

By: Representative Mayo

To: Judiciary En Banc

## HOUSE BILL NO. 127

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

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

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

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

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

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

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

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

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

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



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

36 (4) The committee shall study the impact the death penalty  
37 has as a deterrence, the costs involved in the imposition of the  
38 death penalty and any costs savings that could be realized if the  
39 death penalty were abolished, the effectiveness and qualifications  
40 of lawyers representing death penalty defendants, the profile of  
41 death penalty defendants and any other pertinent information  
42 regarding the death penalty. The committee shall report its  
43 findings to the Legislature on December 1, 2011. After the  
44 presentation of its report to the Legislature and Governor, the  
45 committee shall be dissolved.

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

48 97-3-21. Every person who shall be convicted of murder shall  
49 be sentenced by the court to imprisonment for life in the State  
50 Penitentiary.

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

56 Until the completion of the study of the Death Penalty Impact  
57 Committee, as provided in Section 1 of this act, there shall be a  
58 moratorium on the imposition of the death penalty.

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

61 99-19-51. The manner of inflicting the punishment of death  
62 shall be by continuous intravenous administration of a lethal



63 quantity of an ultra short-acting barbiturate or other similar  
64 drug in combination with a chemical paralytic agent until death is  
65 pronounced by the county coroner where the execution takes place  
66 or by a licensed physician according to accepted standards of  
67 medical practice. Until the completion of the study of the Death  
68 Penalty Impact Committee, as provided in Section 1 of this act,  
69 there shall be a moratorium on the imposition of the death  
70 penalty.

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

73 99-19-53. (1) The State Executioner, or his duly authorized  
74 representative, shall supervise and inflict the punishment of  
75 death as the same is hereby provided. All duties and necessary  
76 acts pertaining to the execution of a convict shall be performed  
77 by the Commissioner of Corrections except where such duties and  
78 actions are vested in the State Executioner. The State  
79 Executioner shall receive for his services in connection therewith  
80 compensation in the sum of Five Hundred Dollars (\$500.00) plus all  
81 actual and necessary expenses for each such execution, to be paid  
82 by the county where the crime was committed. The county of  
83 conviction shall likewise pay the fees of the attending physician  
84 or physicians in attendance. The Executioner may appoint not more  
85 than two (2) deputies who shall be paid One Hundred Fifty Dollars  
86 (\$150.00) per execution and mileage as authorized by law, to be  
87 paid by the county where the crime was committed, to assist in the  
88 infliction of the punishment of death. The Executioner may  
89 appoint such other assistants as may be required; however, such  
90 assistants shall not be entitled to compensation or travel  
91 expenses.

92 (2) Any infliction of the punishment of death by  
93 administration of the required lethal substance or substances in  
94 the manner required by law shall not be construed to be the  
95 practice of medicine or nursing. Any pharmacist is authorized to



96 dispense drugs to the State Executioner without a prescription for  
97 the purpose of this chapter.

98       (3) The State Executioner shall be custodian of all  
99 equipment and supplies involved in the infliction of the death  
100 penalty. All expenses for the maintenance and protection of the  
101 property, together with operating expenses, which as a practical  
102 matter cannot be allocated to the county of conviction, shall be  
103 paid out of funds designated by law for that purpose or out of the  
104 general support fund of the Mississippi Department of Corrections.

105       (4) The State Executioner shall receive the per diem  
106 compensation authorized in Section 25-3-69 in addition to actual  
107 and necessary expenses, including mileage as authorized by law,  
108 for each day, not to exceed three (3) days each month, spent in  
109 maintaining the equipment and supplies involved in the infliction  
110 of the death penalty or preparing for an execution which does not  
111 occur. Such payments shall be paid out of funds designated by law  
112 for that purpose or out of the general support fund of the  
113 Mississippi Department of Corrections.

114       (5) The Governor shall appoint the official State  
115 Executioner who shall serve at the pleasure of the Governor and  
116 until his successor shall have been duly appointed to replace him.

