

1 205662-2 : n : 02/26/2020 : WARD / vr

2

3 SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR SB200

4

5

6

7

8 SYNOPSIS: Under current law, the appellate procedure

9 for death penalty cases provides for a direct

10 appeal to the Alabama Court of Criminal Appeals.

11 Under current law, the Alabama Supreme Court

12 may hear death penalty cases, but is not required

13 to hear the cases.

14 This bill would remove the direct appeal

15 from the Alabama Court of Criminal Appeals and

16 would provide for an automatic direct appeal to the

17 Alabama Supreme Court in cases where the death

18 penalty was imposed.

19 This bill would provide that the Alabama

20 Supreme Court has exclusive appellate jurisdiction

21 of cases where a criminal defendant is convicted of

22 capital murder and sentenced to death.

23 This bill would provide that a death penalty

24 appeal case shall have priority over all other

25 cases and the appeal shall be expedited to the

26 extent practicable.

This bill would also make nonsubstantive, technical revisions to update the existing code language to current style.

A BILL

TO BE ENTITLED

## AN ACT

Relating to appellate procedure in death penalty cases; to amend Sections 12-2-7, 12-3-9, 12-22-241, 12-22-243, 13A-5-53, 13A-5-55, and 15-18-80, Code of Alabama 1975, to further provide for the appellate procedure for death penalty cases; to provide that death penalty appeal cases have priority over all of cases and shall be expedited; and to make nonsubstantive, technical revisions to update the existing code language to current style.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 12-2-7, 12-3-9, 12-22-241, 12-22-243, 13A-5-53, 13A-5-55, and 15-18-80, Code of Alabama 1975, are amended to read as follows:

"§12-2-7.

"The Supreme Court shall have the following authority:

"(1) To exercise appellate jurisdiction coextensive with the state, under such restrictions and regulations as are prescribed by law; but, in deciding appeals, no weight shall be given the decision of the trial judge upon the facts where

1 the evidence is not taken orally before the judge, but in such  
2 cases the Supreme Court shall weigh the evidence and give  
3 judgment as it deems just.

4 "(2) To exercise original jurisdiction in the issue  
5 and determination of writs of quo warranto and mandamus in  
6 relation to matters in which no other court has jurisdiction.

7 "(3) To exercise exclusive appellate jurisdiction of  
8 cases in which a criminal defendant is convicted of capital  
9 murder for a violation of Section 13A-5-40 and is sentenced to  
10 death.

11 "(3) (4) To issue writs of injunction, habeas  
12 corpus, and ~~such~~ other remedial and original writs as are  
13 necessary to give to it a general superintendence and control  
14 of courts of inferior jurisdiction.

15 "(4) (5) To ~~make and promulgate~~ adopt rules  
16 governing the administration of all courts and rules governing  
17 practice and procedure in all courts; ~~provided, that such.~~ The  
18 rules shall not abridge, enlarge, or modify the substantive  
19 right of any party nor affect the jurisdiction of circuit and  
20 district courts or venue of actions ~~therein; and provided~~  
21 ~~further, that the.~~ The right of trial by jury as at common law  
22 and declared by Section 11 of the Constitution of Alabama of  
23 1901 shall be preserved to the parties inviolate.

24 "(5) (6) To punish for contempts by the infliction  
25 of a fine not exceeding \$100, and imprisonment not exceeding  
26 10 days or both.

1                         "(6) (7) To transfer to the Court of Civil Appeals,  
2 for determination by that court, any civil case appealed to  
3 the Supreme Court and within the appellate jurisdiction of the  
4 Supreme Court, except for any of the following:

5                         "a. A case that the Supreme Court determines  
6 presents a substantial question of federal or state  
7 constitutional law.

8                         "b. A case that the Supreme Court determines  
9 involves a novel legal question, the resolution of which will  
10 have significant statewide impact.

11                         "c. A utility rate case appealed directly to the  
12 Supreme Court under the provisions of Section 37-1-140.

13                         "d. A bond validation proceeding appealed to the  
14 Supreme Court under the provisions of Section 6-6-754.

15                         "e. A bar disciplinary proceeding.

