

By: Representative Fleming

To: Judiciary En Banc

HOUSE BILL NO. 684

1 AN ACT TO ABOLISH THE DEATH PENALTY AND IMPOSE HARD LABOR; TO
 2 AMEND SECTIONS 97-3-21, 97-7-67, 97-9-7, 97-25-55, 99-17-20,
 3 99-19-61, 99-19-85, 99-19-101, 99-35-115, 99-35-135, 99-39-23,
 4 99-39-27, 99-41-5, 47-5-139, 47-5-151, 47-5-1003, 47-7-3, 47-7-17,
 5 47-7-33, 47-7-47 AND 73-15-7, MISSISSIPPI CODE OF 1972, IN
 6 CONFORMITY THERETO; TO REPEAL SECTION 99-15-18, MISSISSIPPI CODE
 7 OF 1972, WHICH PROVIDES FOR COMPENSATION OF COUNSEL IN
 8 POST-CONVICTION RELIEF CASES INVOLVING DEATH PENALTY CASES; TO
 9 REPEAL SECTIONS 99-18-1, 99-18-3, 99-18-5, 99-18-7, 99-18-9,
 10 99-18-11, 99-18-13, 99-18-15, 99-18-17 AND 99-18-19, MISSISSIPPI
 11 CODE OF 1972, WHICH CREATE AND PROVIDE THE DUTIES OF THE OFFICE OF
 12 CAPITAL DEFENSE COUNSEL FOR THE PURPOSE OF PROVIDING
 13 REPRESENTATION FOR INDIGENT PARTIES UNDER INDICTMENT FOR DEATH
 14 PENALTY ELIGIBLE OFFENSES; TO REPEAL SECTIONS 99-39-28 AND
 15 99-39-29, MISSISSIPPI CODE OF 1972, WHICH PROVIDES FOR RULES OF
 16 THE SUPREME COURT FOR POST-CONVICTION PROCEEDINGS IN DEATH PENALTY
 17 CASES AND STAY OF EXECUTION BY THE SUPREME COURT; TO REPEAL
 18 SECTIONS 99-39-101, 99-39-103, 99-39-105, 99-39-107, 99-39-109,
 19 99-39-111, 99-39-113, 99-39-115, 99-39-117 AND 99-39-119,
 20 MISSISSIPPI CODE OF 1972, WHICH CREATE AND PROVIDE THE DUTIES OF
 21 THE OFFICE OF CAPITAL POST-CONVICTION FOR THE PURPOSE OF PROVIDING
 22 REPRESENTATION FOR COUNSEL TO INDIGENT PARTIES WHO ARE UNDER
 23 SENTENCES OF DEATH IN POST-CONVICTION PROCEEDINGS; TO REPEAL
 24 SECTIONS 99-19-51, 99-19-53, 99-19-55, 99-19-57, 99-19-87,
 25 99-19-103, 99-19-105, 99-19-106 AND 99-19-107, MISSISSIPPI CODE OF
 26 1972, WHICH PROVIDE FOR THE EXECUTION OF THE DEATH SENTENCE,
 27 INSTRUCTIONS REGARDING THE DEATH PENALTY, JUDICIAL REVIEW OF THE
 28 DEATH PENALTY, SETTING OF THE DATE FOR EXECUTION AND FOR THE
 29 IMPOSITION OF A LIFE SENTENCE IMPOSED IF THE DEATH PENALTY IS HELD
 30 TO BE UNCONSTITUTIONAL; TO REPEAL SECTION 99-35-137, MISSISSIPPI
 31 CODE OF 1972, WHICH PROVIDES FOR THE COPY OF THE DEATH SENTENCE TO
 32 BE SENT TO THE SHERIFF FROM THE CLERK OF THE COURT; AND FOR
 33 RELATED PURPOSES.

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

35 **SECTION 1.** The death penalty is hereby abolished. Any
 36 person who is under penalty of death shall have that sentence
 37 reduced to life without parole with hard labor imposed.

38 **SECTION 2.** Section 47-5-139, Mississippi Code of 1972, is
 39 amended as follows:

40 47-5-139. (1) An inmate shall not be eligible for the
 41 earned time allowance if:

42 (a) The inmate was sentenced to life imprisonment; but
43 an inmate, except an inmate sentenced to life imprisonment for
44 capital murder, who has reached the age of sixty-five (65) or
45 older and who has served at least fifteen (15) years may petition
46 the sentencing court for conditional release;

47 (b) The inmate was convicted as a habitual offender
48 under Sections 99-19-81 through 99-19-85;

49 (c) The inmate has forfeited his earned time allowance
50 by order of the commissioner;

51 (d) The inmate was convicted of a sex crime; or

52 (e) The inmate has not served the mandatory time
53 required for parole eligibility for a conviction of robbery or
54 attempted robbery with a deadly weapon.

55 (2) An offender under two (2) or more consecutive sentences
56 shall be allowed commutation based upon the total term of the
57 sentences.

58 (3) All earned time shall be forfeited by the inmate in the
59 event of escape and/or aiding and abetting an escape. The
60 commissioner may restore all or part of the earned time if the
61 escapee returns to the institution voluntarily, without expense to
62 the state, and without act of violence while a fugitive from the
63 facility.

64 (4) Any officer or employee who shall willfully violate the
65 provisions of this section and be convicted therefor shall be
66 removed from office or employment.

