

By: Representative Fleming

To: Judiciary En Banc

HOUSE BILL NO. 814

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

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

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

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

38 47-5-139. (1) An inmate shall not be eligible for the
 39 earned time allowance if:

40 (a) The inmate was sentenced to life imprisonment; but
 41 an inmate, except an inmate sentenced to life imprisonment for



42 capital murder, who has reached the age of sixty-five (65) or
43 older and who has served at least fifteen (15) years may petition
44 the sentencing court for conditional release;

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

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

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

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

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

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

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

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

67 47-5-151. The superintendent (warden) or other person in
68 charge of prisoners, upon the death of any prisoner under his care
69 and control, shall at once notify the county medical examiner or
70 county medical examiner investigator (hereinafter "medical
71 examiner") of the county in which said prisoner died, of the death
72 of the prisoner, and it shall be the duty of such medical
73 examiner, when so notified of the death of such person, to obtain
74 a court order and notify the State Medical Examiner of the death



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

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

102 The provisions herein set forth in the first paragraph shall
103 likewise apply to any case in which any person is found dead on
104 the premises of the Mississippi State Penitentiary except that the
105 autopsy to be performed on the body of such a person shall not be
106 mandatory upon a person who is not a prisoner unless the medical
107 examiner determines that the death resulted from circumstances



108 raising questions as to the cause of death, in which case the
109 medical examiner may cause an autopsy to be performed upon the
110 body of such deceased person in the same manner as authorized to
111 be performed upon the body of a deceased prisoner.

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

118 * * *

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

127 **SECTION 4.** Section 47-7-3, Mississippi Code of 1972, is
128 amended as follows:

129 47-7-3. (1) Every prisoner who has been convicted of any
130 offense against the State of Mississippi, and is confined in the
131 execution of a judgment of such conviction in the Mississippi
132 State Penitentiary for a definite term or terms of one (1) year or
133 over, or for the term of his or her natural life, whose record of
134 conduct shows that such prisoner has observed the rules of the
135 Penitentiary, and who has served not less than one-fourth (1/4) of
136 the total of such term or terms for which such prisoner was
137 sentenced, or, if sentenced to serve a term or terms of thirty
138 (30) years or more, or, if sentenced for the term of the natural
139 life of such prisoner, has served not less than ten (10) years of



140 such life sentence, may be released on parole as hereinafter
141 provided, except that:

142 (a) No prisoner convicted as a confirmed and habitual
143 criminal under the provisions of Sections 99-19-81 through
144 99-19-85 shall be eligible for parole;

145 (b) Any person who shall have been convicted of a sex
146 crime shall not be released on parole except for a person under
147 the age of nineteen (19) who has been convicted under Section
148 97-3-67;

149 (c) No one shall be eligible for parole until he shall
150 have served one (1) year of his sentence, unless such person has
151 accrued any meritorious earned time allowances, in which case he
152 shall be eligible for parole if he has served (i) nine (9) months
153 of his sentence or sentences, when his sentence or sentences is
154 two (2) years or less; (ii) ten (10) months of his sentence or
155 sentences when his sentence or sentences is more than two (2)
156 years but no more than five (5) years; and (iii) one (1) year of
157 his sentence or sentences when his sentence or sentences is more
158 than five (5) years;

159 (d) (i) No person shall be eligible for parole who
160 shall, on or after January 1, 1977, be convicted of robbery or
161 attempted robbery through the display of a firearm until he shall
162 have served ten (10) years if sentenced to a term or terms of more
163 than ten (10) years or if sentenced for the term of the natural
164 life of such person. If such person is sentenced to a term or
165 terms of ten (10) years or less, then such person shall not be
166 eligible for parole. The provisions of this paragraph (d) shall
167 also apply to any person who shall commit robbery or attempted
168 robbery on or after July 1, 1982, through the display of a deadly
169 weapon. This subparagraph (d)(i) shall not apply to persons
170 convicted after September 30, 1994;

171 (ii) No person shall be eligible for parole who
172 shall, on or after October 1, 1994, be convicted of robbery,