16                         "(7) (8) To exercise such any other powers as are or  
17 may be given to the Supreme Court by law.

18                         "§12-3-9.

19                         "The Court of Criminal Appeals shall have exclusive  
20 appellate jurisdiction of all misdemeanors, including the  
21 violation of town and city ordinances, habeas corpus, and all  
22 felonies, including all post conviction writs in criminal  
23 cases, excluding capital murder appeals prosecuted pursuant to  
24 Section 13A-5-40, where the death penalty was imposed.

25                         "§12-22-241.

26                         "In all cases of automatic appeals, the ~~appellate~~  
27 ~~court~~ Supreme Court may consider, ~~at its discretion~~, any

1       testimony that was seriously prejudicial to the rights of the  
2       appellant and may reverse ~~thereon~~ the lower court's decision,  
3       even though if no objection to the testimony was made thereto  
4       in the court below. The ~~appellate court~~ Supreme Court shall  
5       consider all of the testimony, and, if upon such after  
6       consideration it is of opinion the verdict is so decidedly  
7       contrary to the great weight of the evidence as to be wrong  
8       and unjust and ~~that upon~~ that ~~ground~~ a new trial should be ~~had~~  
9       granted, the court shall enter an order of reversal of the  
10      judgment and grant a new trial, though even if no motion to  
11      that effect was presented in the court below.

12               "§12-22-243.

13               "Upon affirmation of a judgment carrying the death  
14      penalty, the ~~Court of Criminal Appeals~~ must Supreme Court  
15      shall direct the sentence to be executed and, if the day  
16      appointed for the execution of the sentence has passed, ~~must~~  
17      shall specify a day for the execution of the sentence, ~~and~~  
18      the. The judgment and sentence must be executed accordingly.

19               "§13A-5-53.

20               "(a) In any case in which the death penalty is  
21      imposed, in addition to reviewing the case for any error  
22      involving the conviction, ~~the Alabama Court of Criminal~~  
23      Appeals, ~~subject to review by~~ the Alabama Supreme Court, shall  
24      also review the propriety of the death sentence. This review  
25      shall include the determination of whether any error adversely  
26      affecting the rights of the defendant was made in the sentence  
27      proceedings, whether the trial court's findings concerning the

1       aggravating and mitigating circumstances were supported by the  
2       evidence, and whether death was the proper sentence in the  
3       case. If the court determines that an error adversely  
4       affecting the rights of the defendant was made in the sentence  
5       proceedings or that one or more of the trial court's findings  
6       concerning aggravating and mitigating circumstances were not  
7       supported by the evidence, it shall remand the case for new  
8       proceedings to the extent necessary to correct the error or  
9       errors. If the ~~appellate court~~ Supreme Court finds that no  
10      error adversely affecting the rights of the defendant was made  
11      in the sentence proceedings and that the trial court's  
12      findings concerning aggravating and mitigating circumstances  
13      were supported by the evidence, it shall proceed to review the  
14      propriety of the decision that death was the proper sentence.

15                 "(b) In determining whether death was the proper  
16        sentence in the case ~~the Alabama Court of Criminal Appeals,~~  
17        ~~subject to review by~~ the Alabama Supreme Court, shall  
18        determine all of the following:

19                 "(1) Whether the sentence of death was imposed under  
20        the influence of passion, prejudice, or any other arbitrary  
21        factor.;

22                 "(2) Whether an independent weighing of the  
23        aggravating and mitigating circumstances at the appellate  
24        level indicates that death was the proper sentence; and

25                 "(3) Whether the sentence of death is excessive or  
26        disproportionate to the penalty imposed in similar cases,  
27        considering both the crime and the defendant.

"(c) The ~~Court of Criminal Appeals~~ Supreme Court shall explicitly address each of the three questions specified in subsection (b) ~~of this section~~ in every case it reviews in which a sentence of death has been imposed.

"(d) After performing the review specified in this section, the ~~Alabama Court of Criminal Appeals, subject to review by the Alabama Supreme Court,~~ shall be authorized to do any of the following:

"(1) Affirm the sentence of death.✓

"(2) Set the sentence of death aside and remand to the trial court for correction of any errors occurring during the sentence proceedings and for imposition of the appropriate penalty after any new sentence proceedings that are necessary, provided that such errors shall not affect the determination of guilt and shall not preclude the imposition of a sentence of death where it is determined to be proper after any new sentence proceedings that are deemed necessary; or.