67 **SECTION 3.** Section 47-5-151, Mississippi Code of 1972, is
68 amended as follows:

69 47-5-151. The superintendent (warden) or other person in
70 charge of prisoners, upon the death of any prisoner under his care
71 and control, shall at once notify the county medical examiner or
72 county medical examiner investigator (hereinafter "medical
73 examiner") of the county in which said prisoner died, of the death
74 of the prisoner, and it shall be the duty of such medical

75 examiner, when so notified of the death of such person, to obtain
76 a court order and notify the State Medical Examiner of the death
77 of such prisoner. It shall be mandatory that the State Medical
78 Examiner cause an autopsy to be performed upon the body of the
79 deceased prisoner. Furthermore, the State Medical Examiner shall
80 investigate any case where a person is found dead on the premises
81 of the correctional system, in accordance with Sections 41-61-51
82 through 41-61-79. The State Medical Examiner shall make a written
83 report of his investigation, and shall furnish a copy of the same,
84 including the autopsy report, to the superintendent (warden) and a
85 copy of the same to the district attorney of the county in which
86 said prisoner died. The copy so furnished to the district
87 attorney shall be turned over by the district attorney to the
88 grand jury, and it shall be the duty of the grand jury, if there
89 be any suspicion of wrongdoing shown by the inquest papers, to
90 thoroughly investigate the cause of such death.

91 It shall be the duty of the medical examiner of the county in
92 which said prisoner died to arrange for the remains to be
93 transported to the State Medical Examiner for said autopsy, and
94 accompanying the remains shall be the court order for autopsy and
95 any documents or records pertaining to the deceased prisoner,
96 institutional health records or other information relating to the
97 circumstances surrounding the prisoner's death. The State Medical
98 Examiner shall arrange for the remains to be transported to the
99 county in which said prisoner died following completion of the
100 autopsy. If the remains are not claimed for burial within
101 forty-eight (48) hours after autopsy, then said remains may be
102 delivered to the University of Mississippi Medical Center for use
103 in medical research or anatomical study.

104 The provisions herein set forth in the first paragraph shall
105 likewise apply to any case in which any person is found dead on
106 the premises of the Mississippi State Penitentiary except that the
107 autopsy to be performed on the body of such a person shall not be

108 mandatory upon a person who is not a prisoner unless the medical
109 examiner determines that the death resulted from circumstances
110 raising questions as to the cause of death, in which case the
111 medical examiner may cause an autopsy to be performed upon the
112 body of such deceased person in the same manner as authorized to
113 be performed upon the body of a deceased prisoner.

114 Provided further, that the provisions herein shall apply with
115 respect to any deceased prisoner who at the time of death is being
116 detained by duly constituted state authority such as the Columbia
117 Training School, Oakley Training School, Mississippi State
118 Hospital at Whitfield, East Mississippi State Hospital, or any
119 other state institution.

120 * * *

121 Any officer or employee of the prison system or any other
122 officer, employee or person having charge of any prisoner who
123 shall fail to immediately notify the medical examiner of the death
124 of such prisoner, shall be guilty of a misdemeanor and, upon
125 conviction thereof, shall be punished by a fine of not less than
126 One Hundred Dollars (\$100.00) nor more than Five Hundred dollars
127 (\$500.00) and by confinement in the county jail for not more than
128 one (1) year.

129 **SECTION 4.** Section 47-5-1003, Mississippi Code of 1972, is
130 amended as follows:

131 47-5-1003. (1) An intensive supervision program may be used
132 as an alternative to incarceration for offenders who are low risk
133 and nonviolent as selected by the department or court. Any
134 offender convicted of a sex crime or a felony violation of Section
135 41-29-139(a)(1) shall not be placed in the program.

136 (2) The court placing an offender in the intensive
137 supervision program may, acting upon the advice and consent of the
138 commissioner and not later than one (1) year after the defendant
139 has been delivered to the custody of the department, suspend the
140 further execution of the sentence and place the defendant on

141 intensive supervision, except when a sentence of life imprisonment
142 without eligibility for parole with hard labor is imposed or life
143 imprisonment is the maximum penalty which may be imposed or if the
144 defendant has been confined for the conviction of a felony on a
145 previous occasion in any court or courts of the United States and
146 of any state or territories thereof or has been convicted of a
147 felony involving the use of a deadly weapon.

148 (3) To protect and to ensure the safety of the state's
149 citizens, any offender who violates an order or condition of the
150 intensive supervision program shall be arrested by the
151 correctional field officer and placed in the actual custody of the
152 Department of Corrections. Such offender is under the full and
153 complete jurisdiction of the department and subject to removal
154 from the program by the classification hearing officer.

155 (4) When any circuit or county court places an offender in
156 an intensive supervision program, the court shall give notice to
157 the Mississippi Department of Corrections within fifteen (15) days
158 of the court's decision to place the offender in an intensive
159 supervision program. Notice shall be delivered to the central
160 office of the Mississippi Department of Corrections and to the
161 regional office of the department which will be providing
162 supervision to the offender in an intensive supervision program.

163 The courts may not require an offender to complete the
164 intensive supervision program as a condition of probation or
165 post-release supervision.

166 **SECTION 5.** Section 47-7-3, Mississippi Code of 1972, is
167 amended as follows:

168 47-7-3. (1) Every prisoner who has been convicted of any
169 offense against the State of Mississippi, and is confined in the
170 execution of a judgment of such conviction in the Mississippi
171 State Penitentiary for a definite term or terms of one (1) year or
172 over, or for the term of his or her natural life, whose record of
173 conduct shows that such prisoner has observed the rules of the

174 Penitentiary, and who has served not less than one-fourth (1/4) of
175 the total of such term or terms for which such prisoner was
176 sentenced, or, if sentenced to serve a term or terms of thirty
177 (30) years or more, or, if sentenced for the term of the natural
178 life of such prisoner, has served not less than ten (10) years of
179 such life sentence, may be released on parole as hereinafter
180 provided, except that:

181 (a) No prisoner convicted as a confirmed and habitual
182 criminal under the provisions of Sections 99-19-81 through
183 99-19-85 shall be eligible for parole;

184 (b) Any person who shall have been convicted of a sex
185 crime shall not be released on parole except for a person under
186 the age of nineteen (19) who has been convicted under Section
187 97-3-67;

188 (c) No one shall be eligible for parole until he shall
189 have served one (1) year of his sentence, unless such person has
190 accrued any meritorious earned time allowances, in which case he
191 shall be eligible for parole if he has served (i) nine (9) months
192 of his sentence or sentences, when his sentence or sentences is
193 two (2) years or less; (ii) ten (10) months of his sentence or
194 sentences when his sentence or sentences is more than two (2)
195 years but no more than five (5) years; and (iii) one (1) year of
196 his sentence or sentences when his sentence or sentences is more
197 than five (5) years;

