

SECOND REGULAR SESSION

HOUSE BILL NO. 1625

96TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES ELLINGER (Sponsor), PACE, McDONALD,
WALTON GRAY AND MEADOWS (Co-sponsors).

4926L.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To amend chapter 565, RSMo, by adding thereto one new section relating to fairness in the infliction of the death penalty, with an emergency clause.

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 565.036, to read as follows:

565.036. 1. No agent of the state of Missouri shall seek, impose, affirm, or inflict a sentence of death on the basis of race, or seek, defend, impose, affirm, or inflict a sentence of death that any agent of the state of Missouri at any point sought or imposed on the basis of race.

2. A claim that race was the basis of the decision to seek or impose a death sentence may be established if the court finds that at the time the defendant's death sentence was sought or imposed, race was a significant factor in decisions to seek or impose death sentences in any county, city not within a county, judicial circuit, or the state at large.

3. Evidence relevant to establish a finding that at the time the defendant's death sentence was sought or imposed, race was a significant factor in decisions to seek or impose a sentence of death in any county, city not within a county, judicial circuit, or the state at large, may include statistical evidence or other evidence, including but not limited to, sworn testimony of attorneys, prosecutors, law enforcement officers, jurors, or other members of the criminal justice system or both of the following:

(1) Evidence that irrespective of statutory factors, death sentences were sought or imposed significantly more frequently on persons of one race than on persons of another

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 race, or evidence that irrespective of statutory factors death sentences were sought or
18 imposed significantly more frequently when the victim was of one race than when the
19 victim was of another race, or that race was a significant factor in decisions to exercise
20 peremptory challenges during jury selection; and

21 (2) Evidence that the prosecution is unable to justify the racial disparities
22 demonstrated by the defendant by identifying other, legitimate sentencing considerations
23 that when tested statistically, adequately explain the apparent racial disparities.

24 4. The defendant has the burden of proving that at the time his or her death
25 sentence was imposed, race was a significant factor in decisions to seek or impose the
26 sentence of death in any county, city not within a county, judicial circuit, or the state at
27 large. The prosecution may offer evidence in rebuttal of the claims or evidence of the
28 defendant. The prosecution may rebut a statistical showing of statewide racial disparities
29 by introducing statistical evidence or other evidence demonstrating that at the time the
30 defendant's death sentence was sought or imposed no racial discrimination occurred in the
31 county, or city not within a county, where the defendant's sentence of death was sought or
32 imposed. The court may consider evidence of any program, implemented prior to the
33 defendant's trial whose purpose was to eliminate racial disparities, in its evaluation of
34 whether the prosecution has adequately addressed those disparities.

35 5. The defendant shall state with particularity how the evidence supports a claim
36 that at the time his or her death sentence was sought or imposed, race was a significant
37 factor in decisions to seek or impose the sentence of death in any county, city not within a
38 county, judicial circuit, or the state at large. The claim shall be raised by the defendant
39 either by pretrial motion or in post-conviction proceedings under Missouri supreme court
40 rule 24.035 or 29.15. The court shall schedule a hearing on the claim and shall prescribe
41 a time for the submission of evidence by both parties. If the court finds that at the time the
42 defendant's death sentence was sought or imposed, race was a significant factor in
43 decisions to seek or impose the sentence of death in any county, city not within a county,
44 judicial circuit, or the state at large the court shall order that a sentence of death shall not
45 be sought against the defendant or that the defendant's death sentence, imposed by the
46 judgment, shall be vacated and the defendant re-sentenced to life imprisonment without
47 eligibility for probation, parole, or release except by act of the governor.

48 6. Grant or denial of a pretrial motion under this section in a trial court shall be
49 immediately appealable to the supreme court of Missouri, and the defendant shall not be
50 brought to trial until the appeal and any certiorari proceeding arising from it is resolved.

51 7. Notwithstanding any other provision or time limitation contained in Missouri
52 supreme court rules 24.035 and 29.15, a defendant may seek relief from a death sentence

53 **against him or her on the ground that racial considerations played a significant part in the**
54 **decision to seek or impose his or her death sentence by filing a motion seeking relief. The**
55 **motion shall be filed in the ordinary course of the defendant's pending case or post-**
56 **conviction relief proceeding, or within one year of the effective date of this section,**
57 **whichever is the later.**

58 **8. Notwithstanding any provision of Missouri supreme court rules 24.035 and**
59 **29.15, except as specifically stated in subdivisions (1) and (2) of subsection 3 of this section,**
60 **the procedures and hearing on the motion seeking relief from the defendant's death**
61 **sentence on the ground that at the time his or her death sentence was imposed, race was**
62 **a significant factor in decisions to seek or impose the sentence of death in any county, city**
63 **not within a county, judicial circuit, or the state at large, shall follow and comply with**
64 **Missouri supreme court rules 42 to 81. Any appeal from the grant or denial of relief in a**
65 **post-conviction relief motion or in a separate motion under this section shall be as in a civil**
66 **case, and in the trial and appellate courts the defendant shall have the right to**
67 **constitutionally effective counsel.**

68 **9. The provisions of this section shall be applied retroactively.**

Section B. Because immediate action is necessary to protect the citizens of this state
2 from executions that are motivated by racial bias, this act is deemed necessary for the immediate
3 preservation of the public health, welfare, peace, and safety, and is hereby declared to be an
4 emergency act within the meaning of the constitution, and this act shall be in full force and effect
5 upon its passage and approval.

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