

By: Gordon

To: Judiciary;  
AppropriationsSENATE BILL NO. 2537  
(As Passed the Senate)

1 AN ACT TO CREATE THE MISSISSIPPI CAPITAL POST-CONVICTION  
2 COUNSEL ACT; TO CREATE THE MISSISSIPPI OFFICE OF CAPITAL  
3 POST-CONVICTION COUNSEL AND SPECIFY ITS PERSONNEL; TO PROVIDE  
4 QUALIFICATIONS FOR ATTORNEYS IN THE OFFICE; TO PRESCRIBE THE  
5 DUTIES OF ATTORNEYS IN THE OFFICE; TO PROVIDE FOR COMPENSATION; TO  
6 SPECIFY OFFICE HOURS; TO AUTHORIZE THE DIRECTOR TO ACQUIRE OFFICE  
7 SPACE, SUPPLIES AND EQUIPMENT; TO REQUIRE THE DIRECTOR TO MAINTAIN  
8 A DOCKET; TO AUTHORIZE THE APPOINTMENT OF ATTORNEYS IN SITUATIONS  
9 WHERE CONFLICTS ARISE; TO CREATE THE SPECIAL CAPITAL  
10 POST-CONVICTION COUNSEL FUND; TO PROVIDE THAT ATTORNEYS APPOINTED  
11 TO THE OFFICE SHALL BE FULL TIME; TO AMEND SECTION 99-19-105,  
12 MISSISSIPPI CODE OF 1972, TO REVISE THE SETTING OF THE DATE OF  
13 EXECUTION OF DEATH SENTENCE; TO AMEND SECTION 99-39-5, MISSISSIPPI  
14 CODE OF 1972, TO REVISE THE STATUTE OF LIMITATIONS FOR  
15 POST-CONVICTION RELIEF IN CAPITAL CASES; TO AMEND SECTION  
16 99-39-23, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR THE APPOINTMENT  
17 OF POST-CONVICTION COUNSEL IN CAPITAL CASES; TO AMEND SECTION  
18 99-39-27, MISSISSIPPI CODE OF 1972, TO EXCLUDE POST-CONVICTION  
19 RELIEF IN CAPITAL CASES; TO CREATE SECTION 99-15-18, MISSISSIPPI  
20 CODE OF 1972, TO PROVIDE FOR COMPENSATION OF COUNSEL IN  
21 POST-CONVICTION RELIEF CASES INVOLVING THE DEATH PENALTY; TO  
22 CREATE SECTION 99-39-28, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT  
23 THE SUPREME COURT SHALL PROVIDE RULES FOR POST-CONVICTION  
24 PROCEEDINGS IN CAPITAL CASES; TO PROVIDE FOR THE SETTING OF THE  
25 DATE FOR EXECUTION OF DEATH SENTENCES; TO REPEAL SECTION 99-19-49,  
26 MISSISSIPPI CODE OF 1972, WHICH PROVIDES FOR THE SETTING OF A DAY  
27 FOR THE EXECUTION OF A DEATH SENTENCE; AND FOR RELATED PURPOSES.

28 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

29 SECTION 1. This act may be cited as the "Mississippi Capital  
30 Post-Conviction Counsel Act."

31 SECTION 2. There is created the Mississippi Office of  
32 Capital Post-Conviction Counsel. This office shall consist of  
33 three (3) attorneys, one (1) investigator, one (1) fiscal officer  
34 and one (1) secretary/paralegal. One of those attorneys shall  
35 serve as director of the office. The director shall be appointed  
36 by the Chief Justice of the Supreme Court with the approval of a  
37 majority of the justices voting, for a term of four (4) years, or  
38 until a successor takes office. The remaining attorneys and other

39 staff shall be appointed by the director of the office and shall  
40 serve at the will and pleasure of the director. The director and  
41 all other attorneys in the office shall be active members of The  
42 Mississippi Bar and shall meet all qualifications necessary to  
43 serve as post-conviction counsel for persons under a sentence of  
44 death. The director may be removed from office by the Chief  
45 Justice upon finding that the director is not qualified under law  
46 to serve as post-conviction counsel for persons under sentences of  
47 death, has failed to perform the duties of the office or has acted  
48 beyond the scope of the authority granted by law for the office.