198 (d) (i) No person shall be eligible for parole who
199 shall, on or after January 1, 1977, be convicted of robbery or
200 attempted robbery through the display of a firearm until he shall
201 have served ten (10) years if sentenced to a term or terms of more
202 than ten (10) years or if sentenced for the term of the natural
203 life of such person. If such person is sentenced to a term or
204 terms of ten (10) years or less, then such person shall not be
205 eligible for parole. The provisions of this paragraph (d) shall
206 also apply to any person who shall commit robbery or attempted

207 robbery on or after July 1, 1982, through the display of a deadly
208 weapon. This subparagraph (d)(i) shall not apply to persons
209 convicted after September 30, 1994;

210 (ii) No person shall be eligible for parole who
211 shall, on or after October 1, 1994, be convicted of robbery,
212 attempted robbery or carjacking as provided in Section 97-3-115 et
213 seq., through the display of a firearm or drive-by shooting as
214 provided in Section 97-3-109. The provisions of this subparagraph
215 (d)(ii) shall also apply to any person who shall commit robbery,
216 attempted robbery, carjacking or a drive-by shooting on or after
217 October 1, 1994, through the display of a deadly weapon;

218 (e) No person shall be eligible for parole who, on or
219 after July 1, 1994, is charged, tried, convicted and sentenced to
220 life imprisonment without eligibility for parole under the
221 provisions of Section 99-19-101;

222 (f) No person shall be eligible for parole who is
223 charged, tried, convicted and sentenced to life imprisonment under
224 the provisions of Section 99-19-101;

225 (g) No person shall be eligible for parole who is
226 convicted or whose suspended sentence is revoked after June 30,
227 1995, except that a first offender convicted of a nonviolent crime
228 after January 1, 2000, may be eligible for parole if the offender
229 meets the requirements in subsection (1) and this paragraph. In
230 addition to other requirements, if a first offender is convicted
231 of a drug or driving under the influence felony, the offender must
232 complete a drug and alcohol rehabilitation program prior to parole
233 or the offender may be required to complete a post-release drug
234 and alcohol program as a condition of parole. For purposes of
235 this paragraph, "nonviolent crime" means a felony other than
236 homicide, robbery, manslaughter, sex crimes, arson, burglary of an
237 occupied dwelling, aggravated assault, kidnapping, felonious abuse
238 of vulnerable adults, felonies with enhanced penalties, the sale

239 or manufacture of a controlled substance under the Uniform
240 Controlled Substances Law, and felony child abuse.

241 (2) Notwithstanding any other provision of law, an inmate
242 shall not be eligible to receive earned time, good time or any
243 other administrative reduction of time which shall reduce the time
244 necessary to be served for parole eligibility as provided in
245 subsection (1) of this section; however, this subsection shall not
246 apply to the advancement of parole eligibility dates pursuant to
247 the Prison Overcrowding Emergency Powers Act. Moreover,
248 meritorious earned time allowances may be used to reduce the time
249 necessary to be served for parole eligibility as provided in
250 paragraph (c) of subsection (1) of this section.

251 (3) The State Parole Board shall by rules and regulations
252 establish a method of determining a tentative parole hearing date
253 for each eligible offender taken into the custody of the
254 Department of Corrections. The tentative parole hearing date
255 shall be determined within ninety (90) days after the department
256 has assumed custody of the offender. Such tentative parole
257 hearing date shall be calculated by a formula taking into account
258 the offender's age upon first commitment, number of prior
259 incarcerations, prior probation or parole failures, the severity
260 and the violence of the offense committed, employment history and
261 other criteria which in the opinion of the board tend to validly
262 and reliably predict the length of incarceration necessary before
263 the offender can be successfully paroled.

264 (4) Any inmate within twenty-four (24) months of his parole
265 eligibility date and who meets the criteria established by the
266 classification board shall receive priority for placement in any
267 educational development and job training programs. Any inmate
268 refusing to participate in an educational development or job
269 training program may be ineligible for parole.

270 **SECTION 6.** Section 47-7-17, Mississippi Code of 1972, is
271 amended as follows:

272 47-7-17. Within one (1) year after his admission and at such
273 intervals thereafter as it may determine, the board shall secure
274 and consider all pertinent information regarding each offender,
275 except any under a sentence of life imprisonment without
276 eligibility for parole with hard labor is imposed or otherwise
277 ineligible for parole, including the circumstances of his offense,
278 his previous social history, his previous criminal record,
279 including any records of law enforcement agencies or of a youth
280 court regarding that offender's juvenile criminal history, his
281 conduct, employment and attitude while in the custody of the
282 department, and the reports of such physical and mental
283 examinations as have been made. The board shall furnish at least
284 three (3) months' written notice to each such offender of the date
285 on which he is eligible for parole.

286 Before ruling on the application for parole of any offender,
287 the board may have the offender appear before it and interview
288 him. The hearing shall be held two (2) months prior to the month
289 of eligibility in order for the department to address any special
290 conditions required by the board. No application for parole of a
291 person convicted of a capital offense shall be considered by the
292 board unless and until notice of the filing of such application
293 shall have been published at least once a week for two (2) weeks
294 in a newspaper published in or having general circulation in the
295 county in which the crime was committed. The board shall also
296 give notice of the filing of the application for parole to the
297 victim of the offense for which the prisoner is incarcerated and
298 being considered for parole or, in case the offense be homicide, a
299 designee of the immediate family of the victim, provided the
300 victim or designated family member has furnished in writing a
301 current address to the board for such purpose. A parole shall be
302 ordered only for the best interest of society, not as an award of
303 clemency; it shall not be considered to be a reduction of sentence
304 or pardon. An offender shall be placed on parole only when

305 arrangements have been made for his proper employment or for his
306 maintenance and care, and when the board believes that he is able
307 and willing to fulfill the obligations of a law-abiding citizen.
308 Within forty-eight (48) hours prior to the release of an offender
309 on parole, the Director of Records of the department shall give
310 the written notice which is required pursuant to Section 47-5-177.
311 Every offender while on parole shall remain in the legal custody
312 of the department from which he was released and shall be amenable
313 to the orders of the board. The board, upon rejecting the
314 application for parole of any offender, shall within thirty (30)
315 days following such rejection furnish that offender in general
316 terms the reasons therefor in writing. Upon determination by the
317 board that an offender is eligible for release by parole, notice
318 shall also be given by the board to the victim of the offense or
319 the victim's family member, as indicated above, regarding the date
320 when the offender's release shall occur, provided a current
321 address of the victim or the victim's family member has been
322 furnished in writing to the board for such purpose.

