MISSISSIPPI LEGISLATURE                        REGULAR SESSION 2003

By: Representative Mayo                               To: Judiciary En Banc

HOUSE BILL NO. 269


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

SECTION 1. (1) From and after the effective date of this act, there shall be a moratorium on the imposition and execution of the death penalty in the state. Such moratorium shall remain in effect until the Death Penalty Impact Committee created by this section makes its recommendations on the impact of the death penalty.

(2) There is created the Death Penalty Impact Committee which shall be comprised of the following members:

(a) Three (3) members of the Mississippi House of Representatives appointed by the Speaker;

(b) Three (3) members of the Mississippi State Senate appointed by the Lieutenant Governor;

(c) One (1) member from the Office of the Attorney General;

(d) One (1) member from the Mississippi Prosecutor's Association;

(e) One (1) member from the Mississippi Public Defenders Association;

(f) One (1) member from the Conference of Circuit Court Judges.
(3) The committee shall elect from its membership a chairman, vice chairman and a secretary. The members of the committee shall be entitled to receive a per diem as provided in Section 25-3-69 and reimbursement of travel expenses as provided in Section 25-3-41 while in the performance of their duties under this act.

(4) The committee shall study that the impact of the death penalty has as a deterrence, the costs involved in the imposition of the death penalty and any costs savings that could be realized if the death penalty were abolished, the effectiveness and qualifications of lawyers representing death penalty defendants, the profile of death penalty defendants and any other pertinent information regarding the death penalty. The committee shall report its findings to the Legislature on December 1, 2002.

SECTION 2. Section 97-3-21, Mississippi Code of 1972, is amended as follows:

97-3-21. Every person who shall be convicted of murder shall be sentenced by the court to imprisonment for life in the State Penitentiary.

Every person who shall be convicted of capital murder shall be sentenced (a) to death; (b) to imprisonment for life in the State Penitentiary without parole; or (c) to imprisonment for life in the State Penitentiary with eligibility for parole as provided in Section 47-7-3(1)(f).

There shall be a moratorium on the imposition of the death penalty as provided in Section 1 of this act.

SECTION 3. Section 99-19-51, Mississippi Code of 1972, is amended as follows:

99-19-51. The manner of inflicting the punishment of death shall be by continuous intravenous administration of a lethal quantity of an ultra short-acting barbiturate or other similar drug in combination with a chemical paralytic agent until death is pronounced by the county coroner where the execution takes place.
or by a licensed physician according to accepted standards of medical practice. There shall be a moratorium on the imposition of the death penalty as provided in Section 1 of this act.

SECTION 4. Section 99-19-53, Mississippi Code of 1972, is amended as follows:

99-19-53. The State Executioner, or his duly authorized representative, shall supervise and inflict the punishment of death as the same is hereby provided. All duties and necessary acts pertaining to the execution of a convict shall be performed by the Commissioner of Corrections except where such duties and actions are vested in the state executioner. The State Executioner shall receive for his services in connection therewith compensation in the sum of Five Hundred Dollars ($500.00) plus all actual and necessary expenses for each such execution, to be paid by the county where the crime was committed. The county of conviction shall likewise pay the fees of the attending physician or physicians in attendance. The executioner may appoint not more than two (2) deputies who shall be paid One Hundred Fifty Dollars ($150.00) per execution and mileage as authorized by law, to be paid by the county where the crime was committed, to assist in the infliction of the punishment of death. The executioner may appoint such other assistants as may be required; however, such assistants shall not be entitled to compensation or travel expenses.

Any infliction of the punishment of death by administration of the required lethal substance or substances in the manner required by law shall not be construed to be the practice of medicine or nursing. Any pharmacist is authorized to dispense drugs to the State Executioner without a prescription for the purpose of this chapter.

