

# MISSISSIPPI

## Capital Clemency Information Memorandum

### Contents

#### **Introduction**

#### **State Capital Clemency Process**

- I. Basics of the State Capital Clemency Process
  - a. The Power Defined
  - b. The Decision Maker(s)
  - c. When to Bring a Petition
  - d. How to Bring a Petition
  - e. Hearing Practice
  - f. Responding to a Petition
  
- II. State Political and Judicial Information
  - a. Current Clemency Decision Maker(s)
  - b. Legislative Structure and Political Make-Up
  - c. Judicial Review of State Clemency
  
- III. Supplemental State Information
  - a. State-wide Demographics
    - i. General Population
    - ii. Political Breakdown
    - iii. Religious Make-Up
    - iv. Income/Socioeconomic Breakdown
  - b. Criminal Justice
    - i. Overall Prison Population
    - ii. Death Row Population and Demographics
    - iii. Executions (Past and Pending)
    - iv. Exonerations/Innocence
  - c. Public Opinion Polling
  
- IV. Additional Information for Consideration in Clemency
  - a. Significant Past Capital Clemency Decisions
    - i. Grants
    - ii. Denials (where newsworthy or controversial)
  - b. Divisive/Important Political Issues in the State
  - c. Other Relevant Legal, Historical, or Social Issues

## **Introduction**

Clemency in capital cases serves as a “fail-safe” in our criminal justice system, by acting to prevent unjust executions and to ensure that there is meaningful due process and review at every stage of a capital case. Prior to the execution of a death-sentenced prisoner, a clemency petition asks a governor, board of pardons and paroles, or both, to review the case and grant either a *reprieve* (a delay of execution for a set or undetermined period of time); a *pardon* (effectively ‘undoing’ the initial conviction); or a *commutation* of sentence (for example, reducing a sentence of death to a sentence of life in prison). In the capital clemency context, death row petitioners typically seek either a *reprieve* or a *commutation*.

Because the clemency process almost always takes place outside the courtroom and years after a person was initially convicted and sentenced, a death row prisoner may seek executive commutation for a wide range of reasons that may not have been raised or adjudicated in earlier legal proceedings. In seeking clemency, therefore, a petitioner is not restricted by the same rules and requirements that govern an appeal in court. As a result, petitions for capital clemency allow for—and indeed, require—additional investigation into the prisoner’s case and a nuanced understanding of the state-specific issues that can be relevant to the decision maker(s).

While clemency has long been recognized as an essential component of our criminal justice system, access to clemency is not explicitly guaranteed by the federal Constitution or otherwise governed by traditional due process requirements. States, therefore, have wide latitude in defining the procedures that govern their capital clemency processes. As a result, these processes, the quality of capital clemency representation, and the receptivity of decision makers vary widely nationwide.

The following information was assembled to give stakeholders in the capital clemency process some of the information most relevant to understanding clemency in Mississippi. Some of the information contained within this memorandum does not relate directly to Mississippi’s capital clemency process, but nevertheless provides important context and background for thinking about clemency in the state. Given capital clemency’s unique nature as a virtually unrestricted appeal to an executive branch decision maker, it is vital that practitioners seeking clemency on behalf of a death row prisoner have a full understanding of the target state’s historical, political, and legal landscape—or, at the very least, consider those factors as they approach the clemency process.

While the information contained within this memorandum is **not intended to serve as the basis for a capital clemency petition or campaign and is not designed to encapsulate all the diverse issues to consider in capital clemency**, we hope that it will provide a valuable starting point for all stakeholders interested in this important issue.

