

FIRST REGULAR SESSION

# HOUSE BILL NO. 692

## 96TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES SCHAD (Sponsor), COX, FUNDERBURK, LARGENT,  
LOEHNER, JONES (89), JONES (117), PHILLIPS, HIGDON, HINSON, BERNSKOETTER,  
SCHARNHORST, ROWLAND AND SCHATZ (Co-sponsors).

1185L.011

D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

To repeal section 565.035, RSMo, and to enact in lieu thereof one new section relating to supreme court review of death sentences.

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

Section A. Section 565.035, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 565.035, to read as follows: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 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:

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

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

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.

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

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

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

26 (1) Affirm the sentence of death; or

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

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

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

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