117       (6) Until the completion of the study of the Death Penalty  
118 Impact Committee, as provided in Section 1 of this act, there  
119 shall be a moratorium on the imposition of the death penalty.

120       **SECTION 5.** Section 99-19-55, Mississippi Code of 1972, is  
121 amended as follows:

122       99-19-55. (1) Whenever any person shall be condemned to  
123 suffer death for any crime for which such person shall have been  
124 convicted in any court of any county of this state, such  
125 punishment shall be inflicted at 6:00 p.m. or as soon as possible  
126 thereafter within the next twenty-four (24) hours at an  
127 appropriate place designated by the Commissioner of Corrections on  
128 the premises of the Mississippi State Penitentiary at Parchman,



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

145 (2) When a person is sentenced to suffer death in the manner  
146 provided by law, it shall be the duty of the clerk of the court to  
147 deliver forthwith to the Commissioner of Corrections a warrant for  
148 the execution of the condemned person. It shall be the duty of  
149 the commissioner forthwith to notify the State Executioner of the  
150 date of the execution and it shall be the duty of the said State  
151 Executioner, or any person deputized by him in writing, in the  
152 event of his physical disability, as hereinafter provided, to be  
153 present at such execution, to perform the same, and have general  
154 supervision over said execution. In addition to the above  
155 designated persons, the Commissioner of Corrections shall secure  
156 the presence at such execution of the sheriff, or his deputy, of  
157 the county of conviction, at least one (1) but not more than two  
158 (2) physicians or the county coroner where the execution takes  
159 place, and bona fide members of the press, not to exceed eight (8)  
160 in number, and at the request of the condemned, such ministers of  
161 the gospel, not exceeding two (2), as said condemned person shall



162 name. The Commissioner of Corrections shall also name to be  
163 present at the execution such officers or guards as may be deemed  
164 by him to be necessary to insure proper security. No other  
165 persons shall be permitted to witness the execution, except the  
166 commissioner may permit two (2) members of the condemned person's  
167 immediate family as witnesses, if they so request and two (2)  
168 members of the victim's immediate family as witnesses, if they so  
169 request. Provided further, that the Governor may, for good cause  
170 shown, permit two (2) additional persons of good and reputable  
171 character to witness an execution. No person shall be allowed to  
172 take photographs or other recordings of any type during the  
173 execution. The absence of the sheriff, or deputy, after due  
174 notice to attend, shall not delay the execution.

175 (3) The State Executioner, or his duly authorized  
176 representative, the Commissioner of Corrections, or his duly  
177 authorized representative, and the physician or physicians or  
178 county coroner who witnessed such execution shall prepare and sign  
179 officially a certificate setting forth the time and place thereof  
180 and that such criminal was then and there executed in conformity  
181 to the sentence of the court and the provisions of Sections  
182 99-19-51 through 99-19-55, and shall procure the signatures of the  
183 other public officers and persons who witnessed such execution,  
184 which certificate shall be filed with the clerk of the court where  
185 the conviction of the criminal was had, and the clerk shall  
186 subjoin the certificate to the record of the conviction and  
187 sentence.

188 (4) The body of the person so executed shall be released  
189 immediately by the State Executioner, or his duly authorized  
190 representative, to the relatives of the dead person, or to such  
191 friends as may claim the body. The Commissioner of Corrections  
192 shall have sole charge of burial in the event the body is not  
193 claimed as aforesaid, and his discretion in the premises shall be  
194 final. The Commissioner may donate the unclaimed body of an



195 executed person to the University of Mississippi Medical Center  
196 for scientific purposes. The county of conviction shall bear the  
197 reasonable expense of burial in the event the body is not claimed  
198 by relatives or friends or donated to the University of  
199 Mississippi Medical Center.

200 (5) Until the completion of the study of the Death Penalty  
201 Impact Committee, as provided in Section 1 of this act, there  
202 shall be a moratorium on the imposition of the death penalty.