"(3) In cases in which the death penalty is deemed inappropriate under subdivision (b)(2) or (b)(3) ~~of this section~~, set the sentence of death aside and remand to the trial court with directions that the defendant be sentenced to life imprisonment without parole.

"§13A-5-55.

"(a) In all cases in which a defendant is sentenced to death, the judgment of conviction shall be subject to automatic review by the Supreme Court. The sentence of death shall be subject to review as provided in Section 13A-5-53.

1                         "(b) The appeal of conviction of capital murder and  
2                         the review of the sentence of death shall have priority over  
3                         all other cases and shall be expedited by the Supreme Court to  
4                         the extent practicable.

5                         "§15-18-80.

6                         "(a) (1) Whenever any person is sentenced to death,  
7                         the clerk of the court in which the sentence is pronounced  
8                         shall, within 10 days after sentence has been pronounced,  
9                         shall issue a warrant under the seal of the court for the  
10                         execution of the sentence of death, ~~which~~.

11                         "(2) The warrant shall recite the fact of  
12                         conviction, setting forth specifically the offense, the  
13                         judgment of the court, and the time fixed for his or her  
14                         execution, ~~and which~~.

15                         "(3) The warrant shall be directed to the warden of  
16                         the William C. Holman unit of the prison system at Atmore, or  
17                         to the warden of a Department of Corrections facility where  
18                         the condemned person will be housed.

19                         "(4) The warrant shall direct the warden commanding  
20                         him to proceed with the execution, at the time and place named  
21                         in the sentence, ~~to carry the same into execution~~, as provided  
22                         in Section 15-18-82, ~~and the~~.

23                         "(b) The clerk shall deliver ~~such~~ the warrant to the  
24                         sheriff of the county in which ~~such~~ the judgment of conviction  
25                         was ~~had~~, to be by him delivered to the said warden, together  
26                         with the condemned person as provided in subsection (b) of  
27                         this section; provided, however, that in case of appeal to the

1 Supreme Court of Alabama by the defendant and the suspension  
2 of execution of sentence by the trial court, said condemned  
3 person shall remain in the county jail of the county in which  
4 the conviction was had unless the court in which the case is  
5 tried orders otherwise, in which case, upon the affirmation of  
6 the appeal by the Supreme Court, said warrant for the  
7 execution of the death sentence, under seal of the court,  
8 together with the person of the condemned shall be delivered  
9 within 10 days after such affirmation to the warden of Holman  
10 prison as provided above pronounced. Once received, the  
11 sheriff shall notify the department of the receipt of the  
12 warrant. The department shall transfer the inmate to the  
13 department's physical custody as soon as practicable, but no  
14 more than 15 days after receipt of the notice. Once  
15 transferred, the inmate shall remain in the custody of the  
16 department while the appeal is pending.

17 "(b) Immediately upon the receipt of such warrant,  
18 the sheriff shall transport such condemned person to the  
19 William C. Holman unit of the prison system at Atmore, shall  
20 there deliver him and the warrant aforesaid into the hands of  
21 the warden and shall take from the warden his receipt for such  
22 person and such warrant, which receipt the sheriff shall  
23 return to the office of the clerk of the court where the  
24 judgment of death was rendered. For his services, the sheriff  
25 shall be entitled to the same compensation as now provided by  
26 law to sheriffs for removing or conveying prisoners."

1                   Section 2. This act shall apply to any defendant who  
2 is sentenced to death on or after the effective date of this  
3 act.

4                   Section 3. It is the intent of the Legislature that  
5 pursuant to Amendment 328 of the Constitution of Alabama of  
6 1901, now appearing as Section 150 of the Official  
7 Recompilation of the Constitution of Alabama of 1901, as  
8 amended, the Supreme Court of Alabama shall amend its rules to  
9 conform with this act.

10                  Section 4. This act shall become effective on the  
11 first day of the third month following its passage and  
12 approval by the Governor, or its otherwise becoming law.