

HOUSE BILL NO. 350

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

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

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

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

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

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

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

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

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

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

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

35           (4) The committee shall study that the impact of the death  
36 penalty has as a deterrence, the costs involved in the imposition  
37 of the death penalty and any costs savings that could be realized  
38 if the death penalty were abolished, the effectiveness and  
39 qualifications of lawyers representing death penalty defendants,  
40 the profile of death penalty defendants and any other pertinent  
41 information regarding the death penalty. The committee shall  
42 report its findings to the Legislature on December 1, 2006.

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

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

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

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

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

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

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

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

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

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

92 The State Executioner shall be custodian of all equipment and  
93 supplies involved in the infliction of the death penalty. All  
94 expenses for the maintenance and protection of the property,

95 together with operating expenses, which as a practical matter  
96 cannot be allocated to the county of conviction, shall be paid out  
97 of funds designated by law for that purpose or out of the general  
98 support fund of the Mississippi Department of Corrections.

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

108 The Governor shall appoint the official State Executioner who  
109 shall serve at the pleasure of the Governor and until his  
110 successor shall have been duly appointed to replace him.

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

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

115 99-19-55. (1) Whenever any person shall be condemned to  
116 suffer death for any crime for which such person shall have been  
117 convicted in any court of any county of this state, such  
118 punishment shall be inflicted at 6:00 p.m. or as soon as possible  
119 thereafter within the next twenty-four (24) hours at an  
120 appropriate place designated by the Commissioner of Corrections on  
121 the premises of the Mississippi State Penitentiary at Parchman,  
122 Mississippi. All male persons convicted of a capital offense  
123 wherein the death sentence has been imposed shall be immediately  
124 committed to the Department of Corrections and transported to the  
125 maximum security cell block at the Mississippi State Penitentiary  
126 at Parchman, Mississippi. When the maximum inmate capacity at  
127 such maximum security cell block has been reached, the

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

338 (6) Mitigating circumstances shall be the following:

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

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

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

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

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

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

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

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

356 (a) The defendant actually killed;

357 (b) The defendant attempted to kill;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

420 (a) Affirm the sentence of death;

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

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

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

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

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

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