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

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

219 (2) (a) If it is believed that an offender under sentence  
220 of death has become mentally ill since the judgment of the court,  
221 the following shall be the exclusive procedural and substantive  
222 procedure. The offender, or a person acting as his next friend,  
223 or the Commissioner of Corrections may file an appropriate  
224 application seeking post-conviction relief with the Mississippi  
225 Supreme Court. If it is found that the offender is a person with  
226 mental illness, as defined in this subsection, the court shall  
227 suspend the execution of the sentence. The offender shall then be



228 committed to the forensic unit of the Mississippi State Hospital  
229 at Whitfield. The order of commitment shall require that the  
230 offender be examined and a written report be furnished to the  
231 court at that time and every month thereafter, stating whether  
232 there is a substantial probability that the offender will become  
233 sane under this subsection within the foreseeable future and  
234 whether progress is being made toward that goal. If at any time  
235 during the commitment, the appropriate official at the state  
236 hospital considers the offender to be sane under this subsection,  
237 the official shall promptly notify the court to that effect in  
238 writing and place the offender in the custody of the Commissioner  
239 of Corrections. The court then shall conduct a hearing on the  
240 sanity of the offender. The finding of the circuit court is a  
241 final order appealable under the terms and conditions of the  
242 Mississippi Uniform Post-Conviction Collateral Relief Act.

243 (b) For the purposes of this subsection, a person shall  
244 be deemed to be a person with mental illness if the court finds  
245 that the offender does not have sufficient intelligence to  
246 understand the nature of the proceedings against him, what he was  
247 tried for, the purpose of his punishment, the impending fate that  
248 awaits him, and a sufficient understanding to know any fact that  
249 might exist that would make his punishment unjust or unlawful and  
250 the intelligence requisite to convey that information to his  
251 attorneys or the court.

252 (3) Until the completion of the study of the Death Penalty  
253 Impact Committee, as provided in Section 1 of this act, there  
254 shall be a moratorium on the imposition of the death penalty.

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

257 99-19-101. (1) Upon conviction or adjudication of guilt of  
258 a defendant of capital murder or other capital offense, the court  
259 shall conduct a separate sentencing proceeding to determine  
260 whether the defendant should be sentenced to death, life





261 imprisonment without eligibility for parole, or life imprisonment.  
262 The proceeding shall be conducted by the trial judge before the  
263 trial jury as soon as practicable. If, through impossibility or  
264 inability, the trial jury is unable to reconvene for a hearing on  
265 the issue of penalty, having determined the guilt of the accused,  
266 the trial judge may summon a jury to determine the issue of the  
267 imposition of the penalty. If the trial jury has been waived, or  
268 if the defendant pleaded guilty, the sentencing proceeding shall  
269 be conducted before a jury impaneled for that purpose or may be  
270 conducted before the trial judge sitting without a jury if both  
271 the State of Mississippi and the defendant agree thereto in  
272 writing. In the proceeding, evidence may be presented as to any  
273 matter that the court deems relevant to sentence, and shall  
274 include matters relating to any of the aggravating or mitigating  
275 circumstances. However, this subsection shall not be construed to  
276 authorize the introduction of any evidence secured in violation of  
277 the Constitution of the United States or of the State of  
278 Mississippi. The state and the defendant and/or his counsel shall  
279 be permitted to present arguments for or against the sentence of  
280 death.

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

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

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

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

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



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

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

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

299 (c) That there are insufficient mitigating  
300 circumstances, as enumerated in subsection (6), to outweigh the  
301 aggravating circumstances.

302 In each case in which the jury imposes the death sentence,  
303 the determination of the jury shall be supported by specific  
304 written findings of fact based upon the circumstances in  
305 subsections (5) and (6) of this section and upon the records of  
306 the trial and the sentencing proceedings. If, after the trial of  
307 the penalty phase, the jury does not make the findings requiring  
308 the death sentence or life imprisonment without eligibility for  
309 parole, or is unable to reach a decision, the court shall impose a  
310 sentence of life imprisonment.