173 attempted robbery or carjacking as provided in Section 97-3-115 et
174 seq., through the display of a firearm or drive-by shooting as
175 provided in Section 97-3-109. The provisions of this subparagraph
176 (d)(ii) shall also apply to any person who shall commit robbery,
177 attempted robbery, carjacking or a drive-by shooting on or after
178 October 1, 1994, through the display of a deadly weapon;

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

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

186 (g) No person shall be eligible for parole who is
187 convicted or whose suspended sentence is revoked after June 30,
188 1995, except that a first offender convicted of a nonviolent crime
189 after January 1, 2000, may be eligible for parole if the offender
190 meets the requirements in subsection (1) and this paragraph. In
191 addition to other requirements, if a first offender is convicted
192 of a drug or driving under the influence felony, the offender must
193 complete a drug and alcohol rehabilitation program prior to parole
194 or the offender may be required to complete a post-release drug
195 and alcohol program as a condition of parole. For purposes of
196 this paragraph, "nonviolent crime" means a felony other than
197 homicide, robbery, manslaughter, sex crimes, arson, burglary of an
198 occupied dwelling, aggravated assault, kidnapping, felonious abuse
199 of vulnerable adults, felonies with enhanced penalties, the sale
200 or manufacture of a controlled substance under the Uniform
201 Controlled Substances Law, and felony child abuse.

202 (2) Notwithstanding any other provision of law, an inmate
203 shall not be eligible to receive earned time, good time or any
204 other administrative reduction of time which shall reduce the time
205 necessary to be served for parole eligibility as provided in



206 subsection (1) of this section; however, this subsection shall not
207 apply to the advancement of parole eligibility dates pursuant to
208 the Prison Overcrowding Emergency Powers Act. Moreover,
209 meritorious earned time allowances may be used to reduce the time
210 necessary to be served for parole eligibility as provided in
211 paragraph (c) of subsection (1) of this section.

212 (3) The State Parole Board shall by rules and regulations
213 establish a method of determining a tentative parole hearing date
214 for each eligible offender taken into the custody of the
215 Department of Corrections. The tentative parole hearing date
216 shall be determined within ninety (90) days after the department
217 has assumed custody of the offender. Such tentative parole
218 hearing date shall be calculated by a formula taking into account
219 the offender's age upon first commitment, number of prior
220 incarcerations, prior probation or parole failures, the severity
221 and the violence of the offense committed, employment history and
222 other criteria which in the opinion of the board tend to validly
223 and reliably predict the length of incarceration necessary before
224 the offender can be successfully paroled.

225 (4) Any inmate within twenty-four (24) months of his parole
226 eligibility date and who meets the criteria established by the
227 classification board shall receive priority for placement in any
228 educational development and job training programs. Any inmate
229 refusing to participate in an educational development or job
230 training program may be ineligible for parole.

231 **SECTION 5.** Section 73-15-7, Mississippi Code of 1972, is
232 amended as follows:

233 73-15-7. The following shall be excepted from the provisions
234 of this chapter:

235 (a) Gratuitous nursing by friends and members of the
236 family.

237 (b) The furnishing of nursing assistance in an
238 emergency.



239 (c) The practice of nursing which is incidental to a
240 program of study by a student enrolled in an approved educational
241 program of nursing, provided the practice is under the supervision
242 of a registered nurse.

243 (d) The practice of nursing by a graduate of an
244 approved educational program of nursing pending the results of the
245 first licensing examination scheduled by the board following such
246 graduation, provided the practice is under the supervision of a
247 registered nurse or a licensed physician if the nurse is
248 practicing in a physician's office and the graduate holds a
249 temporary permit to practice nursing in Mississippi.

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

254 (f) The practice of nursing by a registered nurse or a
255 licensed practical nurse for a period of not more than ninety (90)
256 days pending licensure in Mississippi, provided the nurse upon
257 employment has furnished the employer with satisfactory evidence
258 of current registration and licensure in another state, and
259 provided such nurse furnishes evidence to the prospective employer
260 of having submitted proper application and fees to the board prior
261 to employment and holds a temporary permit to practice nursing in
262 Mississippi.

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

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

271 * * *



272 **SECTION 6.** Section 97-3-21, Mississippi Code of 1972, is
273 amended as follows:

274 97-3-21. Every person who shall be convicted of murder shall
275 be sentenced by the court to imprisonment for life in the State
276 Penitentiary.

