

FIRST REGULAR SESSION

# SENATE BILL NO. 439

94TH GENERAL ASSEMBLY

INTRODUCED BY SENATORS DAYS, KENNEDY, BRAY, WILSON,  
McKENNA, SMITH, COLEMAN AND JUSTUS.

Read 1st time February 5, 2007, and ordered printed.

TERRY L. SPIELER, Secretary.

1617S.011

## AN ACT

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

*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 section, to be known as section 565.045, to read as follows:

**565.045. 1. A commission on the death penalty is hereby created within the office of administration to consist of ten members: two members from the house of representatives with one from each party (the majority party member shall be appointed by the speaker of the house of representatives and the minority party member shall be appointed by the minority floor leader); two members from the senate, one from each party (the majority party member shall be appointed by the president pro tem and the minority party member shall be appointed by the minority floor leader); a criminal defense lawyer and a county prosecutor appointed by the board of governors of the Missouri Bar; the state public defender or his or her designee; the attorney general or his or her designee; a murder victim's family member and a family member of an individual on death row appointed by the director of the department of corrections. Representation on the commission shall be balanced with the various viewpoints on the death penalty equally represented. The members of the commission shall serve without compensation, but the members shall be reimbursed for necessary expenses incurred in the work of the commission. The commission shall be appointed and staffed on or before December 1, 2007.**

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 body of evidence assembled to obtain a homicide  
59 conviction, including physical evidence, eyewitness testimony,  
60 informant testimony, etc.;

61 (12) The results of any appellate review;

62 (13) The results of any post-conviction review in state or federal  
63 court; and

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

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

77 6. The review conducted by the commission shall include all such  
78 charges filed during the study period.

79 7. The commission shall report its findings and recommendations  
80 regarding the death penalty, including remedies for any deficiencies  
81 found by the commission, to the governor, members of the legislature,  
82 and the Missouri supreme court by January 1, 2011.

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

86 (1) Defendants who are sentenced to death are in fact guilty of  
87 first degree murder;

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

92 (3) Race does not play an impermissible role in determining  
93 which defendants are sentenced to death;

94 (4) Appellate and post-conviction procedures are adequate to

95 provide a fair opportunity for the courts of this state to correct errors  
96 and injustices that occurred at trial in cases in which the death penalty  
97 is imposed, including but not limited to allowing access to physical  
98 evidence for later testing and analysis; and

99 (5) All prosecutors throughout the state use similar criteria to  
100 determine whether to seek the death penalty in a case involving  
101 criminal homicide.

102 9. No execution of a defendant shall take place between the  
103 effective date of this section and January 1, 2011.

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

✓  
Bill

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