323 Failure to provide notice to the victim or the victim's
324 family member of the filing of the application for parole or of
325 any decision made by the board regarding parole shall not
326 constitute grounds for vacating an otherwise lawful parole
327 determination nor shall it create any right or liability, civilly
328 or criminally, against the board or any member thereof.

329 A letter of protest against granting an offender parole shall
330 not be treated as the conclusive and only reason for not granting
331 parole.

332 The board may adopt such other rules not inconsistent with
333 law as it may deem proper or necessary with respect to the
334 eligibility of offenders for parole, the conduct of parole
335 hearings, or conditions to be imposed upon parolees, including a
336 condition that the parolee submit, as provided in Section 47-5-601
337 to any type of breath, saliva or urine chemical analysis test, the

338 purpose of which is to detect the possible presence of alcohol or
339 a substance prohibited or controlled by any law of the State of
340 Mississippi or the United States. The board shall have the
341 authority to adopt rules permitting certain offenders to be placed
342 on unsupervised parole. However, in no case shall an offender be
343 placed on unsupervised parole before he has served a minimum of
344 three (3) years of supervised parole.

345 **SECTION 7.** Section 47-7-33, Mississippi Code of 1972, is
346 amended as follows:

347 47-7-33. (1) When it appears to the satisfaction of any
348 circuit court or county court in the State of Mississippi, having
349 original jurisdiction over criminal actions, or to the judge
350 thereof, that the ends of justice and the best interest of the
351 public, as well as the defendant, will be served thereby, such
352 court, in termtime or in vacation, shall have the power, after
353 conviction or a plea of guilty, except in a case where a sentence
354 of life imprisonment without eligibility for parole with hard
355 labor is imposed or life imprisonment is the maximum penalty which
356 may be imposed or where the defendant has been convicted of a
357 felony on a previous occasion in any court or courts of the United
358 States and of any state or territories thereof, to suspend the
359 imposition or execution of sentence, and place the defendant on
360 probation as herein provided, except that the court shall not
361 suspend the execution of a sentence of imprisonment after the
362 defendant shall have begun to serve such sentence. In placing any
363 defendant on probation, the court, or judge, shall direct that
364 such defendant be under the supervision of the Department of
365 Corrections.

366 (2) When any circuit or county court places an offender on
367 probation, the court shall give notice to the Mississippi
368 Department of Corrections within fifteen (15) days of the court's
369 decision to place the offender on probation. Notice shall be
370 delivered to the central office of the Mississippi Department of

371 Corrections and to the regional office of the department which
372 will be providing supervision to the offender on probation.

373 (3) When any circuit court or county court places a person
374 on probation in accordance with the provisions of this section and
375 that person is ordered to make any payments to his family, if any
376 member of his family whom he is ordered to support is receiving
377 public assistance through the State Department of Public Welfare,
378 the court shall order him to make such payments to the county
379 welfare officer of the county rendering public assistance to his
380 family, for the sole use and benefit of said family.

381 **SECTION 8.** Section 47-7-47, Mississippi Code of 1972, is
382 amended as follows:

383 47-7-47. (1) The judge of any circuit court may place an
384 offender on a program of earned probation after a period of
385 confinement as set out in this section and the judge may seek the
386 advice of the commissioner and shall direct that the defendant be
387 under the supervision of the department.

388 (2) (a) Any circuit court or county court may, upon its own
389 motion, acting upon the advice and consent of the commissioner not
390 earlier than thirty (30) days nor later than one (1) year after
391 the defendant has been delivered to the custody of the department,
392 to which he has been sentenced, suspend the further execution of
393 the sentence and place the defendant on earned probation, except
394 when a sentence of life imprisonment without eligibility for
395 parole with hard labor is imposed or life imprisonment is the
396 maximum penalty which may be imposed or if the defendant has been
397 confined two (2) or more times for the conviction of a felony on a
398 previous occasion in any court or courts of the United States and
399 of any state or territories thereof or has been convicted of a
400 felony involving the use of a deadly weapon.

401 (b) The authority granted in this subsection shall be
402 exercised by the judge who imposed sentence on the defendant, or
403 his successor.

404 (c) The time limit imposed by paragraph (a) of this
405 subsection is not applicable to those defendants sentenced to the
406 custody of the department prior to April 14, 1977. Persons who
407 are convicted of crimes that carry mandatory sentences shall not
408 be eligible for earned probation.

409 (3) When any circuit or county court places an offender on
410 earned probation, the court shall give notice to the Mississippi
411 Department of Corrections within fifteen (15) days of the court's
412 decision to place the offender on earned probation. Notice shall
413 be delivered to the central office of the Mississippi Department
414 of Corrections and to the regional office of the department which
415 will be providing supervision to the offender on earned probation.

416 (4) If the court places any person on probation or earned
417 probation, the court may order the person, as a condition of
418 probation, to a period of confinement and treatment at a private
419 or public agency or institution, either within or without the
420 state, which treats emotional, mental or drug-related problems.
421 Any person who, as a condition of probation, is confined for
422 treatment at an out-of-state facility shall be supervised pursuant
423 to Section 47-7-71, and any person confined at a private agency
424 shall not be confined at public expense. Time served in any such
425 agency or institution may be counted as time required to meet the
426 criteria of subsection (2)(a).