49 SECTION 3. The Office of Capital Post-Conviction Counsel is  
50 created for the purpose of providing representation to indigent  
51 parties under sentences of death in post-conviction proceedings,  
52 and to perform such other duties as set forth by law.

53 SECTION 4. The Office of Capital Post-Conviction Counsel  
54 shall limit its activities to the representation of inmates under  
55 sentence of death in post-conviction proceedings and ancillary  
56 matters related directly to post-conviction review of their  
57 convictions and sentences and other activities explicitly  
58 authorized in statute. Representation by the office or by private  
59 counsel under appointment by the office will end upon the filing  
60 of proceeding for federal habeas corpus review or for appointment  
61 of counsel to represent the defendant in federal habeas corpus  
62 proceedings. However, the office may continue representation if  
63 the office or a staff attorney employed by the office shall be  
64 appointed by a federal court to represent the inmate in federal  
65 habeas corpus proceedings. In such event, the office or the  
66 employee attorney shall apply to the federal court for  
67 compensation and expenses and shall upon receipt of payments by  
68 the federal court pay all sums received over to the office for  
69 deposit in the Special Capital Post-Conviction Counsel Fund as  
70 provided in Section 9 of this act, from which all expenses for  
71 investigation and litigation shall be disbursed. Representation  
72 in post-conviction proceedings shall further include  
73 representation of the inmate from the exhaustion of all state and  
74 federal post-conviction litigation until execution of the sentence  
75 or an adjudication resulting in either a new trial or a vacation

76 of the death sentence. The attorneys appointed to serve in the  
77 Office of Capital Post-Conviction Counsel shall devote their  
78 entire time to the duties of the office, shall not represent any  
79 persons in other litigation, civil or criminal, nor in any other  
80 way engage in the practice of law, and shall in no manner,  
81 directly or indirectly, participate in the trial or any person  
82 charged with capital murder or direct appeal of any person under  
83 sentence of death in the state, nor engage in lobbying activities  
84 for or against the death penalty. Any violation of this provision  
85 shall be grounds for termination from employment, in the case of  
86 the director, by the Chief Justice, and in the case of other  
87 attorneys, by the director, with approval of the Chief Justice.

88 SECTION 5. The director appointed under this act shall be  
89 compensated at no more than the maximum amount allowed by statute  
90 for a district attorney, and other attorneys in the office shall  
91 be compensated at no more than the maximum amount allowed by  
92 statute for an assistant district attorney.

93 SECTION 6. The Director of the Office of Post-Conviction  
94 Counsel shall keep the office open Monday through Friday for not  
95 less than eight (8) hours each day.

96 SECTION 7. In addition to the authority to represent persons  
97 under sentence of death in state post-conviction proceedings, the  
98 director is hereby empowered to pay and disburse salaries,  
99 employment benefits and charges relating to employment of staff  
100 and to establish their salaries, and expenses of the office; to  
101 incur and pay travel expenses of staff necessary for the  
102 performance of the duties of the office; to rent or lease on such  
103 terms as he may think proper such office space as is necessary in  
104 the City of Jackson to accommodate the staff; to solicit and  
105 accept monies, gifts, grants or services from any public or  
106 private sources for the purpose of funding, operating and  
107 executing the statutory duties of the office; to enter into and  
108 perform contracts, including, but not limited to, contracts and

109 agreements necessary to obtain and receive monies, gifts, grants  
110 or services from federal, public and private sources, and to  
111 purchase such necessary office supplies and equipment as may be  
112 needed for the proper administration of said offices; and to incur  
113 and pay such other expenses as are appropriate and customary to  
114 the operations of the office. The director shall be required to  
115 obtain a surety bond in the amount of not less than One Hundred  
116 Thousand Dollars (\$100,000.00) payable to the state. The cost of  
117 such bond shall be paid out of funds appropriated for the  
118 operations of the office. All salaries and other expenditures  
119 shall be paid from funds appropriated for such purposes augmented  
120 by funds received as gifts and grants from public and private  
121 sources.

122       SECTION 8. The director shall, as prescribed by the Chief  
123 Justice, keep a docket of all death penalty cases originating in  
124 the courts of Mississippi, which must at all reasonable times be  
125 open to the inspection of the public and must show the county,  
126 district and court in which the causes have been instituted. The  
127 director shall prepare and maintain a roster of all death penalty  
128 cases originating in the courts of Mississippi and pending in  
129 state and federal courts indicating the current status of each  
130 such case, and a history of those death penalty cases filed since  
131 1976. Copies of such dockets and rosters shall be submitted to  
132 the Supreme Court in such format and with such appropriate  
133 information and as frequently as the Chief Justice may direct.  
134 The director shall also report monthly to the Chief Justice the  
135 activities, receipts and expenditures of the office.

