

FIRST REGULAR SESSION

HOUSE BILL NO. 1092

95TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE MCGHEE.

2476L.01I

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal section 27.030, RSMo, and to enact in lieu thereof one new section relating to the use of state resources by political subdivisions to seek the death penalty, with penalty provisions.

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

Section A. Section 27.030, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 27.030, to read as follows:

27.030. **1. Except as provided in subsection 2 of this section,** when directed by the governor, the attorney general, or one of his **or her** assistants, shall aid any prosecuting or circuit attorney in the discharge of their respective duties in the trial courts and in examinations before grand juries, and when so directed by the trial court, he **or she** may sign indictments in lieu of the prosecuting attorney.

2. In any case in which the accused has been charged with first degree murder and the death penalty has not been waived, the attorney general, or one of his or her assistants, may aid the prosecuting attorney or circuit attorney only on the following conditions:

(1) The attorney general shall establish a committee to be known as the "Death Increment Fiscal Accountability Committee". It shall consist of five attorneys, each of whom must have been admitted to practice in the courts of the state of Missouri for not less than five years, and must have served as first or second chair counsel for either party in at least one death penalty trial in state or federal court. No more than two of the committees' members shall be employed full-time or part-time by the attorney general. No more than two of its members shall be employed full-time in the prosecution of criminal cases; no more than two of its members shall be employed full-time in the defense of

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.

17 criminal cases; and at least one of its members shall have tried at least one federal capital
18 case to verdict either as lead counsel or as co-counsel for the accused. Members of the
19 committee shall serve without pay for their services as such, but shall be compensated by
20 the attorney general for actual expenses incurred in their service on the committee. The
21 committee shall review all cases in which the attorney general is requested to provide
22 assistance in seeking the death penalty against the accused;

23 (2) The attorney general shall create a trust account to be known as the "Death
24 Increment Trust Account", which shall be the sole source of funding for the costs of
25 attorney general's or one of his or her assistants' seeking the death penalty at the trial level.
26 This account shall be subject to the requirements of Missouri Supreme Court Rule 4-1.15;

27 (3) Unless the attorney general, in his or her discretion, declines to seek the death
28 penalty in a case without referring it to the death increment fiscal accountability
29 committee, the attorney general or one of his or her assistants shall prepare a budget for
30 the prosecution of any case in which the attorney general is requested to seek the death
31 penalty, and shall submit the budget to the death increment fiscal accountability
32 committee. In respect to proceedings in the trial court, the budget shall separate the cost
33 of seeking the death penalty from the cost of prosecuting the case as a first degree murder
34 case with a waiver of the death penalty. It shall also provide estimates of the additional
35 cost of defending the direct appeal, the state post-conviction relief motion and appeal, the
36 federal habeas corpus petition, and ancillary proceedings such as challenges to the method
37 of execution and to the accused's competence to be executed, attributable to any decision
38 to insist on the death penalty. The Missouri state public defender system shall provide an
39 estimate of costs attributable to it if the case proceeds as a capital case, including but not
40 limited to the cost, when applicable, of hiring special public defenders or other outside
41 counsel, experts, or investigators. The committee shall review the budget to assure that it
42 reflects the entire cost to the state of seeking the death penalty in the cases it evaluates in
43 considering the request by the county or the city not within a county;

44 (4) If the attorney general refers a case to the death increment fiscal accountability
45 committee, he or she shall, after the foregoing review, make a recommendation whether
46 to seek the death penalty in a given case based on the strength of the evidence of the
47 underlying offense, the strength of the statutory aggravating factors in the specific case,
48 the relative importance of the statutory aggravating factors in separating the specific case
49 from homicide cases generally, the information in mitigation available to the committee,
50 the personnel and budgetary needs of the office of the attorney general and the Missouri
51 state public defender system, and the ability of the state to pay the additional cost of
52 seeking the death penalty as opposed to a sentence other than death, including the effect

53 of this expenditure on other programs and services and on the state's creditworthiness.
54 Counsel for the accused shall be entitled, but not required, to make a presentation to the
55 committee before it makes its recommendation. Nothing that counsel for the accused,
56 including the Missouri state public defender system, presents to the committee, including
57 but not limited to budgetary data, mitigation information, attorney-client communications,
58 and attorney work-product, shall be disclosed to anyone other than the committee
59 members who review the case to which it pertains, and no member of the committee shall
60 be eligible to participate in the prosecution of any case that he or she reviews as a member
61 of the committee or under its auspices. Under no circumstances shall the attorney general
62 be required to seek a death penalty;

63 (5) If the death increment fiscal accountability committee recommends that the
64 attorney general, or one of his or her assistants, assist the prosecuting attorney or circuit
65 attorney in seeking the death penalty in a given case, and the attorney general, in his or her
66 independent professional judgment, decides to follow its recommendation, the county or
67 the city not within a county in which the case arises shall pay into the death increment trust
68 account the added cost of prosecuting the case as a death penalty case in the trial court, as
69 the attorney general has budgeted the cost and as the death increment fiscal accountability
70 committee has approved it. The attorney general shall draw down the costs of seeking the
71 death penalty on a monthly basis. If, when a given case is completed, there remain funds
72 in the death increment trust account that were deposited to cover the costs of seeking death
73 in the case, the county or the city not within a county shall be entitled to a refund of the
74 unexpended funds it paid into the trust account for that case. If the funds in the trust
75 account for a given case are exhausted before the proceedings in the trial court are
76 completed, the county or the city not within a county that sought the attorney general to
77 prosecute the case as a death penalty case shall deposit an additional amount equal to fifty
78 percent of the original death increment budget, or else the attorney general shall waive the
79 death penalty. If the funds in the death increment trust account for a given case are
80 exhausted a second or subsequent time, the county or the city not within a county that
81 sought the attorney general to prosecute the case as a death penalty case shall, whenever
82 at the end of a month the funds in the trust account for the case are exhausted, deposit an
83 additional amount equal to fifty percent of the original death increment budget, or else the
84 attorney general shall waive the death penalty.

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