## **State Capital Clemency Process**

### **I. Basics of the State Capital Clemency Process**

*In many jurisdictions, the capital clemency process is opaque, with few national or state-specific resources available on the topic. As a result, extensive research has been conducted to prepare these memoranda—including lengthy interviews with local practitioners, calls to governors’ offices and parole boards, as well as online research—to help clarify the process for practitioners and others seeking information. Nevertheless, certain areas of practice, such as when to file a petition, and how a petition is likely to receive a response from the decision maker, are not governed by clearly established law or policy. As a result, any gaps noted within these documents reflect a lack of available information or clear answers. Additionally, it is important to remember that the capital clemency process often differs from non-capital clemency processes, and that much of the publicly available information regarding clemency pertains only to non-death-penalty cases.*

#### **a. The Power Defined**

Article 5 of the Mississippi Constitution provides, “In all criminal and penal cases, excepting those of treason and impeachment, the Governor shall have power to grant reprieves and pardons.”<sup>1</sup>

#### **b. The Decision Maker(s)**

The power to grant capital clemency lies solely with the governor.<sup>2</sup> If the governor receives an application that he or she believes merits further inquiry, the governor can then refer the application to the State Parole Board (“Board”) to conduct an investigation.<sup>3</sup> Following such an investigation, the Board may issue the governor a nonbinding recommendation for action on the petition.<sup>4</sup> Despite this process being in place, Mississippi practitioners are unaware of a governor ever using the Board in reviewing a capital clemency petition.<sup>5</sup>

#### **c. When to Bring a Petition**

A capital clemency petition is typically brought after an execution warrant has been issued and an execution date has been set.<sup>6</sup>

<sup>1</sup> Miss. Const. art. 5, § 124.

<sup>2</sup> *Id.*

<sup>3</sup> “The [state parole] board shall have exclusive responsibility for investigating clemency recommendations upon request of the Governor.” Miss. Code Ann. § 47-7-5 (3); see also Criminal Justice Policy Foundation, *State Clemency: Mississippi*, <http://www.cjpf.org/clemency-ms/> (last visited May 23, 2017).

<sup>4</sup> *Id.*

<sup>5</sup> This information comes from December 2016 conversations with experienced Mississippi practitioners.

<sup>6</sup> *Id.*

#### **d. How to Bring a Petition<sup>7</sup>**

Mississippi does not require an official clemency petition form or format to be used by applicants, and there are no guidelines on the Governor's website regarding what sort of information a capital clemency petition should include.<sup>8</sup> A letter or petition requesting clemency should be sent to:

Governor, State of Mississippi  
Office of the Governor  
P.O. Box 139  
Jackson, MS 39205-0139  
Tel: (601) 359-3150

Although there are no formal rules governing the content of the clemency petition, the petitioner should expect to specify the extenuating circumstances which support the basis of the petition. Petitions may include letters of recommendation in support of the request from sources such as neighbors, employers, co-workers, pastors, church members, elected officials, judges, prosecutors, and family members. Petitioners have been encouraged to contact the Legal Division at the Office of the Governor for additional information.

#### **e. Hearing Practice<sup>9</sup>**

As discussed, the governor may choose to refer an application to the Board to conduct an investigation and/or hold a hearing on an application for executive clemency. As noted above, however, this process has not yet been utilized in a Mississippi capital clemency case. Instead, representatives of petitioners have met with the governor's legal counsel or chief of staff regarding pending clemency petitions. It is unclear what process of review is followed within the governor's office following these meetings. Additionally, it is unclear what specific roles or what influence these aides to the governor will have on the governor's ultimate decision to grant or deny clemency, though it is likely that their review of the case and recommendation(s) will be factored into the governor's decision.

#### **f. Responding to a Petition<sup>10</sup>**

There is no constitutional or statutory requirement for the governor's office to respond to a clemency petition, but the governor's office typically sends a letter to petitioner's counsel stating whether clemency is granted or denied prior to the execution date.

<sup>7</sup> *State Clemency: Mississippi*, *supra* note 3. Information found in this section came from this source unless otherwise cited.

<sup>8</sup> An unofficial copy of a pardon application can be found online: *Mississippi Pardon Application*, Recordclearing.org, <http://www.recordclearing.org/wp-content/forms/Mississippi-Pardon-Application.pdf> (last visited Dec. 14, 2016).