The State Executioner shall be custodian of all equipment and supplies involved in the infliction of the death penalty. All expenses for the maintenance and protection of the property,
95 together with operating expenses, which as a practical matter
96 cannot be allocated to the county of conviction, shall be paid out
97 of funds designated by law for that purpose or out of the general
98 support fund of the Mississippi Department of Corrections.
99 The State Executioner shall receive the per diem compensation
100 authorized in Section 25-3-69 in addition to actual and necessary
101 expenses, including mileage as authorized by law, for each day,
102 not to exceed three (3) days each month, spent in maintaining the
103 equipment and supplies involved in the infliction of the death
104 penalty or preparing for an execution which does not occur. Such
105 payments shall be paid out of funds designated by law for that
106 purpose or out of the general support fund of the Mississippi
107 Department of Corrections.
108 The Governor shall appoint the official State Executioner who
109 shall serve at the pleasure of the Governor and until his
110 successor shall have been duly appointed to replace him.
111 There shall be a moratorium on the imposition of the death
112 penalty as provided in Section 1 of this act.
113 SECTION 5. Section 99-19-55, Mississippi Code of 1972, is
114 amended as follows:
115 99-19-55. (1) Whenever any person shall be condemned to
116 suffer death for any crime for which such person shall have been
117 convicted in any court of any county of this state, such
118 punishment shall be inflicted at 6:00 p.m. or as soon as possible
119 thereafter within the next twenty-four (24) hours at an
120 appropriate place designated by the Commissioner of Corrections on
121 the premises of the Mississippi State Penitentiary at Parchman, Mississippi. All male persons convicted of a capital offense
122 wherein the death sentence has been imposed shall be immediately
123 committed to the Department of Corrections and transported to the
124 maximum security cell block at the Mississippi State Penitentiary
125 at Parchman, Mississippi. When the maximum inmate capacity at
126 such maximum security cell block has been reached, the
Commissioner of Corrections shall place such male convicts in an appropriate facility on the grounds of the Mississippi State Penitentiary at Parchman, Mississippi. All female persons convicted of a capital offense wherein the death sentence has been imposed shall be immediately committed to the Department of Corrections and housed in an appropriate facility designated by the Commissioner of Corrections. Upon final affirmance of the conviction, the punishment shall be imposed in the manner provided by law. The State Executioner or his duly authorized deputy shall supervise and perform such execution.

(2) When a person is sentenced to suffer death in the manner provided by law, it shall be the duty of the clerk of the court to deliver forthwith to the Commissioner of Corrections a warrant for the execution of the condemned person. It shall be the duty of the commissioner forthwith to notify the State Executioner of the date of the execution and it shall be the duty of the said State Executioner, or any person deputized by him in writing, in the event of his physical disability, as hereinafter provided, to be present at such execution, to perform the same, and have general supervision over said execution. In addition to the above designated persons, the Commissioner of Corrections shall secure the presence at such execution of the sheriff, or his deputy, of the county of conviction, at least one (1) but not more than two physicians or the county coroner where the execution takes place, and bona fide members of the press, not to exceed eight (8) in number, and at the request of the condemned, such ministers of the gospel, not exceeding two (2), as said condemned person shall name. The Commissioner of Corrections shall also name to be present at the execution such officers or guards as may be deemed by him to be necessary to insure proper security. No other persons shall be permitted to witness the execution, except the commissioner may permit two (2) members of the condemned person's immediate family as witnesses, if they so request and two (2)
members of the victim's immediate family as witnesses, if they so request. Provided further, that the Governor may, for good cause shown, permit two (2) additional persons of good and reputable character to witness an execution. No person shall be allowed to take photographs or other recordings of any type during the execution. The absence of the sheriff, or deputy, after due notice to attend, shall not delay the execution.

(3) The State Executioner, or his duly authorized representative, the Commissioner of Corrections, or his duly authorized representative, and the physician or physicians or county coroner who witnessed such execution shall prepare and sign officially a certificate setting forth the time and place thereof and that such criminal was then and there executed in conformity to the sentence of the court and the provisions of Sections 99-19-51 through 99-19-55, and shall procure the signatures of the other public officers and persons who witnessed such execution, which certificate shall be filed with the clerk of the court where the conviction of the criminal was had, and the clerk shall subjoin the certificate to the record of the conviction and sentence.

(4) The body of the person so executed shall be released immediately by the State Executioner, or his duly authorized representative, to the relatives of the dead person, or to such friends as may claim the body. The Commissioner of Corrections shall have sole charge of burial in the event the body is not claimed as aforesaid, and his discretion in the premises shall be final. The Commissioner may donate the unclaimed body of an executed person to the University of Mississippi Medical Center for scientific purposes. The county of conviction shall bear the reasonable expense of burial in the event the body is not claimed by relatives or friends or donated to the University of Mississippi Medical Center.
(5) There shall be a moratorium on the imposition of the
death penalty as provided in Section 1 of this act.

SECTION 6. Section 99-19-57, Mississippi Code of 1972, is
amended as follows:

99-19-57. (1) If the Commissioner of Corrections shall, at
any time, be satisfied that any female convict in his custody
under sentence of death is pregnant, he shall summon a physician
to inquire into such pregnancy. The commissioner shall summons
and swear all necessary witnesses and the commissioner after full
examination shall certify under his hand what the truth may be in
relation to the alleged pregnancy, and in case such convict shall
be found pregnant, the commissioner shall immediately transmit his
findings to the Governor, and the Governor shall suspend the
execution of the sentence until he is satisfied that the convict
is not or is no longer pregnant. The Governor shall then order,
by his warrant to the commissioner, the execution of the convict
on a day to be therein appointed by the Governor according to the
sentence and judgment of the court.