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

282 **SECTION 7.** Section 99-19-61, Mississippi Code of 1972, is
283 amended as follows:

284 99-19-61. The Commissioner of Corrections is hereby
285 authorized and empowered to pay out of any available funds of the
286 Department of Corrections all lawful costs, fees, and expenses
287 * * * of any person, not a legal resident of Sunflower County,
288 Mississippi, who is charged and tried * * * for the commission of
289 a crime within the confines of the Penitentiary, or any crime
290 committed outside the bounds of the land of the Penitentiary by
291 any inmate lawfully charged thereto. * * *

292 **SECTION 8.** Section 99-19-85, Mississippi Code of 1972, is
293 amended as follows:

294 99-19-85. Nothing in Sections 99-19-81 through 99-19-85
295 shall be construed or considered as seeking or tending to impair
296 the pardoning power or other powers reserved to the Governor under
297 Section 124 of the Mississippi Constitution of 1890.

298 **SECTION 9.** Section 99-19-101, Mississippi Code of 1972, is
299 amended as follows:

300 99-19-101. (1) Upon conviction or adjudication of guilt of
301 a defendant of capital murder or other capital offense, the court
302 shall conduct a separate sentencing proceeding to determine
303 whether the defendant should be sentenced to * * * life
304 imprisonment without eligibility for parole with hard labor



305 imposed, or life imprisonment. The proceeding shall be conducted
306 by the trial judge before the trial jury as soon as practicable.
307 If, through impossibility or inability, the trial jury is unable
308 to reconvene for a hearing on the issue of penalty, having
309 determined the guilt of the accused, the trial judge may summon a
310 jury to determine the issue of the imposition of the penalty. If
311 the trial jury has been waived, or if the defendant pleaded
312 guilty, the sentencing proceeding shall be conducted before a jury
313 impaneled for that purpose or may be conducted before the trial
314 judge sitting without a jury if both the State of Mississippi and
315 the defendant agree thereto in writing. In the proceeding,
316 evidence may be presented as to any matter that the court deems
317 relevant to sentence, and shall include matters relating to any of
318 the aggravating or mitigating circumstances. However, this
319 subsection shall not be construed to authorize the introduction of
320 any evidence secured in violation of the Constitution of the
321 United States or of the State of Mississippi. * * *

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

324 * * *

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

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

330 (c) Based on these considerations, whether the
331 defendant should be sentenced to life imprisonment or life
332 imprisonment without eligibility for parole with hard labor
333 imposed.

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

337 * * *



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

340 (b) That there are insufficient mitigating
341 circumstances, as enumerated in subsection (5), to outweigh the
342 aggravating circumstances.

343 In each case in which the jury imposes a sentence of life
344 imprisonment without eligibility for parole with hard labor
345 imposed, the determination of the jury shall be supported by
346 specific written findings of fact based upon the circumstances in
347 subsections (4) and (5) of this section and upon the records of
348 the trial and the sentencing proceedings. If, after the trial of
349 the penalty phase, the jury does not make the findings requiring a
350 sentence of life imprisonment without eligibility for parole with
351 hard labor imposed, or is unable to reach a decision, the court
352 shall impose a sentence of life imprisonment.

353 * * *

354 (4) Aggravating circumstances shall be limited to the
355 following:

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

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

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

363 (d) The capital offense was committed while the
364 defendant was engaged, or was an accomplice, in the commission of,
365 or an attempt to commit, or flight after committing or attempting
366 to commit, any robbery, rape, arson, burglary, kidnapping,
367 aircraft piracy, sexual battery, unnatural intercourse with any
368 child under the age of twelve (12), or nonconsensual unnatural
369 intercourse with mankind, or felonious abuse and/or battery of a
370 child in violation of subsection (2) of Section 97-5-39,



371 Mississippi Code of 1972, or the unlawful use or detonation of a
372 bomb or explosive device.

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

376 (f) The capital offense was committed for pecuniary
377 gain.

378 (g) The capital offense was committed to disrupt or
379 hinder the lawful exercise of any governmental function or the
380 enforcement of laws.

381 (h) The capital offense was especially heinous,
382 atrocious or cruel.

383 (5) Mitigating circumstances shall be the following:

384 (a) The defendant has no significant history of prior
385 criminal activity.

