

SECOND REGULAR SESSION

HOUSE BILL NO. 1683

95TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES DEEKEN (Sponsor), ENGLUND, QUINN, LAMPE, DOUGHERTY, SCHAAF, STILL, NASHEED, KIRKTON, LOW, HARRIS, ROORDA, JONES (63), CHAPPELLE-NADAL, WEBBER, FLANIGAN, MEADOWS, ATKINS, WALTON GRAY, McGHEE, CALLOWAY, TILLEY, BURNETT, SCHLOTTACH, WRIGHT, STREAM, SANDER, FAITH, OXFORD, KELLY, McNEIL, McDONALD, SKAGGS, McCLANAHAN, STORCH, CARTER, CURLS, KANDER, HODGES, RUCKER, NORR, BROWN (50), NEWMAN, SCAVUZZO, SCHUPP, PACE, SHIVELY, WEBB, SCHOEMEHL, COLONA, MORRIS, LeBLANC, SPRENG, TALBOY AND SANDER (Co-sponsors).

4288L.011

D. ADAM CRUMBLISS, Chief Clerk

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 fourteen 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 county prosecutor appointed by the Missouri Association of Prosecuting Attorneys and a criminal defense lawyer appointed by the Missouri Association of Criminal Defense Lawyers; the state public defender or his or her designee; the attorney general or his or her designee; a police chief appointed by the Missouri Police Chiefs Association; a representative with a law enforcement background selected by the director of public safety; a representative from the faith community selected by the Missouri Christian Leadership Forum; a

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.

14 representative of the National Alliance for Mental Illness selected by the executive director
15 of Missouri's chapter; a murder victim's family member selected by the governor; and a
16 family member of an individual on death row selected by the executive director of Citizens
17 United for Rehabilitation of Errants. The members of the commission shall serve without
18 compensation, but the members shall be reimbursed for necessary expenses incurred in the
19 work of the commission. The commission shall be appointed and staffed on or before
20 December 1, 2010.

21 2. The commission on the death penalty shall elect a chair. The commission shall
22 be assisted in its work by the staff of the Missouri supreme court and the personnel and
23 staff of the state public universities. Information may be obtained from previously
24 compiled studies and reports and through the commission's independent research. The
25 commission shall have subpoena power to obtain information.

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

29 4. The commission shall study whether the death penalty in Missouri serves a
30 legitimate public interest such as deterrence, ensuring public safety, instilling confidence
31 in the criminal justice system or whether alternatives to the death penalty exist that would
32 adequately address these legitimate social and penological interests.

33 5. The commission shall study what supportive services exist in Missouri for family
34 members of murder victims; whether these services are sufficient or if additional services
35 should be provided; whether victims rights and services are provided on an equal basis to
36 all surviving family members; and how the death penalty process affects murder victim's
37 family members compared to the legal process of nondeath penalty cases.

38 6. The commission shall study whether wrongful convictions have occurred in
39 Missouri, and if so, what were the causes of those convictions.

40 7. The commission shall determine if there is a significant difference in the cost of
41 prosecution and incarceration of first degree murder cases where the penalty is life without
42 parole as compared with the cost of death penalty cases from prosecution to execution.

43 8. The commission shall study all aspects of the death penalty as administered in
44 this state. As a part of this study, the commission on the death penalty shall review and
45 analyze at least half of the cases in which the death penalty was sought using a scientific
46 method of random selection and further analyzing by the same method an equal number
47 of cases in which charges of first degree murder, second degree murder, or voluntary
48 manslaughter were filed on or after January 1, 1977. The sampling shall have geographic

49 representation across the state based on population distribution. Such review and analyses
50 shall examine all available data concerning:

- 51 (1) The facts of the offense including mitigating and aggravating circumstances;
- 52 (2) The county in which the charges were filed;
- 53 (3) The charges originally filed;
- 54 (4) The crime for which the defendant was convicted, or to which the defendant
55 entered a plea of guilty or for which the defendant was tried and acquitted;
- 56 (5) The sentence imposed;
- 57 (6) The age, race, gender, religious preference, and economic status of the
58 defendant and the victim;
- 59 (7) Whether evidence exists that the defendant was mentally retarded or mentally
60 ill or both;
- 61 (8) Whether the defendant had a prior criminal record and detailing that record
62 if one exists;
- 63 (9) The identity, number, and experience level of defense counsel at trial, appeal,
64 and post conviction;
- 65 (10) The identity, number, and experience level of trial and appellate prosecutors,
66 including, where appropriate, members of the staff of the attorney general;
- 67 (11) The body of evidence assembled to obtain a homicide conviction, including
68 physical evidence, eyewitness testimony, informant testimony, etc.;
- 69 (12) The results of any appellate review;
- 70 (13) The results of any post-conviction review in state or federal court; and
- 71 (14) The cost per disposition and implementation of sentence. A cost analysis shall
72 include comparison costs borne by county and state governments in the prosecution and
73 defense of the defendant in at least twenty cases where a death sentence was sought and in
74 an equal number of homicide cases where a death sentence was not sought.

75 9. The commission shall consider the experience and training levels of trial and
76 appellate attorneys as required by the courts and according to recommendations of
77 national associations.

78 10. The commission shall report its findings and recommendations regarding the
79 death penalty, including remedies for any deficiencies found by the commission, to the
80 governor, members of the legislature, and the Missouri supreme court by January 1, 2013.

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

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

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

88 **(3) Race, income and other arbitrary factors do not play an impermissible role in**
89 **determining which defendants are sentenced to death;**

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

94 **(5) All prosecutors throughout the state use similar criteria to determine whether**
95 **to seek the death penalty in a case involving criminal homicide, including whether the**
96 **scope of the current capital murder statute (including the aggravating and mitigating**
97 **circumstances) should be expanded, narrowed, or otherwise altered.**

98 **12. No execution of a defendant shall take place between the effective date of this**
99 **section and January 1, 2013.**

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

✓