

SECOND REGULAR SESSION

HOUSE BILL NO. 1870

95TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES ROORDA (Sponsor), NASHEED, DOUGHERTY, CARTER,
WALTON GRAY, OXFORD, MEADOWS, FISCHER (107), LAMPE, NEWMAN, WEBBER,
ATKINS AND MORRIS (Co-sponsors).

4087L.02I

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To amend chapters 565 and 650, RSMo, by adding thereto two new sections relating to the creation of a death penalty commission and moratorium.

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

Section A. Chapters 565 and 650, RSMo, are amended by adding thereto two new sections, to be known as sections 565.047 and 650.370, to read as follows:

2 **565.047. 1. A "Commission on the Death Penalty" is hereby created within the**
3 **office of administration to consist of ten members: two members from the house of**
4 **representatives with one from each party (the majority party member shall be appointed**
5 **by the speaker of the house of representatives and the minority party member shall be**
6 **appointed by the minority floor leader); two members from the senate, one from each party**
7 **(the majority party member shall be appointed by the president pro tem and the minority**
8 **party member shall be appointed by the minority floor leader); a county prosecutor**
9 **appointed by the Missouri Association of Prosecuting Attorneys and a criminal defense**
10 **lawyer appointed by the Missouri Association of Criminal Defense Lawyers; the state**
11 **public defender or his or her designee; the attorney general or his or her designee; a**
12 **murder victim's family member and a family member of an individual on death row**
13 **appointed by the director of the department of corrections. Commission members shall**
14 **be comprised equally of individuals in favor and those opposed to the death penalty. The**
members of the commission shall serve without compensation, but the members shall be

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.

15 reimbursed for necessary expenses incurred in the work of the commission. The
16 commission shall be appointed and staffed on or before December 1, 2010.

17 **2. The commission on the death penalty shall elect a chair. The commission shall**
18 **be assisted in its work by the staff of the Missouri supreme court and the personnel and**
19 **staff of the state public universities.**

20 **3. The commission on the death penalty shall hold public hearings throughout the**
21 **state, calling before it witnesses to testify and allowing other interested citizens to comment**
22 **on issues relevant to the administration of the death penalty in Missouri.**

23 **4. The commission shall study all aspects of the death penalty as administered in**
24 **the state. As part of this study, the commission on the death penalty shall review and**
25 **analyze all cases in which the death penalty was sought and use a scientific method of**
26 **random sampling to review and analyze a statistical representation of cases in which**
27 **charges of first degree murder, second degree murder, or voluntary manslaughter were**
28 **filed on or after January 1, 1977. The sampling shall have geographic representation**
29 **across the state based on population distribution. Such review and analyses shall examine**
30 **all available data concerning:**

- 31 **(1) The facts of the offense including mitigating and aggravating circumstances;**
- 32 **(2) The county in which the charges were filed;**
- 33 **(3) The charges originally filed;**
- 34 **(4) The crime for which the defendant was convicted, or to which the defendant**
35 **entered a plea of guilty or for which the defendant was tried and acquitted;**
- 36 **(5) The sentence imposed;**
- 37 **(6) The age, race, gender, religious preference, and economic status of the**
38 **defendant and the victim;**
- 39 **(7) Whether evidence exists that the defendant was mentally retarded or mentally**
40 **ill or both;**
- 41 **(8) Whether the defendant had a prior criminal record and detailing that record**
42 **if one exists;**
- 43 **(9) The identity, number, and experience level of defense counsel at trial, appeal,**
44 **and post conviction;**
- 45 **(10) The identity, number, and experience level of trial and appellate prosecutors,**
46 **including, where appropriate, members of the staff of the attorney general;**
- 47 **(11) The body of evidence assembled to obtain a homicide conviction, including**
48 **physical evidence, eyewitness testimony, informant testimony, etc.;**
- 49 **(12) The results of any appellate review;**
- 50 **(13) The results of any post-conviction review in state or federal court; and**

51 **(14) The cost per disposition and implementation of sentence. A cost analysis shall**
52 **include comparison costs, both direct and indirect, born by county and state governments**
53 **in the prosecution and defense of the defendant in all homicide cases where a death**
54 **sentence was sought and in at least an equal number of homicide cases where a death**
55 **sentence was not sought.**

56 **5. In considering the experience level of attorneys and the adequacy of resources**
57 **as described in subdivisions (9) and (10) of subsection 4 of this section, the commission**
58 **shall consider the experience and training levels required by the Missouri supreme court,**
59 **the experience and training levels required by the courts and legislatures of other**
60 **jurisdictions in which the death penalty is imposed, and the recommendations of national**
61 **associations.**

62 **6. The review conducted by the commission shall include all such charges filed**
63 **during the study period.**