<sup>9</sup> The information in this section comes from December 2016 conversations with experienced Mississippi practitioners.

<sup>10</sup> *Id.*

## II. State Political and Judicial Information

### a. Current Clemency Decision Maker

Republican **Phil Bryant** is currently serving his second term as governor of Mississippi. He was first elected in 2011 and then re-elected in 2015. He was sworn in for his second term on January 12, 2016.<sup>11</sup>

Prior to being elected governor, Mr. Bryant served as Lieutenant Governor from 2008 to 2011.<sup>12</sup> Bryant was Mississippi Auditor from 1996 to 2007.<sup>13</sup> He served five years in the Mississippi House of Representatives (1990-1995) and was Vice Chairman of the Insurance Committee.<sup>14</sup>

Notably, Governor Bryant is a former deputy with the Rankin County Sheriff's Department.<sup>15</sup> In May 2015, the Clarion Ledger published a guest column by Governor Bryant titled "Criminal Class vs. Law Enforcement," in which he expressed support for law enforcement officers and raised doubts about the existence of racism in policing and misuse of force, stating:

Now comes the narrative of law enforcement officers who allegedly profile based on race, even when the police officers are minorities and when the suspect has violated the law. The incidents can easily be avoided and lives saved. Simply put, if you don't violate the law, disobey a police officer during an intervention and don't resist arrest, your chances of being in conflict with an officer are non-existent.<sup>16</sup>

In 2012, Governor Bryant also spoke out about the clemency process, arguing that the executive clemency power should be restricted by a constitutional amendment or other state legislation and that he would only grant clemency in cases of wrongful convictions: "My request is that we restrict to very narrow guidelines the ability to provide pardons or clemency . . . only for cases where there is clear and convincing evidence that someone has been wrongly convicted."<sup>17</sup>

Some have expressed the belief that Governor Bryant's stated view on clemency was directly influenced by his predecessor Governor Haley Barbour's act of granting pardons to 208 Mississippi felons, including five prisoners who had violent records, but worked at the governor's mansion while serving their sentences.<sup>18</sup>

<sup>11</sup> *About Us*, Governor Phil Bryant, (Jan. 2017), <http://www.governorbryant.ms.gov/Pages/About.aspx>.

<sup>12</sup> *Phil Bryant*, Ballotpedia, [https://ballotpedia.org/Phil\\_Bryant](https://ballotpedia.org/Phil_Bryant) (last visited May 23, 2017).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> Phil Bryant, *Criminal class vs. law enforcement*, Clarion Ledger, (May 16, 2015), <http://www.clarionledger.com/story/opinion/columnists/2015/05/16/bryant-criminal-class-law-enforcement/27456815/>

<sup>16</sup> *Id.*

<sup>17</sup> Huma Khan, *Pardon No More? Mississippi's New Governor Eyes Tougher Rules for Clemency*, ABC News, (Jan. 16, 2012), <http://abcnews.go.com/blogs/politics/2012/01/pardon-no-more-mississippis-new-governor-eyes-tougher-rules-for-clemency>.

<sup>18</sup> *Id.*

### b. Legislative Structure and Political Make-Up

The Mississippi State Legislature is a bicameral legislature composed of the lower Mississippi House of Representatives, with 122 members, and the upper Mississippi State Senate, with 52 members.<sup>19</sup> Members of both the House and the Senate serve four-year terms without term limits.<sup>20</sup>

Mississippi's state legislature is controlled by members of the Republican Party. Republicans hold 32 of the 52 seats in the state senate<sup>21</sup> and 74 of the 122 seats in the state house of representatives.<sup>22</sup>

### c. Judicial Review of State Clemency

In 2012, former Governor Barbour issued 208 pardons before leaving office, causing an outcry from Mississippians.<sup>23</sup> The pardons were challenged in the Mississippi Supreme Court, which held in *In re Hooker*, 87 So.3d 401 (Miss. 2012), that the governor's executive clemency power is outside the scope of judicial review. A majority of the court wrote:

