

FIRST REGULAR SESSION

# HOUSE BILL NO. 1169

103RD GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE HOVIS.

2615H.011

JOSEPH ENGLER, Chief Clerk

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## AN ACT

To repeal section 547.370, RSMo, and to enact in lieu thereof one new section relating to postconviction relief.

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

Section A. Section 547.370, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 547.370, to read as follows:

547.370. 1. When a motion is filed as provided in section 547.360 to set aside a sentence of death, the court shall find on the record whether the movant is indigent. If the movant is indigent, the court shall cause to be appointed two counsel to represent the movant. If movant seeks to reject the appointment of counsel, the court shall find on the record, after a hearing, if necessary, whether the movant is able to competently decide whether to accept or reject the appointment and whether the movant rejected the offer with the understanding of its legal consequences. Unless the movant is so competent and understands the legal consequences, movant shall not be permitted to reject the appointment of counsel.

2. All counsel appointed as provided in this section shall be members of The Missouri Bar or shall be admitted to practice in the particular case as provided in Missouri supreme court rule 9. At least one of the counsel shall meet the following qualifications:

(1) Have attended and successfully completed within two years immediately preceding the appointment at least twelve hours of training or educational programs on the postconviction phase of a criminal case and federal and state aspects of cases in which the death penalty is sought; and

(2) Have at least three years litigation experience in the field of criminal law; and

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 (3) Have participated as counsel or co-counsel to final judgment in at least five  
18 postconviction motions involving class A felonies in either state or federal trial courts; and

19 (4) Have participated in either state or federal court as counsel or co-counsel to final  
20 judgment in at least:

21 (a) Three felony jury trials; or

22 (b) Five direct criminal appeals in felony cases.

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24 Counsel shall certify to the state public defender in such form as the defender may require that  
25 counsel meets the qualifications of this section prior to filing counsel's entry of appearance in  
26 the case.

27 3. Counsel appointed to represent the movant shall not have represented the movant  
28 at trial or on the direct appeal therefrom.

29 4. As to any counsel appointed as provided in this section, the state public defender  
30 shall provide counsel with reasonable compensation and shall provide reasonable and  
31 necessary litigation expenses.

32 **5. This section shall apply to any motions under Missouri supreme court rules**  
33 **24.035 and 29.15 filed by a movant challenging a sentence of death.**

34 **6. The state shall comply with any additional requirements under 28 U.S.C**  
35 **Sections 2261 and 2265 and 28 CFR Section 26.22 that are not specifically contained in**  
36 **this section.**

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