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

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

390 (d) The defendant was an accomplice in the capital
391 offense committed by another person and his participation was
392 relatively minor.

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

395 (f) The capacity of the defendant to appreciate the
396 criminality of his conduct or to conform his conduct to the
397 requirements of law was substantially impaired.

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

399 * * *

400 **SECTION 10.** Section 99-35-135, Mississippi Code of 1972, is
401 amended as follows:

402 99-35-135. If the judgment be affirmed, on appeal, and * * *
403 the sentence be for confinement in the Penitentiary, and the



404 defendant be not present, but in custody, the clerk of the supreme
405 court shall forthwith notify the legal authorities of the
406 Penitentiary as in cases of conviction for Penitentiary offenses
407 in the circuit court, who shall send for the convict as provided
408 in such cases.

409 **SECTION 11.** Section 99-39-23, Mississippi Code of 1972, is
410 amended as follows:

411 99-39-23. (1) If an evidentiary hearing is required the
412 judge may appoint counsel for a petitioner who qualifies for the
413 appointment of counsel under Section 99-15-15, Mississippi Code of
414 1972.

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

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

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

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

431 (6) The order as provided in subsection (5) of this section
432 or any order dismissing the prisoner's motion or otherwise denying
433 relief under this article is a final judgment and shall be
434 conclusive until reversed. It shall be a bar to a second or
435 successive motion under this article. * * * Excepted from this
436 prohibition are those cases in which the prisoner can demonstrate



437 either that there has been an intervening decision of the Supreme
438 Court of either the State of Mississippi or the United States
439 which would have actually adversely affected the outcome of his
440 conviction or sentence or that he has evidence, not reasonably
441 discoverable at the time of trial, which is of such nature that it
442 would be practically conclusive that had such been introduced at
443 trial it would have caused a different result in the conviction or
444 sentence. Likewise excepted are those cases in which the prisoner
445 claims that his sentence has expired or his probation, parole or
446 conditional release has been unlawfully revoked.

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

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

452 * * *

453 **SECTION 12.** Section 99-39-27, Mississippi Code of 1972, is
454 amended as follows:

455 99-39-27. (1) The application for leave to proceed in the
456 trial court filed with the Supreme Court under Section 99-39-7
457 shall name the State of Mississippi as the respondent.

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

462 (3) The prisoner shall serve an executed copy of the
463 application upon the Attorney General simultaneously with the
464 filing of the application with the court.

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

468 (5) Unless it appears from the face of the application,
469 motion, exhibits and the prior record that the claims presented by



470 such are not procedurally barred under Section 99-39-21 and that
471 they further present a substantial showing of the denial of a
472 state or federal right, the court shall by appropriate order deny
473 the application. The court may, in its discretion, require the
474 Attorney General upon sufficient notice to respond to the
475 application.

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

478 (7) In granting the application the court, in its
479 discretion, may:

480 (a) Where sufficient facts exist from the face of the
481 application, motion, exhibits, the prior record and the state's
482 response, together with any exhibits submitted therewith, or upon
483 stipulation of the parties, grant or deny any or all relief
484 requested in the attached motion.

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

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

489 (9) The dismissal or denial of an application under this
490 section is a final judgment and shall be a bar to a second or
491 successive application under this article. * * * Excepted from
492 this prohibition are those cases in which the prisoner can
493 demonstrate either that there has been an intervening decision of
494 the Supreme Court of either the State of Mississippi or the United
495 States which would have actually adversely affected the outcome of
496 his conviction or sentence or that he has evidence, not reasonably
497 discoverable at the time of trial, which is of such nature that it
498 would be practically conclusive that had such been introduced at
499 trial it would have caused a different result in the conviction or
500 sentence. Likewise exempted are those cases in which the prisoner
501 claims that his sentence has expired or his probation, parole or
502 conditional release has been unlawfully revoked.



