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3 SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR SB200
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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.

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

4
5 A BILL
6 TO BE ENTITLED
7 AN ACT

8
9 Relating to appellate procedure in death penalty
10 cases; to amend Sections 12-2-7, 12-3-9, 12-22-241, 12-22-243,
11 13A-5-53, 13A-5-55, and 15-18-80, Code of Alabama 1975, to
12 further provide for the appellate procedure for death penalty
13 cases; to provide that death penalty appeal cases have
14 priority over all of cases and shall be expedited; and to make
15 nonsubstantive, technical revisions to update the existing
16 code language to current style.

17 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

18 Section 1. Sections 12-2-7, 12-3-9, 12-22-241,
19 12-22-243, 13A-5-53, 13A-5-55, and 15-18-80, Code of Alabama
20 1975, are amended to read as follows:

21 "§12-2-7.

22 "The Supreme Court shall have the following
23 authority:

24 "(1) To exercise appellate jurisdiction coextensive
25 with the state, under such restrictions and regulations as are
26 prescribed by law; but, in deciding appeals, no weight shall
27 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.

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

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

9 "(1) Affirm the sentence of death~~;~~.

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

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

23 "§13A-5-55.

24 "(a) In all cases in which a defendant is sentenced
25 to death, the judgment of conviction shall be subject to
26 automatic review by the Supreme Court. The sentence of death
27 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.