

By: Representative Mayo

To: Judiciary En Banc

HOUSE BILL NO. 139

1 AN ACT TO PROVIDE A MORATORIUM ON THE IMPOSITION OF THE DEATH
2 PENALTY FOR THE PURPOSE OF COMPLETING A STUDY ON THE IMPACT OF THE
3 DEATH PENALTY; TO CREATE THE DEATH PENALTY IMPACT COMMITTEE AND
4 PRESCRIBE ITS MEMBERSHIP AND DUTIES; TO AMEND SECTIONS 97-3-21,
5 99-19-51, 99-19-53, 99-19-55, 99-19-57, 99-19-101, 99-19-103 AND
6 99-19-105, MISSISSIPPI CODE OF 1972, IN CONFORMITY TO THE
7 PROVISIONS OF THIS ACT; AND FOR RELATED PURPOSES.

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

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

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

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

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

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

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

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

27 (f) One (1) member from the Conference of Circuit Court
28 Judges.

29 (3) The committee shall elect from its membership a
30 chairman, vice chairman and a secretary. The members of the
31 committee shall be entitled to receive a per diem as provided in
32 Section 25-3-69 and reimbursement of travel expenses as provided
33 in Section 25-3-41 while in the performance of their duties under
34 this act.

35 (4) The committee shall study that the impact of the death
36 penalty has as a deterrence, the costs involved in the imposition
37 of the death penalty and any costs savings that could be realized
38 if the death penalty were abolished, the effectiveness and
39 qualifications of lawyers representing death penalty defendants,
40 the profile of death penalty defendants and any other pertinent
41 information regarding the death penalty. The committee shall
42 report its findings to the Legislature on December 1, 2004.

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

45 97-3-21. Every person who shall be convicted of murder shall
46 be sentenced by the court to imprisonment for life in the State
47 Penitentiary.

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

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

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

57 99-19-51. The manner of inflicting the punishment of death
58 shall be by continuous intravenous administration of a lethal
59 quantity of an ultra short-acting barbiturate or other similar
60 drug in combination with a chemical paralytic agent until death is
61 pronounced by the county coroner where the execution takes place

62 or by a licensed physician according to accepted standards of
63 medical practice. There shall be a moratorium on the imposition
64 of the death penalty as provided in Section 1 of this act.

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

67 99-19-53. The State Executioner, or his duly authorized
68 representative, shall supervise and inflict the punishment of
69 death as the same is hereby provided. All duties and necessary
70 acts pertaining to the execution of a convict shall be performed
71 by the Commissioner of Corrections except where such duties and
72 actions are vested in the state executioner. The State
73 Executioner shall receive for his services in connection therewith
74 compensation in the sum of Five Hundred Dollars (\$500.00) plus all
75 actual and necessary expenses for each such execution, to be paid
76 by the county where the crime was committed. The county of
77 conviction shall likewise pay the fees of the attending physician
78 or physicians in attendance. The executioner may appoint not more
79 than two (2) deputies who shall be paid One Hundred Fifty Dollars
80 (\$150.00) per execution and mileage as authorized by law, to be
81 paid by the county where the crime was committed, to assist in the
82 infliction of the punishment of death. The executioner may
83 appoint such other assistants as may be required; however, such
84 assistants shall not be entitled to compensation or travel
85 expenses.

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

92 The State Executioner shall be custodian of all equipment and
93 supplies involved in the infliction of the death penalty. All
94 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,
122 Mississippi. All male persons convicted of a capital offense
123 wherein the death sentence has been imposed shall be immediately
124 committed to the Department of Corrections and transported to the
125 maximum security cell block at the Mississippi State Penitentiary
126 at Parchman, Mississippi. When the maximum inmate capacity at
127 such maximum security cell block has been reached, the

128 Commissioner of Corrections shall place such male convicts in an
129 appropriate facility on the grounds of the Mississippi State
130 Penitentiary at Parchman, Mississippi. All female persons
131 convicted of a capital offense wherein the death sentence has been
132 imposed shall be immediately committed to the Department of
133 Corrections and housed in an appropriate facility designated by
134 the Commissioner of Corrections. Upon final affirmance of the
135 conviction, the punishment shall be imposed in the manner provided
136 by law. The State Executioner or his duly authorized deputy shall
137 supervise and perform such execution.