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

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

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

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



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

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

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

341 (f) The capital offense was committed for pecuniary  
342 gain.

343 (g) The capital offense was committed to disrupt or  
344 hinder the lawful exercise of any governmental function or the  
345 enforcement of laws.

346 (h) The capital offense was especially heinous,  
347 atrocious or cruel.

348 (6) Mitigating circumstances shall be the following:

349 (a) The defendant has no significant history of prior  
350 criminal activity.

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

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

355 (d) The defendant was an accomplice in the capital  
356 offense committed by another person and his participation was  
357 relatively minor.



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

360 (f) The capacity of the defendant to appreciate the  
361 criminality of his conduct or to conform his conduct to the  
362 requirements of law was substantially impaired.

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

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

366 (a) The defendant actually killed;

367 (b) The defendant attempted to kill;

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

369 (d) The defendant contemplated that lethal force would  
370 be employed.

371 (8) Until the completion of the study of the Death Penalty  
372 Impact Committee, as provided in Section 1 of this act, there  
373 shall be a moratorium on the imposition of the death penalty.

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

376 99-19-103. (1) The statutory instructions as determined by  
377 the trial judge to be warranted by the evidence shall be given in  
378 the charge and in writing to the jury for its deliberation. The  
379 jury, if its verdict be a unanimous recommendation of death, shall  
380 designate in writing, signed by the foreman of the jury, the  
381 statutory aggravating circumstance or circumstances which it  
382 unanimously found beyond a reasonable doubt. Unless at least one  
383 (1) of the statutory aggravated circumstances enumerated in  
384 Section 99-19-101 is so found or if it is found that any such  
385 aggravating circumstance is overcome by the finding of one or more  
386 mitigating circumstances, the death penalty shall not be imposed.  
387 If the jury cannot, within a reasonable time, agree as to  
388 punishment, the judge shall dismiss the jury and impose a sentence  
389 of imprisonment for life.



390           (2) Until the completion of the study of the Death Penalty  
391 Impact Committee, as provided in Section 1 of this act, there  
392 shall be a moratorium on the imposition of the death penalty.

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

395           99-19-105. (1) Whenever the death penalty is imposed, and  
396 upon the judgment becoming final in the trial court, the sentence  
397 shall be reviewed on the record by the Mississippi Supreme Court.  
398 The clerk of the trial court, within ten (10) days after receiving  
399 the transcript, shall transmit the entire record and transcript to  
400 the Mississippi Supreme Court together with a notice prepared by  
401 the clerk and a report prepared by the trial judge. The notice  
402 shall set forth the title and docket number of the case, the name  
403 of the defendant and the name and address of his attorney, a  
404 narrative statement of the judgment, the offense, and the  
405 punishment prescribed. The report shall be in the form of a  
406 standard questionnaire prepared and supplied by the Mississippi  
407 Supreme Court, a copy of which shall be served upon counsel for  
408 the state and counsel for the defendant.

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

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

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

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

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

420                   (d) Should one or more of the aggravating circumstances  
421 be found invalid on appeal, the Mississippi Supreme Court shall  
422 determine whether the remaining aggravating circumstances are



423 outweighed by the mitigating circumstances or whether the  
424 inclusion of any invalid circumstance was harmless error, or both.

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

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

432 (a) Affirm the sentence of death;

433 (b) Reweigh the remaining aggravating circumstances  
434 against the mitigating circumstances should one or more of the  
435 aggravating circumstances be found to be invalid, and (i) affirm  
436 the sentence of death, or (ii) hold the error in the sentence  
437 phase harmless error and affirm the sentence of death, or (iii)  
438 remand the case for a new sentencing hearing; or

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

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

446 (7) Until the completion of the study of the Death Penalty  
447 Impact Committee, as provided in Section 1 of this act, there  
448 shall be a moratorium on the imposition of the death penalty.

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

