

1 HB275  
2 204707-1  
3 By Representative Rowe  
4 RFD: Judiciary  
5 First Read: 18-FEB-20

SYNOPSIS: Under current law, the appellate procedure for death penalty cases provides for a direct appeal to the Alabama Court of Criminal Appeals.

Under current law, the Alabama Supreme Court may hear death penalty cases but is not required to hear the cases.

This bill would provide that the Alabama Court of Criminal Appeals has exclusive appellate jurisdiction of cases where a criminal defendant is convicted of capital murder and sentenced to death.

This bill would provide that a death penalty appeals case would have priority over all other cases and the appeal would be expedited to the extent practicable.

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

A BILL  
TO BE ENTITLED

1 AN ACT

2  
3 Relating to appellate procedure in death penalty  
4 cases; to amend Sections 12-3-9, 13A-5-53, 13A-5-55, 13A-5-56,  
5 15-18-80 and 15-18-82.1, Code of Alabama 1975, to further  
6 provide the appellate procedure for death penalty cases; to  
7 provide that certain death penalty appeal cases have priority  
8 over all other cases; and to make nonsubstantive, technical  
9 revisions to update the existing code language to current  
10 style.

11 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

12 Section 1. Sections 12-3-9, 13A-5-53, 13A-5-55,  
13 13A-5-56, 15-18-80 and 15-18-82.1, Code of Alabama 1975, are  
14 amended to read as follows:

15 "§12-3-9.

16 "The Court of Criminal Appeals shall have the  
17 following authority:

18 "(1) To exercise exclusive appellate jurisdiction of  
19 all misdemeanors, including the violation of town and city  
20 ordinances, habeas corpus, and all felonies, including all  
21 post conviction writs in criminal cases.

22 "(2) To exercise exclusive appellate jurisdiction of  
23 cases in which a criminal defendant is convicted of capital  
24 murder pursuant to subdivision (a) (5) of Section 13A-5-40 and  
25 is sentenced to death.

26 "§13A-5-53.

1           "(a) In any case in which the death penalty is  
2 imposed, in addition to reviewing the case for any error  
3 involving the conviction, the Alabama Court of Criminal  
4 Appeals, ~~subject to review by the Alabama Supreme Court,~~ shall  
5 also review the propriety of the death sentence. This review  
6 shall include the determination of whether any error adversely  
7 affecting the rights of the defendant was made in the sentence  
8 proceedings, whether the trial court's findings concerning the  
9 aggravating and mitigating circumstances were supported by the  
10 evidence, and whether death was the proper sentence in the  
11 case. If the court determines that an error adversely  
12 affecting the rights of the defendant was made in the sentence  
13 proceedings or that one or more of the trial court's findings  
14 concerning aggravating and mitigating circumstances were not  
15 supported by the evidence, it shall remand the case for new  
16 proceedings to the extent necessary to correct the error or  
17 errors. If the appellate court finds that no error adversely  
18 affecting the rights of the defendant was made in the sentence  
19 proceedings and that the trial court's findings concerning  
20 aggravating and mitigating circumstances were supported by the  
21 evidence, it shall proceed to review the propriety of the  
22 decision that death was the proper sentence.

23           "(b) In determining whether death was the proper  
24 sentence in the case, the Alabama Court of Criminal Appeals,  
25 ~~subject to review by the Alabama Supreme Court,~~ shall  
26 determine all of the following:

1           "(1) Whether the sentence of death was imposed under  
2 the influence of passion, prejudice, or any other arbitrary  
3 factor~~7~~.

4           "(2) Whether an independent weighing of the  
5 aggravating and mitigating circumstances at the appellate  
6 level indicates that death was the proper sentence~~7~~and.

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

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

14           "(d) After performing the review ~~specified in this~~  
15 ~~section~~, the Alabama Court of Criminal Appeals~~7~~, ~~subject to~~  
16 ~~review by the Alabama Supreme Court~~, ~~shall be authorized to~~  
17 may do any of the following:

18           "(1) Affirm the sentence of death~~7~~.

19           "(2) Set the sentence of death aside and remand to  
20 the trial court for correction of any errors occurring during  
21 the sentence proceedings and for imposition of the appropriate  
22 penalty after any new sentence proceedings that are necessary,  
23 provided that such errors shall not affect the determination  
24 of guilt and shall not preclude the imposition of a sentence  
25 of death where it is determined to be proper after any new  
26 sentence proceedings that are deemed necessary~~7~~or.