138 (2) When a person is sentenced to suffer death in the manner
139 provided by law, it shall be the duty of the clerk of the court to
140 deliver forthwith to the Commissioner of Corrections a warrant for
141 the execution of the condemned person. It shall be the duty of
142 the commissioner forthwith to notify the State Executioner of the
143 date of the execution and it shall be the duty of the said State
144 Executioner, or any person deputized by him in writing, in the
145 event of his physical disability, as hereinafter provided, to be
146 present at such execution, to perform the same, and have general
147 supervision over said execution. In addition to the above
148 designated persons, the Commissioner of Corrections shall secure
149 the presence at such execution of the sheriff, or his deputy, of
150 the county of conviction, at least one (1) but not more than two
151 (2) physicians or the county coroner where the execution takes
152 place, and bona fide members of the press, not to exceed eight (8)
153 in number, and at the request of the condemned, such ministers of
154 the gospel, not exceeding two (2), as said condemned person shall
155 name. The Commissioner of Corrections shall also name to be
156 present at the execution such officers or guards as may be deemed
157 by him to be necessary to insure proper security. No other
158 persons shall be permitted to witness the execution, except the
159 commissioner may permit two (2) members of the condemned person's
160 immediate family as witnesses, if they so request and two (2)

161 members of the victim's immediate family as witnesses, if they so
162 request. Provided further, that the Governor may, for good cause
163 shown, permit two (2) additional persons of good and reputable
164 character to witness an execution. No person shall be allowed to
165 take photographs or other recordings of any type during the
166 execution. The absence of the sheriff, or deputy, after due
167 notice to attend, shall not delay the execution.

168 (3) The State Executioner, or his duly authorized
169 representative, the Commissioner of Corrections, or his duly
170 authorized representative, and the physician or physicians or
171 county coroner who witnessed such execution shall prepare and sign
172 officially a certificate setting forth the time and place thereof
173 and that such criminal was then and there executed in conformity
174 to the sentence of the court and the provisions of Sections
175 99-19-51 through 99-19-55, and shall procure the signatures of the
176 other public officers and persons who witnessed such execution,
177 which certificate shall be filed with the clerk of the court where
178 the conviction of the criminal was had, and the clerk shall
179 subjoin the certificate to the record of the conviction and
180 sentence.

181 (4) The body of the person so executed shall be released
182 immediately by the State Executioner, or his duly authorized
183 representative, to the relatives of the dead person, or to such
184 friends as may claim the body. The Commissioner of Corrections
185 shall have sole charge of burial in the event the body is not
186 claimed as aforesaid, and his discretion in the premises shall be
187 final. The Commissioner may donate the unclaimed body of an
188 executed person to the University of Mississippi Medical Center
189 for scientific purposes. The county of conviction shall bear the
190 reasonable expense of burial in the event the body is not claimed
191 by relatives or friends or donated to the University of
192 Mississippi Medical Center.

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

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

197 99-19-57. (1) If the Commissioner of Corrections shall, at
198 any time, be satisfied that any female convict in his custody
199 under sentence of death is pregnant, he shall summon a physician
200 to inquire into such pregnancy. The commissioner shall summons
201 and swear all necessary witnesses and the commissioner after full
202 examination shall certify under his hand what the truth may be in
203 relation to the alleged pregnancy, and in case such convict shall
204 be found pregnant, the commissioner shall immediately transmit his
205 findings to the Governor, and the Governor shall suspend the
206 execution of the sentence until he is satisfied that the convict
207 is not or is no longer pregnant. The Governor shall then order,
208 by his warrant to the commissioner, the execution of the convict
209 on a day to be therein appointed by the Governor according to the
210 sentence and judgment of the court.