427 (5) If the court places any person on probation or earned
428 probation, the court may order the person to make appropriate
429 restitution to any victim of his crime or to society through the
430 performance of reasonable work for the benefit of the community.

431 (6) If the court places any person on probation or earned
432 probation, the court may order the person, as a condition of
433 probation, to submit, as provided in Section 47-5-601, to any type
434 of breath, saliva or urine chemical analysis test, the purpose of
435 which is to detect the possible presence of alcohol or a substance

436 prohibited or controlled by any law of the State of Mississippi or
437 the United States.

438 **SECTION 9.** Section 73-15-7, Mississippi Code of 1972, is
439 amended as follows:

440 73-15-7. The following shall be excepted from the provisions
441 of this chapter:

442 (a) Gratuitous nursing by friends and members of the
443 family.

444 (b) The furnishing of nursing assistance in an
445 emergency.

446 (c) The practice of nursing which is incidental to a
447 program of study by a student enrolled in an approved educational
448 program of nursing, provided the practice is under the supervision
449 of a registered nurse.

450 (d) The practice of nursing by a graduate of an
451 approved educational program of nursing pending the results of the
452 first licensing examination scheduled by the board following such
453 graduation, provided the practice is under the supervision of a
454 registered nurse or a licensed physician if the nurse is
455 practicing in a physician's office and the graduate holds a
456 temporary permit to practice nursing in Mississippi.

457 (e) The practice of nursing by any legally qualified
458 nurse of another state who is employed by the United States
459 government or any bureau, division or agency thereof while in the
460 discharge of his or her official duties.

461 (f) The practice of nursing by a registered nurse or a
462 licensed practical nurse for a period of not more than ninety (90)
463 days pending licensure in Mississippi, provided the nurse upon
464 employment has furnished the employer with satisfactory evidence
465 of current registration and licensure in another state, and
466 provided such nurse furnishes evidence to the prospective employer
467 of having submitted proper application and fees to the board prior

468 to employment and holds a temporary permit to practice nursing in
469 Mississippi.

470 (g) The furnishing of nursing assistance by any duly
471 qualified auxiliary personnel employed by state mental health
472 facilities until December 31, 1983.

473 (h) Any registered nurse or licensed practical nurse
474 for nursing duties performed in a physician's office under the
475 direction and supervision of a licensed physician; provided,
476 however, that said registered nurse or licensed practical nurse
477 shall otherwise comply with the other provisions of this chapter.

478 * * *

479 **SECTION 10.** Section 97-3-21, Mississippi Code of 1972, is
480 amended as follows:

481 97-3-21. Every person who shall be convicted of murder shall
482 be sentenced by the court to imprisonment for life in the State
483 Penitentiary.

484 Every person who shall be convicted of capital murder shall
485 be sentenced (a) * * * to imprisonment for life in the State
486 Penitentiary without parole with hard labor imposed or (b) to
487 imprisonment for life in the State Penitentiary with eligibility
488 for parole as provided in Section 47-7-3(1)(f).

489 **SECTION 11.** Section 97-7-67, Mississippi Code of 1972, is
490 amended as follows:

491 97-7-67. If any person shall levy war against this state, or
492 adhere to its enemies, giving them aid and comfort, he shall be
493 guilty of treason, and, shall, upon conviction, suffer a sentence
494 of life imprisonment without eligibility for parole with hard
495 labor imposed or imprisonment for life in the State Penitentiary.

496 **SECTION 12.** Section 97-9-7, Mississippi Code of 1972, is
497 amended as follows:

498 97-9-7. Every person having a knowledge of the actual
499 commission of any offense punishable by a sentence of life
500 imprisonment without eligibility for parole with hard labor

501 imposed or by imprisonment in the Penitentiary for life, who shall
502 take any money or property of another, or any gratuity or reward,
503 or any engagement or promise therefor, upon any agreement or
504 understanding, express or implied, to compound or conceal any such
505 crime, or to abstain from any prosecution thereof, or to withhold
506 any evidence thereof, shall, upon conviction, be punished by
507 imprisonment in the Penitentiary not exceeding five (5) years, or
508 in the county jail not exceeding one (1) year.

509 **SECTION 13.** Section 97-25-55, Mississippi Code of 1972, is
510 amended as follows:

511 97-25-55. (1) The offense of aircraft piracy is defined as
512 the seizure or exercise of control, by force or violence or threat
513 of force or violence, of any aircraft within the airspace
514 jurisdiction of the State of Mississippi. Any person convicted of
515 the offense of aircraft piracy shall suffer a sentence of life
516 imprisonment without eligibility for parole with hard labor
517 imposed or imprisonment for life in the State Penitentiary.

518 (2) The offense of assault with the intent to commit
519 aircraft piracy is defined as an intimidation, threat, assault or
520 battery toward any flight crew member or flight attendant
521 (including any steward or stewardess) of such aircraft so as to
522 interfere with the performance of duties by such member or
523 attendant to perform his duties, with the intent to commit
524 aircraft piracy as defined in subsection (1) of this section. Any
525 person convicted of the offense of assault with intent to commit
526 aircraft piracy shall serve a term not to exceed twenty (20) years
527 or be fined a sum not to exceed Ten Thousand Dollars (\$10,000.00),
528 or both.

529 Any person who, in the commission of such intimidation,
530 threat, assault or battery with the intent to commit aircraft
531 piracy, employs a dangerous or deadly weapon or other means
532 capable of inflicting serious bodily injury shall serve a term not

533 to exceed fifty (50) years or be fined a sum not to exceed Twenty
534 Thousand Dollars (\$20,000.00), or both.