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

6           "§13A-5-55.

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

12           "(b) The appeal of a conviction of capital murder  
13 and the review of the sentence of death shall have priority  
14 over all other cases and shall be expedited by the Alabama  
15 Court of Criminal Appeals to the extent practicable.

16           "§13A-5-56.

17           "(a) The Alabama Supreme Court shall ~~promulgate~~  
18 adopt pattern indictment forms for use in cases in which  
19 indictments charging offenses defined in Section 13A-5-40(a)  
20 are thereafter returned. The Alabama Supreme Court shall also  
21 ~~promulgate~~ adopt pattern verdict forms and pattern jury  
22 instructions for the trial and sentencing aspects of cases  
23 tried thereafter under this article, insofar as ~~such~~ the  
24 verdicts and instructions relate to the particularities of  
25 cases tried under this article.

26           "(b) Within 90 days after the effective date of this  
27 act, the Court of Criminal Appeals shall review indictment

1 forms and pattern verdict forms and jury instructions adopted  
2 under subsection (a) and make any modifications or amendments  
3 to the forms and instructions it deems appropriate.

4 "§15-18-80.

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

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

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

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

22 "(5) The clerk shall deliver ~~such~~ the warrant to the  
23 sheriff of the county in which ~~such~~ the judgment of conviction  
24 was had, ~~to be by him delivered to the said warden, together~~  
25 ~~with the~~ pronounced. The sheriff shall deliver the warrant and  
26 the condemned person to the warden as provided in subsection

1 (b) ~~of this section; provided, however, that in case of appeal~~  
2 ~~to the Supreme Court of Alabama by the defendant.~~

3 "(6) While the case is being reviewed by the Alabama  
4 Court of Criminal Appeals and the trial court has ordered a  
5 suspension of the execution of sentence by the trial court,  
6 ~~said,~~ the condemned person shall remain in the county jail of  
7 the county in which the conviction was ~~had~~ pronounced unless  
8 the court in which the case is tried orders otherwise, ~~in~~  
9 ~~which case, upon.~~

10 (7) Upon the affirmation of the appeal by the  
11 ~~Supreme Court, said~~ Alabama Court of Criminal Appeals, the  
12 warrant for the execution of the death sentence, under seal of  
13 the court, ~~together with~~ and the condemned person ~~of the~~  
14 ~~condemned~~ shall be delivered within 10 days after ~~such the~~  
15 affirmation to the warden of Holman prison, or any other  
16 facility as determined by the Department of Corrections, as  
17 provided ~~above~~ in this section.

18 "(b) Immediately upon the receipt of ~~such the~~  
19 warrant, the sheriff shall transport ~~such the~~ condemned person  
20 to the warden of the William C. Holman unit of the prison  
21 system at Atmore, or any other facility as determined by the  
22 Department of Corrections. ~~shall there deliver him and the~~  
23 ~~warrant aforesaid into the hands of the warden and shall take~~  
24 ~~from the~~ The warden his receipt for ~~such~~ shall provide the  
25 sheriff with a receipt for the condemned person and such the  
26 ~~warrant, which receipt the~~ . The sheriff shall return the  
27 receipt to the office of the clerk of the court where the



1 judgment of death was rendered. For his or her services, the  
2 sheriff shall be entitled to the same compensation as now  
3 provided by law to sheriffs for removing or conveying  
4 prisoners.

5 "§15-18-82.1.

6 "(a) A death sentence shall be executed by lethal  
7 injection, unless the person sentenced to death affirmatively  
8 elects to be executed by electrocution or nitrogen hypoxia.  
9 The sentence shall be executed pursuant to Section 15-18-82.

10 "(b) A person convicted and sentenced to death for a  
11 capital crime at any time shall have one opportunity to elect  
12 that his or her death sentence be executed by electrocution or  
13 nitrogen hypoxia.

14 "(1) The election for death by electrocution is  
15 waived unless it is personally made by the person in writing  
16 and delivered to the warden of the correctional facility  
17 within 30 days after the certificate of judgment pursuant to a  
18 decision by the Alabama ~~Supreme Court~~ Court of Criminal  
19 Appeals affirming the sentence of death or, if a certificate  
20 of judgment is issued before July 1, 2002, the election must  
21 be made and delivered to the warden within 30 days after July  
22 1, 2002. If a warrant of execution is pending on July 1, 2002,  
23 or if a warrant is issued within 30 days after July 1, 2002,  
24 the person sentenced to death who is the subject of the  
25 warrant shall waive election of electrocution as the method of  
26 execution unless a written election signed by the person is  
27 submitted to the warden of the correctional facility no later

1 than 48 hours after a new date for execution of the death  
2 sentence is set.