[A] facially valid pardon, issued by the governor—in whom our Constitution vests the chief-executive power of this state, and who is the head of the coequal executive branch of government— may not be set aside or voided by the judicial branch, based solely on a claim that the procedural publication requirement of [the state constitution] was not met . . . .<sup>24</sup>

Although opponents claimed that Governor Barbour had failed to comply with the constitutional language requiring the publication of pardon applications prior to issuing the grants, the Mississippi Supreme Court held that the violations were not sufficient to justify overriding the separation-of-powers principles militating against judicial review of executive action.<sup>25</sup>

## III. Supplemental State Information

*In thinking about clemency, it is vital to remember that this stage of the death penalty process takes place outside of a courtroom, and is typically directed at a non-legal (or at the very least, non-judicial) audience. Depending on where the petitioner has been convicted and sentenced, a clemency petition will be considered either by the governor, a board of pardons and paroles, or both. Regardless of the individual or entity responsible for the ultimate clemency decision, **politics and public opinion will almost always come into play as this critical decision is made.** For governors, clemency decisions are often perceived (rightly or wrongly) as political 'hot potatoes' that can be used against them if the public is not supportive. Even in states where clemency authority rests solely with a board, members are almost always appointed by the governor, and, therefore, also frequently feel constrained by the inherently*

<sup>19</sup> Mississippi State Legislature, Ballotpedia, [https://ballotpedia.org/Mississippi\\_State\\_Legislature](https://ballotpedia.org/Mississippi_State_Legislature) (last visited May 23, 2017).

<sup>20</sup> *Id.*

<sup>21</sup> Mississippi State Senate, Ballotpedia, [https://ballotpedia.org/Mississippi\\_State\\_Senate](https://ballotpedia.org/Mississippi_State_Senate) (last visited May 17, 2017).

<sup>22</sup> Mississippi House of Representatives, Ballotpedia, [https://ballotpedia.org/Mississippi\\_House\\_of\\_Representatives](https://ballotpedia.org/Mississippi_House_of_Representatives) (last visited May 17, 2017).

<sup>23</sup> Huma Khan, *supra* note 17.

<sup>24</sup> *In re Hooker*, 87 So.3d 401, 414 (Miss. 2012).

<sup>25</sup> *Id.*; see also Daniel T. Kobil, *Compelling Mercy: Judicial Review and the Clemency Power*, 9 U. St. Thomas L.J. 698, 700 (2012), available at <http://ir.stthomas.edu/cgi/viewcontent.cgi?article=1287&context=ustlj>.



*political nature of their roles. As such, it is crucial to remember that local politics, history, demographics, culture, and ethos are always at play when a plea for clemency is being considered. In recognition of the fact that a truly compelling clemency petition cannot be brought without first considering how the issues raised will play out in that particular jurisdiction, the remainder of this memorandum is dedicated to providing some generalized information to better understand the culture and politics in the state where clemency is being sought.*

## **a. Statewide Demographics**

### **i. General Population**

Mississippi's population is estimated at 2,988,726.<sup>26</sup> Of the overall population, 59.5% are white, 37.6% are black or African American, and 3.1% are Hispanic or Latino.<sup>27</sup>

### **ii. Political Breakdown**

According to a 2011 Gallup poll, Mississippi ranked as the most conservative state in the nation with 50.5% of Mississippi residents identifying as "Conservative," 32.1% identifying as "Moderate," and 13.8% identifying as "Liberal."<sup>28</sup> While there are obviously high numbers of conservatives in other states as well, the 2011 poll was the first time more than half of a state's respondents identified as solely conservative, as opposed to considering themselves politically "moderate" (though potentially still voting Republican).<sup>29</sup>