535 (3) Any person who boards an aircraft with a dangerous or
536 deadly weapon or other means capable of inflicting serious bodily
537 injury concealed upon his person or effects shall, upon
538 conviction, serve a term not to exceed ten (10) years or be fined
539 a sum not to exceed Five Thousand Dollars (\$5,000.00), or both.
540 The prohibition of this subsection shall not apply to duly elected
541 or appointed law enforcement officers or commercial security
542 personnel who are in possession of weapons used within the course
543 and scope of their employment; nor shall the prohibition apply to
544 persons who are in possession of weapons or means with the consent
545 of the owner of such aircraft, or his agent, or the lessee or
546 bailee of such aircraft.

547 (4) Anyone accused of violating subsection (1), (2) or (3)
548 of this section shall be indicted and tried as provided by Section
549 99-11-19.

550 **SECTION 14.** Section 99-17-20, Mississippi Code of 1972, is
551 amended as follows:

552 99-17-20. No person shall be tried for capital murder, or
553 any other crime punishable by a sentence of life imprisonment
554 without eligibility for parole with hard labor imposed as provided
555 by law, unless such offense was specifically cited in the
556 indictment returned against the accused by setting forth the
557 section and subsection number of the code defining the offense
558 alleged to have been committed by the accused. The judge, in
559 cases where the offense cited in the indictment is punishable by a
560 sentence of life imprisonment without eligibility for parole with
561 hard labor imposed, may grant an instruction for the state or the
562 defendant which instructs the jury as to their discretion to
563 convict the accused of the commission of an offense not
564 specifically set forth in the indictment returned against the
565 accused. Any conviction of the accused for an offense punishable

566 by a sentence of life imprisonment without eligibility for parole
567 with hard labor imposed shall not be valid unless the offense for
568 which the accused is convicted shall have been set forth in the
569 indictment by section and subsection number of the code which
570 defined the offense allegedly committed by the accused.

571 **SECTION 15.** Section 99-19-61, Mississippi Code of 1972, is
572 amended as follows:

573 99-19-61. The commissioner of corrections is hereby
574 authorized and empowered to pay out of any available funds of the
575 Department of Corrections all lawful costs, fees, and
576 expenses * * * of any person, not a legal resident of Sunflower
577 County, Mississippi, who is charged and tried * * * for the
578 commission of a crime within the confines of the Penitentiary, or
579 any crime committed outside the bounds of the land of the
580 Penitentiary by any inmate lawfully charged thereto. * * *

581 **SECTION 16.** Section 99-19-85, Mississippi Code of 1972, is
582 amended as follows:

583 99-19-85. Nothing in Sections 99-19-81 through 99-19-85
584 shall be construed or considered as seeking or tending to impair
585 the pardoning power or other powers reserved to the Governor under
586 Section 124 of the Mississippi Constitution of 1890.

587 **SECTION 17.** Section 99-19-101, Mississippi Code of 1972, is
588 amended as follows:

589 99-19-101. (1) Upon conviction or adjudication of guilt of
590 a defendant of capital murder or other capital offense, the court
591 shall conduct a separate sentencing proceeding to determine
592 whether the defendant should be sentenced to * * * life
593 imprisonment without eligibility for parole with hard labor
594 imposed, or life imprisonment. The proceeding shall be conducted
595 by the trial judge before the trial jury as soon as practicable.
596 If, through impossibility or inability, the trial jury is unable
597 to reconvene for a hearing on the issue of penalty, having
598 determined the guilt of the accused, the trial judge may summon a

599 jury to determine the issue of the imposition of the penalty. If
600 the trial jury has been waived, or if the defendant pleaded
601 guilty, the sentencing proceeding shall be conducted before a jury
602 impaneled for that purpose or may be conducted before the trial
603 judge sitting without a jury if both the State of Mississippi and
604 the defendant agree thereto in writing. In the proceeding,
605 evidence may be presented as to any matter that the court deems
606 relevant to sentence, and shall include matters relating to any of
607 the aggravating or mitigating circumstances. However, this
608 subsection shall not be construed to authorize the introduction of
609 any evidence secured in violation of the Constitution of the
610 United States or of the State of Mississippi. * * *

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

613 * * *

614 (a) Whether sufficient aggravating circumstances exist
615 as enumerated in subsection (4) of this section;

616 (b) Whether sufficient mitigating circumstances exist
617 as enumerated in subsection (5) of this section, which outweigh
618 the aggravating circumstances found to exist; and

619 (c) Based on these considerations, whether the
620 defendant should be sentenced to life imprisonment or life
621 imprisonment without eligibility for parole with hard labor
622 imposed.

623 (3) For the jury to impose a sentence of life imprisonment
624 without eligibility for parole with hard labor imposed, it must
625 unanimously find in writing the following:

626 * * *

627 (a) That sufficient aggravating circumstances exist as
628 enumerated in subsection (4) of this section; and

629 (b) That there are insufficient mitigating
630 circumstances, as enumerated in subsection (5), to outweigh the
631 aggravating circumstances.

632 In each case in which the jury imposes a sentence of life
633 imprisonment without eligibility for parole with hard labor
634 imposed, the determination of the jury shall be supported by
635 specific written findings of fact based upon the circumstances in
636 subsections (4) and (5) of this section and upon the records of
637 the trial and the sentencing proceedings. If, after the trial of
638 the penalty phase, the jury does not make the findings requiring a
639 sentence of life imprisonment without eligibility for parole with
640 hard labor imposed, or is unable to reach a decision, the court
641 shall impose a sentence of life imprisonment.

642 * * *

643 (4) Aggravating circumstances shall be limited to the
644 following:

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

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

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

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

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

665 (f) The capital offense was committed for pecuniary
666 gain.

667 (g) The capital offense was committed to disrupt or
668 hinder the lawful exercise of any governmental function or the
669 enforcement of laws.

670 (h) The capital offense was especially heinous,
671 atrocious or cruel.

672 (5) Mitigating circumstances shall be the following:

673 (a) The defendant has no significant history of prior
674 criminal activity.

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

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

679 (d) The defendant was an accomplice in the capital
680 offense committed by another person and his participation was
681 relatively minor.

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

684 (f) The capacity of the defendant to appreciate the
685 criminality of his conduct or to conform his conduct to the
686 requirements of law was substantially impaired.