136       SECTION 9. If, at any time during the representation of two  
137 (2) or more defendants, the director determines that the interest  
138 of those persons are so adverse or hostile that they cannot all be  
139 represented by the director or his staff without conflict of  
140 interest, or if the director shall determine that the volume or  
141 number of representations shall so require, the director, in his

142 sole discretion, notwithstanding any statute or regulation to the  
143 contrary, shall be authorized to employ qualified private counsel.

144 Fees and expenses, approved by order of the appropriate court,  
145 including investigative and expert witness expenses of such  
146 private counsel shall be paid from funds appropriated to a Special  
147 Capital Post-Conviction Counsel Fund for this purpose, which fund  
148 is hereby created. Monies in this fund shall not lapse into the  
149 General Fund at the end of a fiscal year but shall remain in the  
150 fund and any interest which accrues to the fund shall remain in  
151 the fund.

152 SECTION 10. The director is further authorized to solicit  
153 and accept monies, gifts, grants or services from any public or  
154 private source, for the purpose of funding, operating and  
155 executing the duties of the office.

156 SECTION 11. Section 99-19-105, Mississippi Code of 1972, is  
157 amended as follows:

158 99-19-105. (1) Whenever the death penalty is imposed, and  
159 upon the judgment becoming final in the trial court, the sentence  
160 shall be reviewed on the record by the Mississippi Supreme Court.  
161 The clerk of the trial court, within ten (10) days after receiving  
162 the transcript, shall transmit the entire record and transcript to  
163 the Mississippi Supreme Court together with a notice prepared by  
164 the clerk and a report prepared by the trial judge. The notice  
165 shall set forth the title and docket number of the case, the name  
166 of the defendant and the name and address of his attorney, a  
167 narrative statement of the judgment, the offense, and the  
168 punishment prescribed. The report shall be in the form of a  
169 standard questionnaire prepared and supplied by the Mississippi  
170 Supreme Court, a copy of which shall be served upon counsel for  
171 the state and counsel for the defendant.

172 (2) The Mississippi Supreme Court shall consider the  
173 punishment as well as any errors enumerated by way of appeal.

174 (3) With regard to the sentence, the court shall determine:

175 (a) Whether the sentence of death was imposed under the  
176 influence of passion, prejudice or any other arbitrary factor;

177 (b) Whether the evidence supports the jury's or judge's  
178 finding of a statutory aggravating circumstance as enumerated in  
179 Section 99-19-101;

180 (c) Whether the sentence of death is excessive or  
181 disproportionate to the penalty imposed in similar cases,  
182 considering both the crime and the defendant; and

183 (d) Should one or more of the aggravating circumstances  
184 be found invalid on appeal, the Mississippi Supreme Court shall  
185 determine whether the remaining aggravating circumstances are  
186 outweighed by the mitigating circumstances or whether the  
187 inclusion of any invalid circumstance was harmless error, or both.

188 (4) Both the defendant and the state shall have the right to  
189 submit briefs within the time provided by the court, and to  
190 present oral argument to the court.

191 (5) The court shall include in its decision a reference to  
192 those similar cases which it took into consideration. In addition  
193 to its authority regarding correction of errors, the court, with  
194 regard to review of death sentences, shall be authorized to:

195 (a) Affirm the sentence of death;

196 (b) Reweigh the remaining aggravating circumstances  
197 against the mitigating circumstances should one or more of the  
198 aggravating circumstances be found to be invalid, and (i) affirm  
199 the sentence of death or (ii) hold the error in the sentence phase  
200 harmless error and affirm the sentence of death or (iii) remand  
201 the case for a new sentencing hearing; or

202 (c) Set the sentence aside and remand the case for  
203 modification of the sentence to imprisonment for life.

204 (6) The sentence review shall be in addition to direct  
205 appeal, if taken, and the review and appeal shall be consolidated  
206 for consideration. The court shall render its decision on legal  
207 errors enumerated, the factual substantiation of the verdict, and

208 the validity of the sentence.