Both of Mississippi's U.S. senators are Republican.<sup>30</sup> Of Mississippi's four representatives in the U.S. House of Representatives, three are Republican and one is a Democrat.<sup>31</sup> Since 2000, Mississippi voters have consistently supported the Republican presidential nominee; most recently, Donald J. Trump won Mississippi with 57.9% of the state's vote.<sup>32</sup>

### **iii. Religious Make-Up<sup>33</sup>**

Christians make up 83% of Mississippi's population, including significant numbers of Evangelical Protestants (41%), Mainline Protestants (12%), Historically Black Protestants (24%), and Catholics (4%). Several other religions are represented in smaller numbers: Mormon (1%); Orthodox Christian or from other Christian denominations (less than 1%); Jewish (less than 1%); and, Muslim (less than 1%). Only 2% of the population is part of a non-Christian faith. Of the total population, 11% consider themselves "nothing in particular."

<sup>26</sup> *Quick Facts, Mississippi*, United States Census Bureau, [http://www.census.gov/quickfacts/table/PST045215/00\\_28](http://www.census.gov/quickfacts/table/PST045215/00_28), (last visited May 17, 2017).

<sup>27</sup> *Id.*

<sup>28</sup> Jeffrey M. Jones, *Mississippi Rates as the Most Conservative U.S. State*, Gallup, (Feb. 25, 2011), <http://www.gallup.com/poll/146348/Mississippi-Rates-Conservative-State.aspx>.

<sup>29</sup> *Id.*

<sup>30</sup> *Senators of the 114<sup>th</sup> Congress*, United States Senate, [http://www.senate.gov/general/contact\\_information/senators\\_cfm.cfm?State=MS](http://www.senate.gov/general/contact_information/senators_cfm.cfm?State=MS) (last visited May 17, 2017).

<sup>31</sup> *Mississippi*, GovTrack, <https://www.govtrack.us/congress/members/MS> (last visited May 17, 2017).

<sup>32</sup> *Presidential Election in Mississippi, 2016*, Ballotpedia, [https://ballotpedia.org/Presidential\\_election\\_in\\_Mississippi,\\_2016](https://ballotpedia.org/Presidential_election_in_Mississippi,_2016) (last visited May 23, 2017).

<sup>33</sup> *Religious Landscape Study*, Pew Research Center, <http://www.pewforum.org/religious-landscape-study/state/mississippi/> (last visited May 17, 2017). The information in this section is taken from this cite, unless otherwise noted.

**iv. Income/Socioeconomic Breakdown**

According to a 2014 study by the Center for American Progress, Mississippi ranked as the poorest state in the country.<sup>34</sup> In 2014, 29% of children and 34.3% of African Americans were living in poverty.<sup>35</sup> The following table compares Mississippi’s population to national averages in several socioeconomic categories:

	Mississippi <sup>36</sup>	U.S. <sup>37</sup>
<b>Per capita income (2011-2015)</b>	\$21,057	\$28,930
<b>Median household income (2011-2015)</b>	\$39,665	\$53,889
<b>Persons in poverty</b>	22%	13.5%
<b>Bachelor’s degree or higher</b>	20.7%	29.8%
<b>High school diploma or higher</b>	82.3%	86.7%

**b. Criminal Justice**

**i. Overall Prison Population**

According to a lengthy Bureau of Justice Statistics (BJS) report published in 2014, the Mississippi prison population that year reached 18,793.<sup>38</sup> African Americans are disproportionately represented in Mississippi prisons, making up 57% of the state prison population, but comprising only 37% of the general population.<sup>39</sup> The overall crime rate in Mississippi in 2015 was about 10% higher than the national average rate, but the violent crime rate was about 24% lower than in other states.<sup>40</sup>

**ii. Death Row Population and Demographics<sup>41</sup>**

Total Number of Prisoners on Death Row: 47

<sup>34</sup> *The 10 Poorest States In America*, Business Insider, (Dec. 17, 2014), <http://www.businessinsider.com/the-10-poorest-states-in-america-2014-12>.

