

FIRST REGULAR SESSION

# HOUSE BILL NO. 445

## 94TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES DEEKEN (Sponsor), JOHNSON, HUBBARD, AVERY, SANDER, QUINN (7), SCHNEIDER, BRUNS, SCHAAF, LeVOTA, TILLEY, BOWMAN, DENISON, McGHEE, SCHLOTTACH, LEMBKE, FAITH, WRIGHT-JONES, HARRIS (110), MEADOWS, ROORDA, BURNETT, VILLA, BROWN (50), LOW (39), QUINN (9), BAKER (25), MEINERS, WALTON, HOSKINS, BLAND, TALBOY, CURLS, SPRENG, McCLANAHAN, LOWE (44), LAMPE, STORCH, RUCKER, CHAPPELLE-NADAL, DAUS, DOUGHERTY AND OXFORD (Co-sponsors).

Read 1st time January 17, 2007 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

1260L.011

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### AN ACT

To amend chapter 565, RSMo, by adding thereto one new section relating to the creation of a death penalty commission.

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

Section A. Chapter 565, RSMo, is amended by adding thereto one new section, to be known as section 565.045, to read as follows:

**565.045. 1. A commission on the death penalty is hereby created within the office of administration to consist of ten members: two members from the house of representatives with one from each party (the majority party member shall be appointed by the speaker of the house of representatives and the minority party member shall be appointed by the minority floor leader); two members from the senate, one from each party (the majority party member shall be appointed by the president pro tem and the minority party member shall be appointed by the minority floor leader); a criminal defense lawyer and a county prosecutor appointed by the board of governors of The Missouri Bar; the state public defender or his or her designee; the attorney general or his or her designee; a murder victim's family member and a family member of an individual on death row appointed by the director of the department of corrections. Representation on the**

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.

12 commission shall be balanced with the various viewpoints on the death penalty equally  
13 represented. The members of the commission shall serve without compensation, but the  
14 members shall be reimbursed for necessary expenses incurred in the work of the  
15 commission. The commission shall be appointed and staffed on or before December 1,  
16 2007.

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 report its findings and recommendations regarding the  
65 death penalty, including remedies for any deficiencies found by the commission, to the  
66 governor, members of the legislature, and the Missouri supreme court by January 1, 2011.

67           8. The commission shall make recommendations for amendments to the statutes  
68 and court rules pertaining to cases in which the death penalty is sought or imposed to  
69 provide assurances that:

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

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

74           (3) Race does not play an impermissible role in determining which defendants are  
75 sentenced to death;

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

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

82           **9. No execution of a defendant shall take place between the effective date of this**  
83 **section and January 1, 2011.**

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

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