

HB 811 -- FIRST DEGREE MURDER

SPONSOR: Dogan

COMMITTEE ACTION: Voted "Do Pass" by the Special Committee on Criminal Justice by a vote of 6 to 1. Voted "Do Pass" by the Standing Committee on Rules- Administrative Oversight by a vote of 8 to 0.

Currently, if a jury cannot decide or agree upon a defendant's punishment upon conviction of first degree murder, the jury is instructed that the court shall assess and declare the punishment at life imprisonment without eligibility for probation, parole, or release except by act of the Governor or death. This bill removes death as an option for the court to declare as punishment in cases where the jury cannot decide or agree upon the punishment.

This bill is similar to HCS HB 2459 (2018).

PROPOSERS: Supporters say that this is a two-word bill that repeals language currently allowing someone in a death penalty case where the jury is hung to be sentenced to death by the judge. Missouri and Indiana are the only two states left that allow a judge to sentence a person to death under these circumstances. Even people who are in favor of the death penalty can appreciate that the way it plays out in practice needs to be changed. The 6th Amendment requires that citizens decide the facts of a case, not the judge. Even in the penalty phase of a trial there is a fact-finding aspect, including whether there were aggravating factors, so they are not arbitrarily choosing between life and death. The jury must be unanimous in its finding in that fact phase, too. This is how the law was prior to 1983. It is important to note that this is about procedure. It is understood that a jury is meant to make a decision about sentencing and it is undemocratic to allow a judge to make the decision alone. There has been a consideration regarding who receives the death penalty en masse. There is a procedure in the US called a "death-qualified jury," and it should be composed of people who are not categorically opposed to the death penalty and those who do not think the death penalty should be imposed in every case. Super PACs put judges in place and we should not allow these individuals alone to sentence people to death.

Testifying for the bill were Representative Dogan; Donnell "Malik" Sims; Rita Linhardt, Missouri Catholic Conference; Rosemary Purcival; Marian Boyd; Elyse Max, Missourians for Alternatives to The Death Penalty; Nicole Lynch, Empower Missouri; Greg Mermelstein, Missouri Public Defenders Office; Mid Missouri Fellowship of Reconciliation; and Lawrence Kemp, Federal Public

Defenders Office-Western District.

OPPONENTS: Those who oppose the bill say that the change is in the jury instruction part of the trial. The instruction should not be stubbornly persistent in the sentencing.

Testifying against the bill was the Missouri Association of Prosecuting Attorneys.