209 \* \* \*

210 SECTION 12. Section 99-39-5, Mississippi Code of 1972, is  
211 amended as follows:

212 99-39-5. (1) Any prisoner in custody under sentence of a  
213 court of record of the State of Mississippi who claims:

214 (a) That the conviction or the sentence was imposed in  
215 violation of the Constitution of the United States or the  
216 Constitution or laws of Mississippi;

217 (b) That the trial court was without jurisdiction to  
218 impose sentence;

219 (c) That the statute under which the conviction and/or  
220 sentence was obtained is unconstitutional;

221 (d) That the sentence exceeds the maximum authorized by  
222 law;

223 (e) That there exists evidence of material facts, not  
224 previously presented and heard, that requires vacation of the  
225 conviction or sentence in the interest of justice;

226 (f) That his plea was made involuntarily;

227 (g) That his sentence has expired; his probation,  
228 parole or conditional release unlawfully revoked; or he is  
229 otherwise unlawfully held in custody;

230 (h) That he is entitled to an out-of-time appeal; or

231 (i) That the conviction or sentence is otherwise  
232 subject to collateral attack upon any grounds of alleged error  
233 heretofore available under any common law, statutory or other  
234 writ, motion, petition, proceeding or remedy; may file a motion to  
235 vacate, set aside or correct the judgment or sentence, or for an  
236 out-of-time appeal.

237 (2) A motion for relief under this chapter shall be made  
238 within three (3) years after the time in which the prisoner's  
239 direct appeal is ruled upon by the Supreme Court of Mississippi  
240 or, in case no appeal is taken, within three (3) years after the

241 time for taking an appeal from the judgment of conviction or  
242 sentence has expired, or in case of a guilty plea, within three  
243 (3) years after entry of the judgment of conviction. Excepted  
244 from this three-year statute of limitations are those cases in  
245 which the prisoner can demonstrate either that there has been an  
246 intervening decision of the Supreme Court of either the State of  
247 Mississippi or the United States which would have actually  
248 adversely affected the outcome of his conviction or sentence or  
249 that he has evidence, not reasonably discoverable at the time of  
250 trial, which is of such nature that it would be practically  
251 conclusive that had such been introduced at trial it would have  
252 caused a different result in the conviction or sentence. Likewise  
253 excepted are those cases in which the prisoner claims that his  
254 sentence has expired or his probation, parole or conditional  
255 release has been unlawfully revoked. Likewise excepted are  
256 filings for post-conviction relief in capital cases which shall be  
257 made within one (1) year after conviction.

258 (3) This motion is not a substitute for, nor does it affect,  
259 any remedy incident to the proceeding in the trial court, or  
260 direct review of the conviction or sentence.

261 (4) Proceedings under this chapter shall be subject to the  
262 provisions of Section 99-19-42.

263 SECTION 13. Section 99-39-23, Mississippi Code of 1972, is  
264 amended as follows:

265 99-39-23. (1) If an evidentiary hearing is required the  
266 judge may appoint counsel for a petitioner who qualifies for the  
267 appointment of counsel under Section 99-15-15, Mississippi Code of  
268 1972.

269 (2) The hearing shall be conducted as promptly as  
270 practicable, having regard for the need of counsel for both  
271 parties for adequate time for investigation and preparation.

272 (3) The parties shall be entitled to subpoena witnesses and  
273 compel their attendance, including, but not being limited to,



274 subpoenas duces tecum.

275 (4) The court may receive proof by affidavits, depositions,  
276 oral testimony or other evidence and may order the prisoner  
277 brought before it for the hearing.

278 (5) If the court finds in favor of the prisoner, it shall  
279 enter an appropriate order with respect to the conviction or  
280 sentence under attack, and any supplementary orders as to  
281 rearraignment, retrial, custody, bail, discharge, correction of  
282 sentence or other matters that may be necessary and proper. The  
283 court shall make specific findings of fact, and state expressly  
284 its conclusions of law, relating to each issue presented.