<sup>35</sup> *Mississippi 2015 Report*, Talk Poverty, <https://talkpoverty.org/state-year-report/mississippi-2015-report/> (last visited Dec. 15, 2016).

<sup>36</sup> *Quick Facts, Mississippi*, *supra* note 26.

<sup>37</sup> *Id.*

<sup>38</sup> E. Ann Carson. *Prisoners in 2014*, U.S. Department of Justice, (Sept. 2015), available at <http://www.bjs.gov/content/pub/pdf/p14.pdf>. For current information regarding monthly prison and jail admissions in Mississippi, see Mississippi Department of Corrections, *Research and Statistics*, <http://www.mdoc.ms.gov/Admin-Finance/Pages/Research-Statistics.aspx> (last visited May 23, 2017).

<sup>39</sup> *Overrepresentation of Blacks in Mississippi*, Prison Policy Initiative, (May 28, 2014), [http://www.prisonpolicy.org/graphs/2010percent/MS\\_Blacks\\_2010.html](http://www.prisonpolicy.org/graphs/2010percent/MS_Blacks_2010.html).

<sup>40</sup> *Mississippi*, National Institute of Corrections, <http://nicic.gov/statestats/?st=ms> (last visited Dec. 15, 2016).

<sup>41</sup> *Current Death Row Facts*, Mississippi Department of Corrections, <http://www.mdoc.ms.gov/Death-Row/Pages/Current-Death-Row-Facts.aspx> (last visited May 17, 2017). All information in this section comes from this source, unless otherwise cited.



- Number of Women on Death Row: 1
- Number of Black Prisoners on Death Row: 26
- Number of White Prisoners on Death Row: 20
- Number of Asian Prisoners on Death Row: 1

### iii. Executions (Past and Pending)<sup>42</sup>

Total Number of Executions since 1976: 21

- Most Recent Execution: June 20, 2012
- Number of Executions in 2016: 0
- Number of Executions Scheduled for 2017: 0

Fifteen individuals were executed under former Governor Haley Barbour during his two terms in office. Mississippi executed one person in each of 2005 and 2006, two people in 2008, three people in 2010, two individuals in 2011, and six individuals in 2012.<sup>43</sup>

In 2016, Mississippi death row prisoners **Richard Jordan**, **Thomas Loden Jr**, and **Ricky Chase** brought suit against the state's lethal-injection law under the Eighth Amendment to the U.S. Constitution, claiming that the state's current use of lethal injection drugs causes "torturous death."<sup>44</sup> This litigation has resulted in a de facto moratorium on Mississippi executions until it is resolved by the courts, or a new drug protocol is put into place.

### iv. Exonerations/Innocence<sup>45</sup>

#### 1. Larry Fisher

**Larry Fisher** was charged with a 1983 rape and murder of a high school student in Meridian, Mississippi, and convicted and sentenced to death for the crime in 1984.<sup>46</sup> Fisher requested a change of venue

<sup>42</sup> *Searchable Execution Database*, Death Penalty Information Center, [http://www.deathpenaltyinfo.org/views-executions?exec\\_name=1&sex=All&state%5B%5D=MS&sex\\_1=All&federal=All&foreigner=All&juvenile=All&volunteer=All&=Apply](http://www.deathpenaltyinfo.org/views-executions?exec_name=1&sex=All&state%5B%5D=MS&sex_1=All&federal=All&foreigner=All&juvenile=All&volunteer=All&=Apply) (last visited Dec. 19, 2016).

<sup>43</sup> *Number of Executions by State and Region Since 1976*, Death Penalty Information Center, (Dec. 9, 2016), <http://www.deathpenaltyinfo.org/number-executions-state-and-region-1976>

<sup>44</sup> See Patsy R. Brumfield, *Death row inmates claim win in case over lethal injection ingredients*, Mississippi Today, (Sept. 2, 2016), <https://mississippitoday.org/2016/09/02/death-row-inmates-claim-win-in-case-over-lethal-injection-ingredients/>; see also Arielle Dreher, *Fighting the Lethal Injection*, Jackson Free Press, (July 27, 2016), <http://www.jacksonfreepress.com/news/2016/jul/27/fighting-lethal-injection/>.

