

SECOND REGULAR SESSION

HOUSE BILL NO. 2596

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE ELLINGTON.

6378H.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, RSMo, and to enact in lieu thereof two new sections relating to racial considerations in death penalty cases.

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 assembly, second regular session, and section 565.035 as enacted by senate bill no. 448, eighty-second general assembly, second regular session, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 565.035 and 565.044, to read as follows:

- 565.035. 1. Whenever the death penalty is imposed in any case, and upon the judgment becoming final in the trial court, the sentence shall be reviewed on the record by the supreme court of Missouri. The circuit clerk of the court trying the case, within ten days after receiving the transcript, shall transmit the entire record and transcript to the supreme court together with a notice prepared by the circuit clerk and a report prepared by the trial judge. The notice shall set forth the title and docket number of the case, the name of the defendant and the name and address of his attorney, a narrative statement of the judgment, the offense, and the punishment prescribed. The report by the judge shall be in the form of a standard questionnaire prepared and supplied by the supreme court of Missouri.
2. The supreme court of Missouri shall consider the punishment as well as any errors enumerated by way of appeal.
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) Whether race was a significant factor in the decision to seek or impose the death**
21 **penalty or in other decisions to seek or impose the death penalty in the county or judicial**
22 **circuit in which the defendant was prosecuted or tried or the state at the time the death**
23 **sentence was sought or imposed.**

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

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

29 (1) Affirm the sentence of death; or

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

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

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

48 supreme court shall be attached to the office of the clerk of the supreme court for administrative
49 purposes.

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

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5 a notice prepared by the circuit clerk and a report prepared by the trial judge. The notice shall
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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) Whether race was a significant factor in the decision to seek or impose the death**
21 **penalty or in other decisions to seek or impose the death penalty in the county or judicial**
22 **circuit in which the defendant was prosecuted or tried or the state at the time the death**
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48 supreme court shall be attached to the office of the clerk of the supreme court for administrative
49 purposes.

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52 defendant. If an appeal is taken, the appeal and the sentence review shall be consolidated for
53 consideration. The court shall render its decision on legal errors enumerated, the factual
54 substantiation of the verdict, and the validity of the sentence.

**565.044. 1. No person shall be sentenced to death or executed under any judgment
2 that was sought or obtained on the basis of race.**

3 **2. Before the first or second stage of trial in which murder in the first degree is**
4 **charged without a waiver of the death penalty, a defendant may file a motion upon the**
5 **ground that racial considerations played a significant part in the decision to seek the death**
6 **penalty. A defendant who has been sentenced to death on or after August 28, 2016, may**
7 **file a motion to set aside the sentence based upon the ground that racial considerations**
8 **played a significant part in the decision to seek or impose the death penalty, and the**
9 **provisions of sections 547.360 and 547.370 shall apply to such motions. A defendant who**
10 **was sentenced to death prior to August 28, 2016, may file a motion to seek relief under this**
11 **section.**

12 **3. The court shall schedule a hearing on the motion and shall prescribe a time for**
13 **the submission of evidence by both parties.**

14 **4. The defendant has the burden of proving, and shall state with particularity how,**
15 **the evidence supports a claim that race was a significant factor in the decision to seek or**
16 **impose the death penalty. The state may offer evidence in rebuttal of the claims or**
17 **evidence of the defendant, including statistical evidence. The court may consider evidence**
18 **of the impact upon the defendant's trial of any program to eliminate race as a factor in**
19 **seeking or imposing the death penalty.**

20 **5. A finding that race was a significant factor in the decision to seek or impose the**
21 **death penalty shall be established if the court finds that race was a significant factor in**
22 **decisions to seek or impose the death penalty in the county or judicial circuit in which the**
23 **defendant was prosecuted or tried or the state at the time the death sentence was sought**
24 **or imposed.**

25 **6. Evidence relevant to establish a finding that race was a significant factor in**
26 **decisions to seek or impose the death penalty may include statistical evidence or other**
27 **evidence, including sworn testimony of defense attorneys, prosecuting or circuit attorneys,**
28 **law enforcement officers, jurors, or other members of the criminal justice system that,**
29 **irrespective of statutory factors, one or more of the following applies:**

30 **(1) The death penalty was sought or imposed significantly more disproportionately**
31 **upon persons of one race than upon persons of another race, based on the percentage of**
32 **the state's population by race; or**

33 **(2) Race was a significant factor in decisions to exercise peremptory challenges**
34 **during jury selection.**

35 **7. If the court finds that race was a significant factor in the decision to seek or**
36 **impose the death penalty, the court shall order that a death sentence not be sought, or that**
37 **the death sentence imposed by the judgment shall be vacated and the defendant**
38 **resentenced to life imprisonment without eligibility for probation, parole, or release except**
39 **by act of the governor.**

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