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

688 * * *

689 **SECTION 18.** Section 99-35-115, Mississippi Code of 1972, is
690 amended as follows:

691 99-35-115. (1) A person convicted of felony child abuse or
692 any offense in which a sentence of life imprisonment without
693 eligibility for parole with hard labor imposed or life
694 imprisonment is imposed shall not be entitled to be released from
695 imprisonment pending an appeal to the Supreme Court.

696 (2) (a) A person convicted of any felony, not enumerated in
697 subsection (1), shall be entitled to be released from imprisonment

698 on bail pending an appeal to the Supreme Court, within the
699 discretion of a judicial officer, if the convict shows by clear
700 and convincing evidence that release of the convict would not
701 constitute a special danger to any other person or to the
702 community, and that a condition or a combination of conditions may
703 be placed on release that will reasonably assure the appearance of
704 the convict as required, and only when the peculiar circumstances
705 of the case render it proper.

706 (b) If bail is denied, the judicial officer shall place
707 the reasons for such denial of record in the case.

708 (c) For the purposes of this section, "judicial
709 officer" means the trial court or trial judge, a judge of the
710 district in which the conviction occurred, the Supreme Court or a
711 justice of the Supreme Court in vacation of the court.

712 (d) The victim or family of a victim shall be entitled
713 to submit a written statement objecting to the granting of release
714 on bail pending appeal.

715 **SECTION 19.** Section 99-35-135, Mississippi Code of 1972, is
716 amended as follows:

717 99-35-135. If the judgment be affirmed, on appeal, and * * *
718 the sentence be for confinement in the Penitentiary, and the
719 defendant be not present, but in custody, the clerk of the supreme
720 court shall forthwith notify the legal authorities of the
721 Penitentiary as in cases of conviction for Penitentiary offenses
722 in the circuit court, who shall send for the convict as provided
723 in such cases.

724 **SECTION 20.** Section 99-39-23, Mississippi Code of 1972, is
725 amended as follows:

726 99-39-23. (1) If an evidentiary hearing is required the
727 judge may appoint counsel for a petitioner who qualifies for the
728 appointment of counsel under Section 99-15-15, Mississippi Code of
729 1972.

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

733 (3) The parties shall be entitled to subpoena witnesses and
734 compel their attendance, including, but not being limited to,
735 subpoenas duces tecum.

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

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

746 (6) The order as provided in subsection (5) of this section
747 or any order dismissing the prisoner's motion or otherwise denying
748 relief under this article is a final judgment and shall be
749 conclusive until reversed. It shall be a bar to a second or
750 successive motion under this article. * * * Excepted from this
751 prohibition are those cases in which the prisoner can demonstrate
752 either that there has been an intervening decision of the Supreme
753 Court of either the State of Mississippi or the United States
754 which would have actually adversely affected the outcome of his
755 conviction or sentence or that he has evidence, not reasonably
756 discoverable at the time of trial, which is of such nature that it
757 would be practically conclusive that had such been introduced at
758 trial it would have caused a different result in the conviction or
759 sentence. Likewise excepted are those cases in which the prisoner
760 claims that his sentence has expired or his probation, parole or
761 conditional release has been unlawfully revoked.

762 (7) No relief shall be granted under this article unless the
763 prisoner proves by a preponderance of the evidence that he is
764 entitled to such.

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

767 * * *

768 **SECTION 21.** Section 99-39-27, Mississippi Code of 1972, is
769 amended as follows:

770 99-39-27. (1) The application for leave to proceed in the
771 trial court filed with the Supreme Court under Section 99-39-7
772 shall name the State of Mississippi as the respondent.

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

777 (3) The prisoner shall serve an executed copy of the
778 application upon the Attorney General simultaneously with the
779 filing of the application with the court.

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

783 (5) Unless it appears from the face of the application,
784 motion, exhibits and the prior record that the claims presented by
785 such are not procedurally barred under Section 99-39-21 and that
786 they further present a substantial showing of the denial of a
787 state or federal right, the court shall by appropriate order deny
788 the application. The court may, in its discretion, require the
789 Attorney General upon sufficient notice to respond to the
790 application.

791 (6) The court upon satisfaction of the standards set forth
792 in this article is empowered to grant the application.

793 (7) In granting the application the court, in its
794 discretion, may:

795 (a) Where sufficient facts exist from the face of the
796 application, motion, exhibits, the prior record and the state's
797 response, together with any exhibits submitted therewith, or upon
798 stipulation of the parties, grant or deny any or all relief
799 requested in the attached motion.

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

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

804 (9) The dismissal or denial of an application under this
805 section is a final judgment and shall be a bar to a second or
806 successive application under this article. * * * Excepted from
807 this prohibition are those cases in which the prisoner can
808 demonstrate either that there has been an intervening decision of
809 the Supreme Court of either the State of Mississippi or the United
810 States which would have actually adversely affected the outcome of
811 his conviction or sentence or that he has evidence, not reasonably
812 discoverable at the time of trial, which is of such nature that it
813 would be practically conclusive that had such been introduced at
814 trial it would have caused a different result in the conviction or
815 sentence. Likewise exempted are those cases in which the prisoner
816 claims that his sentence has expired or his probation, parole or
817 conditional release has been unlawfully revoked.