64 **7. The commission shall study whether alternatives to the death penalty exist that**
65 **would sufficiently ensure public safety and address other legitimate social and penological**
66 **interests, including the interests of families of victims.**

67 **8. The commission shall report its findings and recommendations regarding the**
68 **death penalty, including remedies for any deficiencies found by the commission, to the**
69 **governor, members of the legislature, and the Missouri supreme court by January 1, 2013.**

70 **9. The commission shall make recommendations for amendments to the statutes**
71 **and court rules pertaining to cases in which the death penalty is sought or imposed to**
72 **provide assurances that:**

73 **(1) Defendants who are sentenced to death are in fact guilty of first degree murder;**

74 **(2) Defendants in cases in which the death penalty is sought are provided adequate**
75 **and experienced counsel and adequate resources for the defense of their cases at trial and**
76 **at the appellate and post-conviction stages;**

77 **(3) Race does not play an impermissible role in determining which defendants are**
78 **sentenced to death;**

79 **(4) Appellate and post-conviction procedures are adequate to provide a fair**
80 **opportunity for the courts of this state to correct errors and injustices that occurred at trial**
81 **in cases in which the death penalty is imposed, including but not limited to allowing access**
82 **to physical evidence for later testing and analysis; and**

83 **(5) All prosecutors throughout the state use similar criteria to determine whether**
84 **to seek the death penalty in a case involving criminal homicide.**

85 **10. No execution of a defendant shall take place between the effective date of this**
86 **section and January 1, 2013.**

87 **11. During the moratorium period, the special procedures in cases of first degree**
88 **murder provided in sections 565.030 to 565.040 and any other proceedings related to**
89 **capital cases, including motions for post-conviction relief, shall continue to be operative**
90 **and shall proceed as if no such moratorium were in place, except that no day certain for**
91 **execution shall be appointed that falls during the moratorium.**

92 **12. Beginning on the effective date of this section the office of administration shall**
93 **make an annual report which estimates the total cost to the state of the disposition and**
94 **implementation of the death penalty during each year. These annual reports shall be**
95 **provided to the governor, the speaker of the house of representatives and the president pro**
96 **tem of the senate.**

97 **13. At any time that the state of Missouri abolishes or repeals the death penalty, the**
98 **money saved annually as a result of its abolition or repeal as determined by the estimates**
99 **provided by the office of administration in subsection 12 of this section shall, subject to**
100 **appropriation be transferred that year and each year thereafter to the department of**
101 **public safety for deposit in the cold case investigation revolving fund established in section**
102 **650.370.**

650.370. 1. There is hereby established in the state treasury a fund to be known as
2 **the "Cold Case Investigation Revolving Fund" which shall consist of all money**
3 **appropriated by the state under section 565.047 from savings due to the death penalty**
4 **moratorium. The fund shall be administered by the department of public safety. The state**
5 **treasurer shall be custodian of the fund and shall approve disbursements from the fund**
6 **in accordance with sections 30.170 and 30.180.**

7 **2. Notwithstanding the provisions of section 33.080 to the contrary, any moneys**
8 **remaining in the fund at the end of the biennium shall not revert to the credit of the**
9 **general revenue fund.**

10 **3. The state treasurer shall invest moneys in the fund in the same manner as other**
11 **funds are invested. Any interest and moneys earned on such investments shall be credited**
12 **to the fund.**

13 **4. Moneys in the fund shall be used solely for the purpose of reimbursing law**
14 **enforcement agencies in this state for the costs associated with reopening old investigations**
15 **regarding homicides, missing persons, sexual assaults or child abductions.**

16 **5. Law enforcement agencies may apply to the department of public safety for**
17 **reimbursement of the costs associated with reopening old investigations regarding**
18 **homicides, missing persons, sexual assaults or child abductions from the cold case**
19 **investigation revolving fund.**

20 **6. All applications shall be evaluated by the department of public safety which shall**
21 **promulgate rules for the submission of applications, their evaluation, and criteria for**
22 **determining the amount, if any, of reimbursement to be awarded to the applicants.**

23 **7. Any rule or portion of a rule, as that term is defined in section 536.010 that is**
24 **created under the authority delegated in this section shall become effective only if it**
25 **complies with and is subject to all of the provisions of chapter 536 and, if applicable,**
26 **section 536.028. This section and chapter 536 are nonseverable and if any of the powers**
27 **vested with the general assembly pursuant to chapter 536 to review, to delay the effective**
28 **date, or to disapprove and annul a rule are subsequently held unconstitutional, then the**
29 **grant of rulemaking authority and any rule proposed or adopted after August 28, 2010,**
30 **shall be invalid and void.**

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