285 (6) The order as provided in subsection (5) of this section  
286 or any order dismissing the prisoner's motion or otherwise denying  
287 relief under this chapter is a final judgment and shall be  
288 conclusive until reversed. It shall be a bar to a second or  
289 successive motion under this chapter. Excepted from this  
290 prohibition is a motion filed pursuant to Section 99-19-57(2),  
291 Mississippi Code of 1972, raising the issue of the convict's  
292 supervening insanity prior to the execution of a sentence of  
293 death. A dismissal or denial of a motion relating to insanity  
294 under Section 99-19-57(2), Mississippi Code of 1972, shall be res  
295 judicata on the issue and shall likewise bar any second or  
296 successive motions on the issue. Likewise excepted from this  
297 prohibition are those cases in which the prisoner can demonstrate  
298 either that there has been an intervening decision of the Supreme  
299 Court of either the State of Mississippi or the United States  
300 which would have actually adversely affected the outcome of his  
301 conviction or sentence or that he has evidence, not reasonably  
302 discoverable at the time of trial, which is of such nature that it  
303 would be practically conclusive that had such been introduced at  
304 trial it would have caused a different result in the conviction or  
305 sentence. Likewise excepted are those cases in which the prisoner  
306 claims that his sentence has expired or his probation, parole or

307 conditional release has been unlawfully revoked.

308 (7) No relief shall be granted under this chapter unless the  
309 prisoner proves by a preponderance of the evidence that he is  
310 entitled to such.

311 (8) Proceedings under this section shall be subject to the  
312 provisions of Section 99-19-42.

313 (9) In cases resulting in a sentence of death and upon a  
314 determination of indigence, appointment of post-conviction counsel  
315 shall be made by the Office of Capital Post-Conviction Counsel  
316 upon order entered by the Supreme Court promptly upon announcement  
317 of the decision on direct appeal affirming the sentence of death.  
318 The order shall direct the trial court to immediately determine  
319 indigence and whether the inmate will accept counsel.

320 SECTION 14. Section 99-39-27, Mississippi Code of 1972, is  
321 amended as follows:

322 99-39-27. (1) The application for leave to proceed in the  
323 trial court filed with the Supreme Court under Section 99-39-7  
324 shall name the State of Mississippi as the respondent.

325 (2) The application shall contain the original and two (2)  
326 executed copies of the motion proposed to be filed in the trial  
327 court together with such other supporting pleadings and  
328 documentation as the Supreme Court by rule may require.

329 (3) The prisoner shall serve an executed copy of the  
330 application upon the Attorney General simultaneously with the  
331 filing of the application with the court.

332 (4) The original motion, together with all files, records,  
333 transcripts and correspondence relating to the judgment under  
334 attack, shall promptly be examined by the court.

335 (5) Unless it appears from the face of the application,  
336 motion, exhibits and the prior record that the claims presented by  
337 such are not procedurally barred under Section 99-39-21 and that  
338 they further present a substantial showing of the denial of a  
339 state or federal right, the court shall by appropriate order deny

340 the application. The court may, in its discretion, require the  
341 Attorney General upon sufficient notice to respond to the  
342 application.

343 (6) The court upon satisfaction of the standards set forth  
344 in this chapter is empowered to grant the application.

345 (7) In granting the application the court, in its  
346 discretion, may:

347 (a) Where sufficient facts exist from the face of the  
348 application, motion, exhibits, the prior record and the state's  
349 response, together with any exhibits submitted therewith, or upon  
350 stipulation of the parties, grant or deny any or all relief  
351 requested in the attached motion.

352 (b) Allow the filing of the motion in the trial court  
353 for further proceedings under Sections 99-39-13 through 99-39-23.

354 (8) No application or relief shall be granted without the  
355 Attorney General being given at least five (5) days to respond.

356 (9) The dismissal or denial of an application under this  
357 section is a final judgment and shall be a bar to a second or  
358 successive application under this chapter. Excepted from this  
359 prohibition is an application filed pursuant to Section  
360 99-19-57(2), Mississippi Code of 1972, raising the issue of the  
361 convict's supervening insanity prior to the execution of a  
362 sentence of death. A dismissal or denial of an application  
363 relating to insanity under Section 99-19-57(2), Mississippi Code  
364 of 1972, shall be res judicata on the issue and shall likewise bar  
365 any second or successive applications on the issue. Likewise  
366 excepted from this prohibition are those cases in which the  
367 prisoner can demonstrate either that there has been an intervening  
368 decision of the Supreme Court of either the State of Mississippi  
369 or the United States which would have actually adversely affected  
370 the outcome of his conviction or sentence or that he has evidence,  
371 not reasonably discoverable at the time of trial, which is of such  
372 nature that it would be practically conclusive that had such been

373 introduced at trial it would have caused a different result in the  
374 conviction or sentence. Likewise exempted are those cases in  
375 which the prisoner claims that his sentence has expired or his  
376 probation, parole or conditional release has been unlawfully  
377 revoked.