(2) (a) If it is believed that a convict under sentence of
death has become insane since the judgment of the court, the
following shall be the exclusive procedural and substantive
procedure. The convict, or a person acting as his next friend, or
the Commissioner of Corrections may file an appropriate
application seeking post conviction relief with the Mississippi
Supreme Court. If it is found that the convict is insane, as
defined in this subsection, the court shall suspend the execution
of the sentence. The convict shall then be committed to the
forensic unit of the Mississippi State Hospital at Whitfield. The
order of commitment shall require that the convict be examined and
a written report be furnished to the court at that time and every
month thereafter stating whether there is a substantial
probability that the convict will become sane under this
subsection within the foreseeable future and whether progress is
being made toward that goal. If at any time during such commitment the appropriate official at the State Hospital shall consider the convict is sane under this subsection, such official shall promptly notify the court to that effect in writing, and place the convict in the custody of the Commissioner of Corrections. The court shall thereupon conduct a hearing on the sanity of the convict. The finding of the circuit court is a final order appealable under the terms and conditions of the Mississippi Uniform Post-Conviction Collateral Relief Act. (b) For the purposes of this subsection, a person shall be deemed insane if the court finds the convict does not have sufficient intelligence to understand the nature of the proceedings against him, what he was tried for, the purpose of his punishment, the impending fate which awaits him, and a sufficient understanding to know any fact which might exist which would make his punishment unjust or unlawful and the intelligence requisite to convey such information to his attorneys or the court.

(3) There shall be a moratorium on the imposition of the death penalty as provided in Section 1 of this act.

SECTION 7. Section 99-19-101, Mississippi Code of 1972, is amended as follows:

99-19-101. (1) Upon conviction or adjudication of guilt of a defendant of capital murder or other capital offense, the court shall conduct a separate sentencing proceeding to determine whether the defendant should be sentenced to death, life imprisonment without eligibility for parole, or life imprisonment. The proceeding shall be conducted by the trial judge before the trial jury as soon as practicable. If, through impossibility or inability, the trial jury is unable to reconvene for a hearing on the issue of penalty, having determined the guilt of the accused, the trial judge may summon a jury to determine the issue of the imposition of the penalty. If the trial jury has been waived, or if the defendant pleaded guilty, the sentencing proceeding shall
be conducted before a jury impaneled for that purpose or may be
created before the trial judge sitting without a jury if both
the State of Mississippi and the defendant agree thereto in
writing. In the proceeding, evidence may be presented as to any
matter that the court deems relevant to sentence, and shall
include matters relating to any of the aggravating or mitigating
circumstances. However, this subsection shall not be construed to
authorize the introduction of any evidence secured in violation of
the Constitution of the United States or of the State of
Mississippi. The state and the defendant and/or his counsel shall
be permitted to present arguments for or against the sentence of
death.

(2) After hearing all the evidence, the jury shall
deliberate on the following matters:

(a) Whether sufficient factors exist as enumerated in
subsection (7) of this section;

(b) Whether sufficient aggravating circumstances exist
as enumerated in subsection (5) of this section;

(c) Whether sufficient mitigating circumstances exist
as enumerated in subsection (6) of this section, which outweigh
the aggravating circumstances found to exist; and

(d) Based on these considerations, whether the
defendant should be sentenced to life imprisonment, life
imprisonment without eligibility for parole, or death.

(3) For the jury to impose a sentence of death, it must
unanimously find in writing the following:

(a) That sufficient factors exist as enumerated in
subsection (7) of this section;

(b) That sufficient aggravating circumstances exist as
enumerated in subsection (5) of this section; and

(c) That there are insufficient mitigating
circumstances, as enumerated in subsection (6), to outweigh the
aggravating circumstances.
In each case in which the jury imposes the death sentence, the determination of the jury shall be supported by specific written findings of fact based upon the circumstances in subsections (5) and (6) of this section and upon the records of the trial and the sentencing proceedings. If, after the trial of the penalty phase, the jury does not make the findings requiring the death sentence or life imprisonment without eligibility for parole, or is unable to reach a decision, the court shall impose a sentence of life imprisonment.

(4) The judgment of conviction and sentence of death shall be subject to automatic review by the Supreme Court of Mississippi within sixty (60) days after certification by the sentencing court of entire record, unless the time is extended for an additional period by the Supreme Court for good cause shown. Such review by the Supreme Court shall have priority over all other cases and shall be heard in accordance with rules promulgated by the Supreme Court.

(5) Aggravating circumstances shall be limited to the following:

(a) The capital offense was committed by a person under sentence of imprisonment.

(b) The defendant was previously convicted of another capital offense or of a felony involving the use or threat of violence to the person.

(c) The defendant knowingly created a great risk of death to many persons.