211 (2) (a) If it is believed that a convict under sentence of
212 death has become insane since the judgment of the court, the
213 following shall be the exclusive procedural and substantive
214 procedure. The convict, or a person acting as his next friend, or
215 the Commissioner of Corrections may file an appropriate
216 application seeking post conviction relief with the Mississippi
217 Supreme Court. If it is found that the convict is insane, as
218 defined in this subsection, the court shall suspend the execution
219 of the sentence. The convict shall then be committed to the
220 forensic unit of the Mississippi State Hospital at Whitfield. The
221 order of commitment shall require that the convict be examined and
222 a written report be furnished to the court at that time and every
223 month thereafter stating whether there is a substantial
224 probability that the convict will become sane under this
225 subsection within the foreseeable future and whether progress is

226 being made toward that goal. If at any time during such
227 commitment the appropriate official at the State Hospital shall
228 consider the convict is sane under this subsection, such official
229 shall promptly notify the court to that effect in writing, and
230 place the convict in the custody of the Commissioner of
231 Corrections. The court shall thereupon conduct a hearing on the
232 sanity of the convict. The finding of the circuit court is a
233 final order appealable under the terms and conditions of the
234 Mississippi Uniform Post-Conviction Collateral Relief Act.

235 (b) For the purposes of this subsection, a person shall
236 be deemed insane if the court finds the convict does not have
237 sufficient intelligence to understand the nature of the
238 proceedings against him, what he was tried for, the purpose of his
239 punishment, the impending fate which awaits him, and a sufficient
240 understanding to know any fact which might exist which would make
241 his punishment unjust or unlawful and the intelligence requisite
242 to convey such information to his attorneys or the court.

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

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

247 99-19-101. (1) Upon conviction or adjudication of guilt of
248 a defendant of capital murder or other capital offense, the court
249 shall conduct a separate sentencing proceeding to determine
250 whether the defendant should be sentenced to death, life
251 imprisonment without eligibility for parole, or life imprisonment.
252 The proceeding shall be conducted by the trial judge before the
253 trial jury as soon as practicable. If, through impossibility or
254 inability, the trial jury is unable to reconvene for a hearing on
255 the issue of penalty, having determined the guilt of the accused,
256 the trial judge may summon a jury to determine the issue of the
257 imposition of the penalty. If the trial jury has been waived, or
258 if the defendant pleaded guilty, the sentencing proceeding shall

259 be conducted before a jury impaneled for that purpose or may be
260 conducted before the trial judge sitting without a jury if both
261 the State of Mississippi and the defendant agree thereto in
262 writing. In the proceeding, evidence may be presented as to any
263 matter that the court deems relevant to sentence, and shall
264 include matters relating to any of the aggravating or mitigating
265 circumstances. However, this subsection shall not be construed to
266 authorize the introduction of any evidence secured in violation of
267 the Constitution of the United States or of the State of
268 Mississippi. The state and the defendant and/or his counsel shall
269 be permitted to present arguments for or against the sentence of
270 death.

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

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

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

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

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

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

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

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

289 (c) That there are insufficient mitigating
290 circumstances, as enumerated in subsection (6), to outweigh the
291 aggravating circumstances.

292 In each case in which the jury imposes the death sentence,
293 the determination of the jury shall be supported by specific
294 written findings of fact based upon the circumstances in
295 subsections (5) and (6) of this section and upon the records of
296 the trial and the sentencing proceedings. If, after the trial of
297 the penalty phase, the jury does not make the findings requiring
298 the death sentence or life imprisonment without eligibility for
299 parole, or is unable to reach a decision, the court shall impose a
300 sentence of life imprisonment.

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

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

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

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

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

318 (d) The capital offense was committed while the
319 defendant was engaged, or was an accomplice, in the commission of,
320 or an attempt to commit, or flight after committing or attempting
321 to commit, any robbery, rape, arson, burglary, kidnapping,
322 aircraft piracy, sexual battery, unnatural intercourse with any
323 child under the age of twelve (12), or nonconsensual unnatural
324 intercourse with mankind, or felonious abuse and/or battery of a

325 child in violation of subsection (2) of Section 97-5-39,
326 Mississippi Code of 1972, or the unlawful use or detonation of a
327 bomb or explosive device.

