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3 HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR HB275  
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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.