(d) The capital offense was committed while the defendant was engaged, or was an accomplice, in the commission of, or an attempt to commit, or flight after committing or attempting to commit, any robbery, rape, arson, burglary, kidnapping, aircraft piracy, sexual battery, unnatural intercourse with any child under the age of twelve (12), or nonconsensual unnatural intercourse with mankind, or felonious abuse and/or battery of a
child in violation of subsection (2) of Section 97-5-39,
Mississippi Code of 1972, or the unlawful use or detonation of a
bomb or explosive device.

  (e) The capital offense was committed for the purpose
of avoiding or preventing a lawful arrest or effecting an escape
from custody.
  (f) The capital offense was committed for pecuniary
gain.
  (g) The capital offense was committed to disrupt or
hinder the lawful exercise of any governmental function or the
enforcement of laws.
  (h) The capital offense was especially heinous,
atrocious or cruel.

(6) Mitigating circumstances shall be the following:
  (a) The defendant has no significant history of prior
criminal activity.
  (b) The offense was committed while the defendant was
under the influence of extreme mental or emotional disturbance.
  (c) The victim was a participant in the defendant's
conduct or consented to the act.
  (d) The defendant was an accomplice in the capital
offense committed by another person and his participation was
relatively minor.
  (e) The defendant acted under extreme duress or under
the substantial domination of another person.
  (f) The capacity of the defendant to appreciate the
criminality of his conduct or to conform his conduct to the
requirements of law was substantially impaired.
  (g) The age of the defendant at the time of the crime.

(7) In order to return and impose a sentence of death the
jury must make a written finding of one or more of the following:
  (a) The defendant actually killed;
  (b) The defendant attempted to kill;
(c) The defendant intended that a killing take place;
(d) The defendant contemplated that lethal force would be employed.

(8) There shall be a moratorium on the imposition of the death penalty as provided in Section 1 of this act.

SECTION 8. Section 99-19-103, Mississippi Code of 1972, is amended as follows:

99-19-103. The statutory instructions as determined by the trial judge to be warranted by the evidence shall be given in the charge and in writing to the jury for its deliberation. The jury, if its verdict be a unanimous recommendation of death, shall designate in writing, signed by the foreman of the jury, the statutory aggravating circumstance or circumstances which it unanimously found beyond a reasonable doubt. Unless at least one (1) of the statutory aggravated circumstances enumerated in Section 99-19-101 is so found or if it is found that any such aggravating circumstance is overcome by the finding of one or more mitigating circumstances, the death penalty shall not be imposed. If the jury cannot, within a reasonable time, agree as to punishment, the judge shall dismiss the jury and impose a sentence of imprisonment for life.

There shall be a moratorium on the imposition of the death penalty as provided in Section 1 of this act.

SECTION 9. Section 99-19-105, Mississippi Code of 1972, is amended as follows:
99-19-105. (1) Whenever the death penalty is imposed, and upon the judgment becoming final in the trial court, the sentence shall be reviewed on the record by the Mississippi Supreme Court. The clerk of the trial court, within ten (10) days after receiving the transcript, shall transmit the entire record and transcript to the Mississippi Supreme Court together with a notice prepared by the clerk and a report prepared by the trial judge. The notice shall set forth the title and docket number of the case, the name
of the defendant and the name and address of his attorney, a
narrative statement of the judgment, the offense, and the
punishment prescribed. The report shall be in the form of a
standard questionnaire prepared and supplied by the Mississippi
Supreme Court, a copy of which shall be served upon counsel for
the state and counsel for the defendant.

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

(3) With regard to the sentence, the court shall determine:
(a) Whether the sentence of death was imposed under the
influence of passion, prejudice or any other arbitrary factor;
(b) Whether the evidence supports the jury's or judge's
finding of a statutory aggravating circumstance as enumerated in
Section 99-19-101;
(c) Whether the sentence of death is excessive or
disproportionate to the penalty imposed in similar cases,
considering both the crime and the defendant; and
(d) Should one or more of the aggravating circumstances
be found invalid on appeal, the Mississippi Supreme Court shall
determine whether the remaining aggravating circumstances are
outweighed by the mitigating circumstances or whether the
inclusion of any invalid circumstance was harmless error, or both.

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

(5) The court shall include in its decision a reference to
those similar cases which it took into consideration. In addition
to its authority regarding correction of errors, the court, with
regard to review of death sentences, shall be authorized to:
(a) Affirm the sentence of death;
(b) Reweigh the remaining aggravating circumstances
against the mitigating circumstances should one or more of the
aggravating circumstances be found to be invalid, and (i) affirm
the sentence of death or (ii) hold the error in the sentence phase harmless error and affirm the sentence of death or (iii) remand the case for a new sentencing hearing; or

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

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

(7) There shall be a moratorium on the imposition of the death penalty as provided in Section 1 of this act.

SECTION 10. This act shall take effect and be in force from and after its passage.