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

505 * * *

506 **SECTION 13.** Section 99-41-5, Mississippi Code of 1972, is
507 amended as follows:

508 99-41-5. As used in this chapter, unless the context
509 otherwise requires, the term:

510 (a) "Allowable expense" means reasonable charges
511 incurred for reasonably needed:

512 (i) Products, services and accommodations,
513 including, but not limited to, medical care, rehabilitation,
514 rehabilitative occupational training and other remedial treatment
515 and care, but not to exceed Ten Thousand Dollars (\$10,000.00);

516 (ii) Mental health counseling and care not to
517 exceed Three Thousand Five Hundred Dollars (\$3,500.00) for the
518 victim and victim's family member; provided, however, if there is
519 more than one (1) family member, the amount of compensation
520 awarded shall be prorated and not to exceed Three Thousand Five
521 Hundred Dollars (\$3,500.00); and

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

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

528 (i) A victim;

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

531 (iii) A person authorized to act on behalf of any
532 of the persons enumerated in subparagraphs (i) and (ii) of this
533 paragraph; however, "claimant" shall not include any of the
534 following: provider or creditor of victim; assignee of provider



568 committed within the state and delinquent acts as defined in
569 Section 43-21-105 which meet this definition;

570 (e) "Department" means the Department of Finance and
571 Administration;

572 (f) "Dependent" means a natural person wholly or
573 partially dependent upon the victim for care or support, and
574 includes a child of the victim born after the death of the victim
575 where the death occurred as a result of criminally injurious
576 conduct;

577 (g) "Economic loss of a dependent" means loss, after
578 death of the victim, of contributions or things of economic value
579 to the dependent, not including services which would have been
580 received from the victim if he or she had not suffered the fatal
581 injury, less expenses of the dependent avoided by reason of death
582 of the victim;

583 (h) "Economic loss" means monetary detriment consisting
584 only of allowable expense, work loss and, if injury causes death,
585 economic loss of a dependent, but shall not include noneconomic
586 loss or noneconomic detriment;

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

590 (j) "Noneconomic loss or detriment" means pain,
591 suffering, inconvenience, physical impairment and nonpecuniary
592 damage;

593 (k) "Work loss" means loss of income from work the
594 victim or claimant would have performed if the victim had not been
595 injured, but reduced by any income from substitute work actually
596 performed by the victim or claimant or by income the victim or
597 claimant would have earned in available appropriate substitute
598 work that he or she was capable of performing, but unreasonably
599 failed to undertake; and



600 (1) "Victim" means a person who suffers personal injury
601 or death as a result of criminally injurious conduct.

602 **SECTION 14.** Section 99-15-18, Mississippi Code of 1972,
603 which provides for compensation of counsel in post-conviction
604 relief cases involving the death penalty, is repealed.

605 **SECTION 15.** Sections 99-18-1, 99-18-3, 99-18-5, 99-18-7,
606 99-18-9, 99-18-11, 99-18-13, 99-18-15, 99-18-17 and 99-18-19,
607 Mississippi Code of 1972, which create and provide the duties of
608 the Office of Capital Defense Counsel for the purpose of providing
609 representation for indigent parties under indictment for death
610 penalty eligible offenses, are repealed.

611 **SECTION 16.** Sections 99-39-28 and 99-39-29, Mississippi Code
612 of 1972, which provides the rules of the Supreme Court for
613 post-conviction proceeding in death penalty cases and stay of
614 execution by the Supreme Court, are repealed.

615 **SECTION 17.** Sections 99-39-101, 99-39-103, 99-39-105,
616 99-39-107, 99-39-109, 99-39-111, 99-39-113, 99-39-115, 99-39-117
617 and 99-39-119, Mississippi Code of 1972, create and provide the
618 duties of the Office of Capital Post-Conviction Counsel for the
619 purpose of providing representation for indigent parties who are
620 under sentences of death.

621 **SECTION 18.** Sections 99-19-51, 99-19-53, 99-19-55, 99-19-57,
622 99-19-87, 99-19-103, 99-19-105, 99-19-106 and 99-19-107,
623 Mississippi Code of 1972, which provide for the execution of the
624 death sentence, death instructions regarding the death penalty,
625 judicial review of the death penalty, setting of the date for
626 execution, and for the imposition of a life sentence if the death
627 penalty is held to be unconstitutional.

628 **SECTION 19.** Section 99-35-137, Mississippi Code of 1972,
629 which provides for the copy of the death sentence to be sent to
630 the sheriff from the clerk of the court, is repealed.

631 **SECTION 20.** This act shall take effect and be in force from
632 and after July 1, 2003.

