

SECOND REGULAR SESSION

# HOUSE BILL NO. 2254

## 103RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE HOVIS.

4956H.011

JOSEPH ENGLER, Chief Clerk

### AN ACT

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

*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Section A. Section 547.370, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 547.370, to read as follows: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]~~ **Whenever the death penalty is imposed in any case, the circuit court shall, at the time it imposes sentence and judgment, find on the record whether the [movant] defendant is indigent. If the [movant] defendant is indigent, the court shall, without delay, cause to be appointed two counsel to represent the [movant] defendant in the preparation and litigation of the defendant's motion under Missouri supreme court rule 24.035 or 29.15. If [movant] the defendant seeks to reject the appointment of counsel, the court shall find on the record, after a hearing, if necessary, whether the [movant] defendant is able to competently decide whether to accept or reject the appointment and whether the [movant] defendant rejected the offer with the understanding of its legal consequences. Unless the [movant] defendant is so competent and understands the legal consequences, [movant] the defendant shall not be permitted to reject the appointment of counsel. If the defendant is not indigent, the court may enter an order denying 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:

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 (1) Have attended and successfully completed within two years immediately  
19 preceding the appointment at least twelve hours of training or educational programs on the  
20 postconviction phase of a criminal case and federal and state aspects of cases in which the  
21 death penalty is sought; and
- 22 (2) Have at least three years **of** litigation experience in the field of criminal law **and**  
23 **three years of litigation experience in the field of postconviction law**; and
- 24 (3) Have participated as counsel or co-counsel to final judgment in at least five  
25 postconviction motions involving class A felonies in either state or federal trial courts; and
- 26 (4) Have participated in either state or federal court as counsel or co-counsel to final  
27 judgment in at least:
- 28 (a) Three felony jury trials; or
- 29 (b) Five direct criminal appeals in felony cases; **and**
- 30 (c) **Have been a member of the Missouri Bar for a period of at least five years.**  
31
- 32 **Upon a showing of good cause, the circuit court may appoint other counsel whose**  
33 **background, knowledge, or experience would otherwise enable such counsel to properly**  
34 **represent the defendant in any motion under Missouri supreme court rule 24.035 or**  
35 **29.15, with due consideration of the seriousness of the penalty and the unique and**  
36 **complex nature of the litigation.** Counsel shall certify to the state public defender in such  
37 form as the defender may require that counsel meets the qualifications of this section prior to  
38 filing counsel's entry of appearance in the case.
- 39 3. Counsel appointed to represent the ~~[movant]~~ **defendant** shall not have represented  
40 the ~~[movant]~~ **defendant** at trial ~~[or on]~~ **and shall not represent the defendant in** the direct  
41 appeal therefrom.
- 42 4. As to any counsel appointed as provided in this section, the state public defender  
43 shall provide counsel with reasonable compensation and shall provide reasonable and  
44 necessary litigation expenses.
- 45 **5. This section shall apply whenever the death penalty is imposed in any case and**  
46 **to any motions under Missouri supreme court rule 24.035 or 29.15 filed by a movant**  
47 **challenging a sentence of death.**
- 48 **6. The state shall comply with any additional requirements under 28 U.S.C**  
49 **Sections 2261 and 2265 and 28 CFR Section 26.22 that are not specifically contained in**  
50 **this section.**