

SECOND REGULAR SESSION

# SENATE BILL NO. 827

93RD GENERAL ASSEMBLY

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INTRODUCED BY SENATORS DOUGHERTY, BRAY AND WHEELER.

Read 1st time January 9, 2006, and ordered printed.

TERRY L. SPIELER, Secretary.

4256S.011

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## AN ACT

To amend chapter 565, RSMo, by adding thereto one new section relating to the creation of a death penalty commission.

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*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Chapter 565, RSMo, is amended by adding thereto one new  
2 section, to be known as section 565.043, to read as follows:

**565.043. 1. A commission on the death penalty is hereby created  
2 within the office of administration to consist of ten members: two  
3 members from the house of representatives with one from each party  
4 (the majority party member shall be appointed by the speaker of the  
5 house of representatives and the minority party member shall be  
6 appointed by the minority floor leader); two members from the senate,  
7 one from each party (the majority party member shall be appointed by  
8 the president pro tem and the minority party member shall be  
9 appointed by the minority floor leader); a criminal defense lawyer and  
10 a county prosecutor appointed by the board of governors of The  
11 Missouri Bar; the state public defender or his or her designee; the  
12 attorney general or his or her designee; a murder victim's family  
13 member and a family member of an individual on death row appointed  
14 by the director of the department of corrections. Representation on the  
15 commission shall be balanced with the various viewpoints on the death  
16 penalty equally represented. The members of the commission shall  
17 serve without compensation, but the members shall be reimbursed for  
18 necessary expenses incurred in the work of the commission. The  
19 commission shall be appointed and staffed on or before December 1,  
20 2006.**

21 **2. The commission on the death penalty shall elect a chair. The**

22 commission shall be assisted in its work by the staff of the Missouri  
23 supreme court and the personnel and staff of the state public  
24 universities.

25 3. The commission on the death penalty shall hold public  
26 hearings throughout the state, calling before it witnesses to testify and  
27 allowing other interested citizens to comment on issues relevant to the  
28 administration of the death penalty in Missouri.

29 4. The commission shall study all aspects of the death penalty as  
30 administered in the state. As part of this study, the commission on the  
31 death penalty shall review and analyze all cases in which the death  
32 penalty was sought and use a scientific method of random sampling to  
33 review and analyze a statistical representation of cases in which  
34 charges of first degree murder, second degree murder, or voluntary  
35 manslaughter were filed on or after January 1, 1977. The sampling  
36 shall have geographic representation across the state based on  
37 population distribution. Such review and analyses shall examine all  
38 available data concerning:

39 (1) The facts of the offense including mitigating and aggravating  
40 circumstances;

41 (2) The county in which the charges were filed;

42 (3) The charges originally filed;

43 (4) The crime for which the defendant was convicted, or to which  
44 the defendant entered a plea of guilty or for which the defendant was  
45 tried and acquitted;

46 (5) The sentence imposed;

47 (6) The age, race, gender, religious preference, and economic  
48 status of the defendant and the victim;

49 (7) Whether evidence exists that the defendant was mentally  
50 retarded or mentally ill or both;

51 (8) Whether the defendant had a prior criminal record and  
52 detailing that record if one exists;

53 (9) The identity, number, and experience level of defense counsel  
54 at trial, appeal, and post conviction;

55 (10) The identity, number, and experience level of trial and  
56 appellate prosecutors, including, where appropriate, members of the  
57 staff of the attorney general;

58 (11) The results of any appellate review;

59           **(12) The results of any post-conviction review in state or federal**  
60 **court; and**

61           **(13) The cost per disposition and implementation of sentence. A**  
62 **cost analysis shall include comparison costs, both direct and indirect,**  
63 **born by county and state governments in the prosecution and defense**  
64 **of the defendant in all homicide cases where a death sentence was**  
65 **sought and in at least an equal number of homicide cases where a death**  
66 **sentence was not sought.**

67           **5. In considering the experience level of attorneys and the**  
68 **adequacy of resources as described in subdivisions (9) and (10) of**  
69 **subsection 4 of this section, the commission shall consider the**  
70 **experience and training levels required by the Missouri supreme court,**  
71 **the experience and training levels required by the courts and**  
72 **legislatures of other jurisdictions in which the death penalty is**  
73 **imposed, and the recommendations of national associations.**

74           **6. The review conducted by the commission shall include all such**  
75 **charges filed during the study period.**

76           **7. The commission shall report its findings and recommendations**  
77 **regarding the death penalty, including remedies for any deficiencies**  
78 **found by the commission, to the governor, members of the legislature,**  
79 **and the Missouri supreme court by January 1, 2010.**

80           **8. The commission shall make recommendations for amendments**  
81 **to the statutes and court rules pertaining to cases in which the death**  
82 **penalty is sought or imposed to provide assurances that:**

83           **(1) Defendants who are sentenced to death are in fact guilty of**  
84 **first degree murder;**

85           **(2) Defendants in cases in which the death penalty is sought are**  
86 **provided adequate and experienced counsel and adequate resources for**  
87 **the defense of their cases at trial and at the appellate and post-**  
88 **conviction stages;**

89           **(3) Race does not play an impermissible role in determining**  
90 **which defendants are sentenced to death;**

91           **(4) Appellate and post-conviction procedures are adequate to**  
92 **provide a fair opportunity for the courts of this state to correct errors**  
93 **and injustices that occurred at trial in cases in which the death penalty**  
94 **is imposed, including but not limited to allowing access to physical**  
95 **evidence for later testing and analysis; and**

96           **(5) All prosecutors throughout the state use similar criteria to**  
97 **determine whether to seek the death penalty in a case involving**  
98 **criminal homicide.**

99           **9. No execution of a defendant shall take place between the**  
100 **effective date of this section and January 1, 2010.**

101           **10. During the moratorium period, the special procedures in**  
102 **cases of first degree murder provided in sections 565.030 to 565.040 and**  
103 **any other proceedings related to capital cases, including motions for**  
104 **post-conviction relief, shall continue to be operative and shall proceed**  
105 **as if no such moratorium were in place, except that no day certain for**  
106 **execution shall be appointed that falls during the moratorium.**

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Bill

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