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

820 * * *

821 **SECTION 22.** Section 99-41-5, Mississippi Code of 1972, is
822 amended as follows:

823 99-41-5. As used in this chapter, unless the context
824 otherwise requires, the term:

825 (a) "Allowable expense" means reasonable charges
826 incurred for reasonably needed:

827 (i) Products, services and accommodations,
828 including, but not limited to, medical care, rehabilitation,
829 rehabilitative occupational training and other remedial treatment
830 and care, but not to exceed Ten Thousand Dollars (\$10,000.00);

831 (ii) Mental health counseling and care not to
832 exceed Three Thousand Five Hundred Dollars (\$3,500.00) for the
833 victim and victim's family member; provided, however, if there is
834 more than one (1) family member, the amount of compensation
835 awarded shall be prorated and not to exceed Three Thousand Five
836 Hundred Dollars (\$3,500.00); and

837 (iii) Expenses related to funeral, cremation or
838 burial, but not to exceed a total charge of Four Thousand Five
839 Hundred Dollars (\$4,500.00) and transportation costs to arrange or
840 attend services, but not to exceed Five Hundred Dollars (\$500.00);

841 (b) "Claimant" means any of the following persons
842 applying for compensation under this chapter:

843 (i) A victim;

844 (ii) A dependent of a victim who has died because
845 of criminally injurious conduct; or

846 (iii) A person authorized to act on behalf of any
847 of the persons enumerated in subparagraphs (i) and (ii) of this
848 paragraph; however, "claimant" shall not include any of the
849 following: provider or creditor of victim; assignee of provider
850 or creditor, including a collection agency; or another person or
851 entity other than those enumerated in this paragraph;

852 (c) "Collateral source" means a source of benefits or
853 advantages for economic loss for which the claimant would
854 otherwise be eligible to receive compensation under this chapter
855 which the claimant has received, or which is readily available to
856 the claimant, from any one or more of the following:

857 (i) The offender;

858 (ii) The government of the United States or any
859 agency thereof, a state or any of its political subdivisions or an
860 instrumentality of two (2) or more states;

861 (iii) Social Security, Medicare and Medicaid;

862 (iv) Workers' compensation;

863 (v) Wage continuation programs of any employer;

864 (vi) Proceeds of a contract of insurance payable
865 to the claimant for loss which the victim sustained because of the
866 criminally injurious conduct;

867 (vii) A contract providing prepaid hospital and
868 other health care services or benefits for disability; or

869 (viii) Any temporary nonoccupational disability
870 insurance;

871 (d) "Criminally injurious conduct" means an act
872 occurring or attempted within the geographical boundaries of this
873 state, or to a resident of Mississippi while that resident is
874 within any other state of the United States or any foreign
875 country, which state or foreign country does not provide
876 compensation for those injuries caused by an act for which
877 compensation would be available had the act occurred in
878 Mississippi, and which act results in personal injury or death to
879 a victim for which punishment by fine, imprisonment, or death that
880 may have been imposed before the effective date of House Bill No.
881 _____, 2004 Regular Session, which abolished the death penalty,
882 may be imposed. The term shall also apply to federal offenses
883 committed within the state and delinquent acts as defined in
884 Section 43-21-105 which meet this definition;

885 (e) "Department" means the Department of Finance and
886 Administration;

887 (f) "Dependent" means a natural person wholly or
888 partially dependent upon the victim for care or support, and
889 includes a child of the victim born after the death of the victim

890 where the death occurred as a result of criminally injurious
891 conduct;

892 (g) "Economic loss of a dependent" means loss, after
893 death of the victim, of contributions or things of economic value
894 to the dependent, not including services which would have been
895 received from the victim if he or she had not suffered the fatal
896 injury, less expenses of the dependent avoided by reason of death
897 of the victim;

898 (h) "Economic loss" means monetary detriment consisting
899 only of allowable expense, work loss and, if injury causes death,
900 economic loss of a dependent, but shall not include noneconomic
901 loss or noneconomic detriment;

902 (i) "Family member" means the victim's spouse, parent,
903 grandparent, stepparent, child, stepchild, grandchild, brother,
904 sister, half brother, half sister or spouse's parent;

905 (j) "Noneconomic loss or detriment" means pain,
906 suffering, inconvenience, physical impairment and nonpecuniary
907 damage;

908 (k) "Work loss" means loss of income from work the
909 victim or claimant would have performed if the victim had not been
910 injured, but reduced by any income from substitute work actually
911 performed by the victim or claimant or by income the victim or
912 claimant would have earned in available appropriate substitute
913 work that he or she was capable of performing, but unreasonably
914 failed to undertake; and

915 (l) "Victim" means a person who suffers personal injury
916 or death as a result of criminally injurious conduct.

917 **SECTION 23.** Section 99-15-18, Mississippi Code of 1972,
918 which provides for compensation of counsel in post-conviction
919 relief cases involving the death penalty, is repealed.

920 **SECTION 24.** Sections 99-18-1, 99-18-3, 99-18-5, 99-18-7,
921 99-18-9, 99-18-11, 99-18-13, 99-18-15, 99-18-17 and 99-18-19,
922 Mississippi Code of 1972, which create and provide the duties of

923 the Office of Capital Defense Counsel for the purpose of providing
924 representation for indigent parties under indictment for death
925 penalty eligible offenses, are repealed.

926 **SECTION 25.** Sections 99-39-28 and 99-39-29, Mississippi Code
927 of 1972, which provides the rules of the Supreme Court for
928 post-conviction proceeding in death penalty cases and stay of
929 execution by the Supreme Court, are repealed.

930 **SECTION 26.** Sections 99-39-101, 99-39-103, 99-39-105,
931 99-39-107, 99-39-109, 99-39-111, 99-39-113, 99-39-115, 99-39-117
932 and 99-39-119, Mississippi Code of 1972, which create and provide
933 the duties of the Office of Capital Post-Conviction Counsel for
934 the purpose of providing representation for indigent parties who
935 are under sentences of death, are repealed.

936 **SECTION 27.** Sections 99-19-51, 99-19-53, 99-19-55, 99-19-57,
937 99-19-87, 99-19-103, 99-19-105, 99-19-106 and 99-19-107,
938 Mississippi Code of 1972, which provide for the execution of the
939 death sentence, death instructions regarding the death penalty,
940 judicial review of the death penalty, setting of the date for
941 execution, and for the imposition of a life sentence if the death
942 penalty is held to be unconstitutional, are repealed.

943 **SECTION 28.** Section 99-35-137, Mississippi Code of 1972,
944 which provides for the copy of the death sentence to be sent to
945 the sheriff from the clerk of the court, is repealed.

946 **SECTION 29.** This act shall take effect and be in force from
947 and after July 1, 2004.