

SECOND REGULAR SESSION

HOUSE BILL NO. 1647

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE KELLEY.

4879H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal section 565.035 as enacted by senate bill no. 491, ninety-seventh general assembly, second regular session and section 565.035 as enacted by senate bill no. 448, eighty-second general assembly, second regular session, 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 565.035, as enacted by senate bill no. 491, ninety-seventh general
2 assembly, second regular session and section 565.035 as enacted by senate bill no. 448, eighty-
3 second general assembly, second regular session, is repealed and one new section enacted in lieu
4 thereof, to be known as section 565.035, to read as follows:

565.035. 1. Whenever the death penalty is imposed in any case, and upon the judgment
2 becoming final in the trial court, the sentence shall be reviewed on the record by the supreme
3 court of Missouri. The circuit clerk of the court trying the case, within ten days after receiving
4 the transcript, shall transmit the entire record and transcript to the supreme court together with
5 a notice prepared by the circuit clerk and a report prepared by the trial judge. The notice shall
6 set forth the title and docket number of the case, the name of the defendant and the name and
7 address of his attorney, a narrative statement of the judgment, the offense, and the punishment
8 prescribed. The report by the judge shall be in the form of a standard questionnaire prepared and
9 supplied by the supreme court of Missouri.

10 2. The supreme court of Missouri shall consider the punishment as well as any errors
11 enumerated by way of appeal.

12 3. With regard to the sentence, the supreme court shall determine:

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

13 (1) Whether the sentence of death was imposed under the influence of passion, prejudice,
14 or any other arbitrary factor; and

15 (2) Whether the evidence supports the jury's or judge's finding of a statutory aggravating
16 circumstance as enumerated in subsection 2 of section 565.032 and any other circumstance
17 found;

18 (3) Whether the sentence of death is excessive or disproportionate to the penalty imposed
19 in similar cases, considering both the offense, the strength of the evidence and the defendant.

20 4. Both the defendant and the state shall have the right to submit briefs within the time
21 provided by the supreme court, and to present oral argument to the supreme court.

22 5. The supreme court shall include in its decision a reference to those similar cases which
23 it took into consideration. In addition to its authority regarding correction of errors, the supreme
24 court, with regard to review of death sentences, shall be authorized to:

25 (1) Affirm the sentence of death; or

26 (2) Set the sentence aside and resentence the defendant to life imprisonment without
27 eligibility for probation, parole, or release except by act of the governor; or

28 (3) Set the sentence aside and remand the case for retrial of the punishment hearing. A
29 new jury shall be selected or a jury may be waived by agreement of both parties and then the
30 punishment trial shall proceed in accordance with this chapter, with the exception that the
31 evidence of the guilty verdict shall be admissible in the new trial together with the official
32 transcript of any testimony and evidence properly admitted in each stage of the original trial
33 where relevant to determine punishment.

34 6. There shall be an assistant to the supreme court, who shall be an attorney appointed
35 by the supreme court and who shall serve at the pleasure of the court. The court shall accumulate
36 the records of all cases in which the sentence of death or life imprisonment without probation
37 or parole was imposed after May 26, 1977, or such earlier date as the court may deem
38 appropriate. The assistant shall provide the court with whatever extracted information the court
39 desires with respect thereto, including but not limited to a synopsis or brief of the facts in the
40 record concerning the offense and the defendant. The court shall be authorized to employ an
41 appropriate staff, within the limits of appropriations made for that purpose, and such methods
42 to compile such data as are deemed by the supreme court to be appropriate and relevant to the
43 statutory questions concerning the validity of the sentence. The office of the assistant to the
44 supreme court shall be attached to the office of the clerk of the supreme court for administrative
45 purposes.

46 7. In addition to the mandatory sentence review, there shall be a right of direct appeal
47 of the conviction to the supreme court of Missouri. This right of appeal may be waived by the
48 defendant. If an appeal is taken, the appeal and the sentence review shall be consolidated for

49 consideration. The court shall render its decision on legal errors enumerated, the factual
50 substantiation of the verdict, and the validity of the sentence.

