

House \_\_\_\_\_ Amendment NO. \_\_\_\_\_

Offered By

1 AMEND House Committee Substitute for House Bill No. 1995, Page 1, In the Title, Line 8, by  
2 deleting the phrase "first degree murder" and inserting in lieu thereof the phrase "sentencing"; and  
3

4 Further amend said bill, Section 565.033, Page 18, Line 27, by inserting after all of said section and  
5 line the following:  
6

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

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

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

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

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

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

25 (4) Whether race was a significant factor in the decision to seek or impose the death penalty  
26 or in other decisions to seek or impose the death penalty in the county or judicial circuit in which  
27 the defendant was prosecuted or tried or the state at the time the death sentence was sought or  
28 imposed.

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

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

34 (1) Affirm the sentence of death; or

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

Standing Action Taken \_\_\_\_\_ Date \_\_\_\_\_

Select Action Taken \_\_\_\_\_ Date \_\_\_\_\_

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

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

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

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;

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

(4) Whether race was a significant factor in the decision to seek or impose the death penalty or in other decisions to seek or impose the death penalty in the county or judicial circuit in which the defendant was prosecuted or tried or the state at the time the death sentence was sought or imposed.

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

5. The supreme court shall include in its decision a reference to those similar cases which it took into consideration. In addition to its authority regarding correction of errors, the supreme

1 court, with regard to review of death sentences, shall be authorized to:

- 2 (1) Affirm the sentence of death; or
- 3 (2) Set the sentence aside and resentence the defendant to life imprisonment without
- 4 eligibility for probation, parole, or release except by act of the governor; or
- 5 (3) Set the sentence aside and remand the case for retrial of the punishment hearing. A new
- 6 jury shall be selected or a jury may be waived by agreement of both parties and then the punishment
- 7 trial shall proceed in accordance with this chapter, with the exception that the evidence of the guilty
- 8 verdict shall be admissible in the new trial together with the official transcript of any testimony and
- 9 evidence properly admitted in each stage of the original trial where relevant to determine
- 10 punishment.

11 6. There shall be an assistant to the supreme court, who shall be an attorney appointed by

12 the supreme court and who shall serve at the pleasure of the court. The court shall accumulate the

13 records of all cases in which the sentence of death or life imprisonment without probation or parole

14 was imposed after May 26, 1977, or such earlier date as the court may deem appropriate. The

15 assistant shall provide the court with whatever extracted information the court desires with respect

16 thereto, including but not limited to a synopsis or brief of the facts in the record concerning the

17 crime and the defendant. The court shall be authorized to employ an appropriate staff, within the

18 limits of appropriations made for that purpose, and such methods to compile such data as are

19 deemed by the supreme court to be appropriate and relevant to the statutory questions concerning

20 the validity of the sentence. The office of the assistant to the supreme court shall be attached to the

21 office of the clerk of the supreme court for administrative purposes.

22 7. In addition to the mandatory sentence review, there shall be a right of direct appeal of the

23 conviction to the supreme court of Missouri. This right of appeal may be waived by the defendant.

24 If an appeal is taken, the appeal and the sentence review shall be consolidated for consideration.

25 The court shall render its decision on legal errors enumerated, the factual substantiation of the

26 verdict, and the validity of the sentence."; and

27

28 Further amend said bill, Page 19, Section 565.040, Line 15, by inserting after all of said section and

29 line the following:

30

31 "565.044. 1. No person shall be sentenced to death or executed under any judgment that

32 was sought or obtained on the basis of race.

33 2. Before the first or second stage of trial in which murder in the first degree is charged

34 without a waiver of the death penalty, a defendant may file a motion upon the ground that racial

35 considerations played a significant part in the decision to seek the death penalty. A defendant who

36 has been sentenced to death on or after August 28, 2016, may file a motion to set aside the sentence

37 based upon the ground that racial considerations played a significant part in the decision to seek or

38 impose the death penalty, and the provisions of sections 547.360 and 547.370 shall apply to such

39 motions. A defendant who was sentenced to death prior to August 28, 2016, may file a motion to

40 seek relief under this section.

41 3. The court shall schedule a hearing on the motion and shall prescribe a time for the

42 submission of evidence by both parties.

43 4. The defendant has the burden of proving, and shall state with particularity how, the

44 evidence supports a claim that race was a significant factor in the decision to seek or impose the

45 death penalty. The state may offer evidence in rebuttal of the claims or evidence of the defendant,

46 including statistical evidence. The court may consider evidence of the impact upon the defendant's

47 trial of any program to eliminate race as a factor in seeking or imposing the death penalty.

48 5. A finding that race was a significant factor in the decision to seek or impose the death

1 penalty shall be established if the court finds that race was a significant factor in decisions to seek or  
2 impose the death penalty in the county or judicial circuit in which the defendant was prosecuted or  
3 tried or the state at the time the death sentence was sought or imposed.

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

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

12 (2) Race was a significant factor in decisions to exercise peremptory challenges during jury  
13 selection.

14 7. If the court finds that race was a significant factor in the decision to seek or impose the  
15 death penalty, the court shall order that a death sentence not be sought, or that the death sentence  
16 imposed by the judgment shall be vacated and the defendant resentenced to life imprisonment  
17 without eligibility for probation, parole, or release except by act of the governor."; and

18  
19 Further amend said bill by amending the title, enacting clause, and intersectional references  
20 accordingly.