3 "(2) The election for death by nitrogen hypoxia is  
4 waived unless it is personally made by the person in writing  
5 and delivered to the warden of the correctional facility  
6 within 30 days after the certificate of judgment pursuant to a  
7 decision by the Alabama ~~Supreme Court~~ Court of Criminal  
8 Appeals affirming the sentence of death. If a certificate of  
9 judgment is issued before June 1, 2018, the election must be  
10 made and delivered to the warden within 30 days of that date.  
11 If a warrant of execution is pending on June 1, 2018, or if a  
12 warrant is issued within 30 days of that date, the person who  
13 is the subject of the warrant shall waive election of nitrogen  
14 hypoxia as the method of execution unless a written election  
15 signed by the person is submitted to the warden of the  
16 correctional facility not later than 48 hours after June 1,  
17 2018, or after the warrant is issued, whichever is later.

18 "(c) If electrocution, nitrogen hypoxia, and lethal  
19 injection are all held to be unconstitutional by the Alabama  
20 Supreme Court under the Constitution of Alabama of 1901, or  
21 held to be unconstitutional by the United States Supreme Court  
22 under the United States Constitution, or if the United States  
23 Supreme Court declines to review any judgment holding a method  
24 of execution to be unconstitutional under the United States  
25 Constitution made by the Alabama Supreme Court or the United  
26 States Court of Appeals that has jurisdiction over Alabama,  
27 then all persons sentenced to death shall be executed by any

1 constitutional method of execution based on the sole  
2 discretion of the Commissioner of the Department of  
3 Corrections.

4 "(d) The provisions of the opinion and all points of  
5 law decided by the United States Supreme Court in *Malloy v.*  
6 *South Carolina*, 237 U.S. 180 (1915), finding that the Ex Post  
7 Facto Clause of the United States Constitution is not violated  
8 by a legislatively enacted change in the method of execution  
9 for a sentence of death validly imposed for previously  
10 committed capital murders, are adopted by the Legislature as  
11 the law of this state.

12 "(e) A change in the method of execution shall not  
13 increase the punishment or modify the penalty of death for  
14 capital murder. Any legislative change to the method of  
15 execution for the crime of capital murder shall not violate  
16 Section 22 of Article I of the Constitution of Alabama of  
17 1901.

18 "(f) Notwithstanding any law to the contrary, a  
19 person authorized by state law to prescribe medication and  
20 designated by the Department of Corrections may prescribe the  
21 drug or drugs necessary to compound a lethal injection.  
22 Notwithstanding any law to the contrary, a person authorized  
23 by state law to prepare, compound, or dispense medication and  
24 designated by the Department of Corrections may prepare,  
25 compound, or dispense a lethal injection. For purposes of this  
26 section, prescription, preparation, compounding, dispensing,  
27 and administration of a lethal injection shall not constitute

1 the practice of medicine, nursing, or pharmacy.  
2 Notwithstanding any law to the contrary, a person designated  
3 by the Department of Corrections to participate in an  
4 execution in any capacity shall be exempt from criminal  
5 liability for necessary actions taken to carry out the  
6 execution.

7 "(g) The policies and procedures of the Department  
8 of Corrections for execution of persons sentenced to death  
9 shall be exempt from the Alabama Administrative Procedure Act,  
10 Chapter 22 of Title 41.

11 "(h) No sentence of death shall be reduced as a  
12 result of a determination that a method of execution is  
13 declared unconstitutional under the Constitution of Alabama of  
14 1901, or the Constitution of the United States. In any case in  
15 which an execution method is declared unconstitutional, the  
16 death sentence shall remain in force until the sentence can be  
17 lawfully executed by any valid method of execution.

18 "(i) An election for a choice of a method of  
19 execution made by a convict shall at no time supersede the  
20 means of execution available to the Department of Corrections.

21 "(j) Nothing contained in this section is intended  
22 to require any physician, nurse, pharmacist, or employee of  
23 the Department of Corrections or any other person to assist in  
24 any aspect of an execution which is contrary to the person's  
25 moral or ethical beliefs.

1                   Section 2. This act shall become effective  
2 immediately following its passage and approval by the  
3 Governor, or its otherwise becoming law.