51 **8. If a defendant has exhausted all appeals for a conviction resulting in a death**
52 **penalty sentence, the attorney general shall provide notice to the supreme court that all**
53 **such appeals for the defendant have been exhausted. The supreme court shall conduct and**
54 **complete its review of such sentence as prescribed in this section within thirty days of**
55 **receiving notice from the attorney general. If the sentence of death is affirmed, the date**
56 **of execution of the defendant shall be within sixty days of the date the supreme court**
57 **completes its review.**

565.035. 1. Whenever the death penalty is imposed in any case, and upon the judgment
2 becoming final in the trial court, the sentence shall be reviewed on the record by the supreme
3 court of Missouri. The circuit clerk of the court trying the case, within ten days after receiving
4 the transcript, shall transmit the entire record and transcript to the supreme court together with
5 a notice prepared by the circuit clerk and a report prepared by the trial judge.

6 The notice shall set forth the title and docket number of the case, the name of the defendant and
7 the name and address of his attorney, a narrative statement of the judgment, the offense, and the
8 punishment prescribed. The report by the judge shall be in the form of a standard questionnaire
9 prepared and supplied by the supreme court of Missouri.

10 2. The supreme court of Missouri shall consider the punishment as well as any errors
11 enumerated by way of appeal.

12 3. With regard to the sentence, the supreme court shall determine:

13 (1) Whether the sentence of death was imposed under the influence of passion, prejudice,
14 or any other arbitrary factor; and

15 (2) Whether the evidence supports the jury's or judge's finding of a statutory aggravating
16 circumstance as enumerated in subsection 2 of section 565.032 and any other circumstance
17 found;

18 (3) Whether the sentence of death is excessive or disproportionate to the penalty imposed
19 in similar cases, considering both the crime, the strength of the evidence and the defendant.

20 4. Both the defendant and the state shall have the right to submit briefs within the time
21 provided by the supreme court, and to present oral argument to the supreme court.

22 5. The supreme court shall include in its decision a reference to those similar cases which
23 it took into consideration. In addition to its authority regarding correction of errors, the supreme
24 court, with regard to review of death sentences, shall be authorized to:

25 (1) Affirm the sentence of death; or

26 (2) Set the sentence aside and resentence the defendant to life imprisonment without
27 eligibility for probation, parole, or release except by act of the governor; or

28 (3) Set the sentence aside and remand the case for retrial of the punishment hearing. A
29 new jury shall be selected or a jury may be waived by agreement of both parties and then the
30 punishment trial shall proceed in accordance with this chapter, with the exception that the
31 evidence of the guilty verdict shall be admissible in the new trial together with the official
32 transcript of any testimony and evidence properly admitted in each stage of the original trial
33 where relevant to determine punishment.

34 6. There shall be an assistant to the supreme court, who shall be an attorney appointed
35 by the supreme court and who shall serve at the pleasure of the court. The court shall accumulate
36 the records of all cases in which the sentence of death or life imprisonment without probation
37 or parole was imposed after May 26, 1977, or such earlier date as the court may deem
38 appropriate. The assistant shall provide the court with whatever extracted information the court
39 desires with respect thereto, including but not limited to a synopsis or brief of the facts in the
40 record concerning the crime and the defendant. The court shall be authorized to employ an
41 appropriate staff, within the limits of appropriations made for that purpose, and such methods
42 to compile such data as are deemed by the supreme court to be appropriate and relevant to the
43 statutory questions concerning the validity of the sentence. The office of the assistant to the
44 supreme court shall be attached to the office of the clerk of the supreme court for administrative
45 purposes.

46 7. In addition to the mandatory sentence review, there shall be a right of direct appeal
47 of the conviction to the supreme court of Missouri. This right of appeal may be waived by the
48 defendant. If an appeal is taken, the appeal and the sentence review shall be consolidated for
49 consideration. The court shall render its decision on legal errors enumerated, the factual
50 substantiation of the verdict, and the validity of the sentence.

51 **8. If a defendant has exhausted all appeals for a conviction resulting in a death**
52 **penalty sentence, the attorney general shall provide notice to the supreme court that all**
53 **such appeals for the defendant have been exhausted. The supreme court shall conduct and**
54 **complete its review of such sentence as prescribed in this section within thirty days of**
55 **receiving notice from the attorney general. If the sentence of death is affirmed, the date**
56 **of execution of the defendant shall be within sixty days of the date the supreme court**
57 **completes its review.**

✓