

SENATE BILL NO. 741

103RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR SCHROER.

2974S.01H

KRISTINA MARTIN, Secretary

AN ACT

To repeal section 547.370, RSMo, and to enact in lieu thereof one new section relating to the death penalty.

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

Section A. Section 547.370, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 547.370, to read as follows:

547.370. 1. [When a motion is filed as provided in section 547.360 to set aside a sentence of death,] **Whenever the death penalty is imposed in any case,** the circuit court shall, **at the time it imposes sentence and judgment,** find on the record whether the [movant] **defendant** is indigent. If the [movant] **defendant** is indigent, the court shall, **without delay,** cause to be appointed two counsel to represent the [movant] **defendant in the preparation and litigation of a defendant's motion under Missouri supreme court rule 24.035 or 29.15.** If [movant] **the defendant** seeks to reject the appointment of counsel, the court shall find on the record, after a hearing[,] if necessary, whether the [movant] **defendant** is able to competently decide whether to accept or reject the appointment and whether the [movant] **defendant** rejected the offer with the understanding of its legal consequences. Unless the [movant] **defendant** is so competent and understands the legal consequences, [movant] **defendant** shall not be permitted to reject the appointment of

EXPLANATION-Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

19 counsel. **If the defendant is not indigent, the court may**
20 **enter an order denying the appointment of counsel.**

21 2. All counsel appointed as provided in this section
22 shall be members of The Missouri Bar or shall be admitted to
23 practice in the particular case as provided in Missouri
24 supreme court rule 9. At least one of the counsel shall
25 meet the following qualifications:

26 (1) Have attended and successfully completed within
27 two years immediately preceding the appointment at least
28 twelve hours of training or educational programs on the
29 postconviction phase of a criminal case and federal and
30 state aspects of cases in which the death penalty is sought;
31 and

32 (2) Have at least three years litigation experience in
33 the field of criminal law **and three years litigation**
34 **experience in the field of postconviction law;** and

35 (3) Have participated as counsel or co-counsel to
36 final judgment in at least five postconviction motions
37 involving class A felonies in either state or federal trial
38 courts; [and]

39 (4) Have participated in either state or federal court
40 as counsel or co-counsel to final judgment in at least:

41 (a) Three felony jury trials; or

42 (b) Five direct criminal appeals in felony cases; **and**

43 (5) **Have been a member of the Missouri Bar for a**
44 **period of at least five years.**

45 **Upon a showing of good cause, the circuit court may appoint**
46 **other counsel whose background, knowledge, or experience**
47 **would otherwise enable the counsel to properly represent the**
48 **defendant in any motion made under Missouri supreme court**
49 **rule 24.035 or 29.15, with due consideration of the**

50 **seriousness of the penalty and the unique and complex nature**
51 **of the litigation.**

52 Counsel shall certify to the state public defender in such
53 form as the defender may require that counsel meets the
54 qualifications of this section prior to filing counsel's
55 entry of appearance in the case.

56 3. Counsel appointed to represent the [movant]
57 **defendant** shall not have represented the [movant] **defendant**
58 at trial [or on], **and shall not represent the defendant in**
59 the direct appeal therefrom.

60 4. As to any counsel appointed as provided in this
61 section, the state public defender shall provide counsel
62 with reasonable compensation and shall provide reasonable
63 and necessary litigation expenses.

64 5. **This section shall apply whenever the death penalty**
65 **is imposed in any case and to any motions under Missouri**
66 **supreme court rule 24.035 or 29.15 filed by a defendant**
67 **challenging a sentence of death.**

68 6. **The state shall comply with any additional**
69 **requirements in 28 U.S.C. Section 2261 and 2265 and 28 CFR**
70 **Section 26.22 that are not specifically contained in this**
71 **section.**

✓