378 (10) Proceedings under this section shall be subject to the  
379 provisions of Section 99-19-42.

380 (11) Post-conviction proceedings wherein the defendant is  
381 under sentence of death shall be governed by rules established by  
382 the Supreme Court as well as the provisions of this section.

383 SECTION 16. The following shall be codified as Section  
384 99-15-18, Mississippi Code of 1972:

385 99-15-18. (1) Counsel employed by an office funded by the  
386 State of Mississippi or any county shall receive no compensation  
387 or expenses for representation of a party seeking post-conviction  
388 relief while under a sentence of death other than the compensation  
389 attendant to his office.

390 (2) Unless employed by such an office, counsel appointed to  
391 represent a party seeking post-conviction relief while under a  
392 sentence of death shall be paid at an hourly rate not to exceed  
393 eighty percent (80%) of the hourly rate allowed in the United  
394 States District Courts of the Northern and Southern Districts of  
395 Mississippi to attorneys appointed to represent defendants seeking  
396 habeas corpus relief. Money shall not be paid to court appointed  
397 counsel unless either (a) a petition is timely filed, or (b) if a  
398 petition is not filed, a notice is timely filed stating that  
399 counsel has reviewed the record and found no meritorious claim.  
400 Prior to payment of any fees in a case in excess of Seven Thousand  
401 Five Hundred Dollars (\$7,500.00) or expenses of investigation and  
402 experts in excess of Two Thousand Five Hundred Dollars  
403 (\$2,500.00), the application for such fees and expenses will be  
404 submitted to the Supreme Court for review of the award of the  
405 convicting court. If counsel believes that the court has failed

406 to allow reasonable compensation, counsel may petition the Supreme  
407 Court for review. If counsel is appointed in successive  
408 post-conviction proceedings, such counsel shall receive reasonable  
409 compensation considering the services performed.

410 (3) The trial court shall also, upon petition by the party  
411 seeking post-conviction relief, authorize additional monies to pay  
412 for investigative and expert services that are reasonably  
413 necessary to adequately litigate the post-conviction claims. The  
414 initial petition for such expenses shall present a credible  
415 estimate of anticipated expenses, and such estimate shall be  
416 updated from time to time as needed to inform the court of the  
417 status of such expenses. Payment of such expenses shall be made  
418 from funds in the Special Capital Post-Conviction Counsel Fund.

419 SECTION 16. The following shall be codified as Section  
420 99-39-28, Mississippi Code of 1972:

421 99-39-28. If application to proceed in the trial court is  
422 granted, post-conviction proceedings on cases where the death  
423 penalty has been imposed in the trial court and appeals from the  
424 trial court shall be conducted in accordance with rules  
425 established by the Supreme Court.

426 SECTION 17. When judgment of death becomes final and a writ  
427 of certiorari to the United States Supreme Court has been denied  
428 or the time for filing such petition has expired, the court shall  
429 set an execution date for a person sentenced to the death penalty.

430 Within sixty (60) days following the appointment of  
431 post-conviction counsel, upon declaration by counsel that he deems  
432 post-conviction review to be meritorious and that he intends to  
433 file an application for post-conviction review, the court may stay  
434 execution pending the disposition of the post-conviction  
435 proceeding. In the event no application for post-conviction  
436 relief is filed within one (1) year of the date of the disposition  
437 of the petition for writ of certiorari or the time for certiorari  
438 has expired, any stay entered by the court will automatically

439 vacate. The filing of a declaration by counsel that he deems  
440 post-conviction review to be meritorious and intends to file an  
441 application for post-conviction review shall in no manner  
442 constitute the filing of an application for post-conviction review  
443 that would toll the running of any statute of limitations.  
444 Setting or resetting the date of execution shall be made on motion  
445 of the state that all state and federal remedies have been  
446 exhausted, or that the defendant has failed to file for further  
447 state or federal review within the time allowed by law.

448 SECTION 18. Section 99-19-49, Mississippi Code of 1972,  
449 which provides for the setting of a day for the execution of a  
450 death sentence, is repealed.

451 SECTION 19. This act shall take effect and be in force from  
452 and after July 1, 2000.