328 (e) The capital offense was committed for the purpose
329 of avoiding or preventing a lawful arrest or effecting an escape
330 from custody.

331 (f) The capital offense was committed for pecuniary
332 gain.

333 (g) The capital offense was committed to disrupt or
334 hinder the lawful exercise of any governmental function or the
335 enforcement of laws.

336 (h) The capital offense was especially heinous,
337 atrocious or cruel.

338 (6) Mitigating circumstances shall be the following:

339 (a) The defendant has no significant history of prior
340 criminal activity.

341 (b) The offense was committed while the defendant was
342 under the influence of extreme mental or emotional disturbance.

343 (c) The victim was a participant in the defendant's
344 conduct or consented to the act.

345 (d) The defendant was an accomplice in the capital
346 offense committed by another person and his participation was
347 relatively minor.

348 (e) The defendant acted under extreme duress or under
349 the substantial domination of another person.

350 (f) The capacity of the defendant to appreciate the
351 criminality of his conduct or to conform his conduct to the
352 requirements of law was substantially impaired.

353 (g) The age of the defendant at the time of the crime.

354 (7) In order to return and impose a sentence of death the
355 jury must make a written finding of one or more of the following:

356 (a) The defendant actually killed;

357 (b) The defendant attempted to kill;

358 (c) The defendant intended that a killing take place;

359 (d) The defendant contemplated that lethal force would
360 be employed.

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

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

365 99-19-103. The statutory instructions as determined by the
366 trial judge to be warranted by the evidence shall be given in the
367 charge and in writing to the jury for its deliberation. The jury,
368 if its verdict be a unanimous recommendation of death, shall
369 designate in writing, signed by the foreman of the jury, the
370 statutory aggravating circumstance or circumstances which it
371 unanimously found beyond a reasonable doubt. Unless at least one
372 (1) of the statutory aggravated circumstances enumerated in
373 Section 99-19-101 is so found or if it is found that any such
374 aggravating circumstance is overcome by the finding of one or more
375 mitigating circumstances, the death penalty shall not be imposed.
376 If the jury cannot, within a reasonable time, agree as to
377 punishment, the judge shall dismiss the jury and impose a sentence
378 of imprisonment for life.

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

381 **SECTION 9.** Section 99-19-105, Mississippi Code of 1972, is
382 amended as follows:

383 99-19-105. (1) Whenever the death penalty is imposed, and
384 upon the judgment becoming final in the trial court, the sentence
385 shall be reviewed on the record by the Mississippi Supreme Court.
386 The clerk of the trial court, within ten (10) days after receiving
387 the transcript, shall transmit the entire record and transcript to
388 the Mississippi Supreme Court together with a notice prepared by
389 the clerk and a report prepared by the trial judge. The notice
390 shall set forth the title and docket number of the case, the name

391 of the defendant and the name and address of his attorney, a
392 narrative statement of the judgment, the offense, and the
393 punishment prescribed. The report shall be in the form of a
394 standard questionnaire prepared and supplied by the Mississippi
395 Supreme Court, a copy of which shall be served upon counsel for
396 the state and counsel for the defendant.

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

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

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

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

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

408 (d) Should one or more of the aggravating circumstances
409 be found invalid on appeal, the Mississippi Supreme Court shall
410 determine whether the remaining aggravating circumstances are
411 outweighed by the mitigating circumstances or whether the
412 inclusion of any invalid circumstance was harmless error, or both.

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

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

420 (a) Affirm the sentence of death;

421 (b) Reweigh the remaining aggravating circumstances
422 against the mitigating circumstances should one or more of the
423 aggravating circumstances be found to be invalid, and (i) affirm

424 the sentence of death or (ii) hold the error in the sentence phase
425 harmless error and affirm the sentence of death or (iii) remand
426 the case for a new sentencing hearing; or

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

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

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

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