<sup>45</sup> For inclusion in this section, an individual must have been convicted, sentenced to death, and subsequently either been acquitted of all charges related to the crime that placed them on death row, had all charges related to the crime that placed them on death row dismissed by the prosecution, or been granted a complete pardon based on evidence of innocence. This characterization mirrors the language used by national entities tracking death row exonerations, such as the National Registry of Exoneration and the Death Penalty Information Center. See *Glossary*, The National Registry of Exonerations, <http://www.law.umich.edu/special/exoneration/Pages/glossary.aspx> (last visited Dec. 19, 2016); *Innocence: List of those freed from death row*, Death Penalty Information Center, <http://deathpenaltyinfo.org/innocence-list-those-freed-death-row> (last visited Dec. 19, 2016).

<sup>46</sup> *Innocence Database*, Death Penalty Information Center, <https://deathpenaltyinfo.org/innocence-cases#23> (last visited May 22, 2017).

because of the extensive pre-trial media, but his request was denied.<sup>47</sup> The Mississippi Supreme Court reversed his conviction and sentence based on the denied change of venue: "In a very real sense Fisher's guilt was announced by the news media of Meridian, Mississippi, loudly and long before a Lauderdale County jury was ever impaneled to hear the case. By this he was denied his right to a fair trial before the trial began."<sup>48</sup> Fisher was re-tried two months later in a different county and was acquitted of all charges related to the Meridian, Mississippi murder.<sup>49</sup> Fisher nevertheless remained incarcerated on an unrelated rape conviction.<sup>50</sup>

## 2. Sabrina Butler

**Sabrina Butler** was 17 years old when her 9-month old son, who had a heart murmur, stopped breathing and was pronounced dead after being rushed to the hospital.<sup>51</sup> Butler was arrested for child abuse and murder because of bruises found on her son's body, which she claimed were inflicted during her resuscitation attempts.<sup>52</sup> In 1990, she was convicted of capital murder and sentenced to death.<sup>53</sup> Her conviction was overturned by the Mississippi Supreme Court in 1992 on the basis of insufficient evidence that a crime had been convicted.<sup>54</sup> She was retried and acquitted on December 17, 1995.<sup>55</sup>

## 3. Kennedy Brewer

**Kennedy Brewer** spent 12 years on Mississippi's death row for the 1992 rape and murder of his girlfriend's 3-year-old daughter.<sup>56</sup> In 2001, Brewer's attorneys used advanced DNA testing to show that the semen on the victim's body could not have come from Brewer. After Brewer was granted relief by a post-conviction court, the state indicated that it would retry him despite the lack of a DNA match.<sup>57</sup> In 2007, Brewer was released on bond, pending a new trial.<sup>58</sup> While the state was preparing to retry Brewer, the Innocence Project worked with the Mississippi Attorney General's Office to match the DNA sample to Justin Johnson, an earlier suspect in the case, leading to dismissal of the charges against Brewer and the arrest of Johnson for the rape and murder.<sup>59</sup>

<sup>47</sup> *Id.*

<sup>48</sup> *Fisher v. State*, 481 So.2d 203, 206 (1985).

<sup>49</sup> *See Fisher v. State*, 532 So.2d 992, 994 (1988) (upholding his conviction in a different case).

<sup>50</sup> *Id.*

<sup>51</sup> *Innocence Database*, Death Penalty Information Center, <https://deathpenaltyinfo.org/innocence-cases#59> (last visited May 22, 2017).

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> *Butler v. State*, 608 So.2d 314 (Miss. 1992).

<sup>55</sup> *Innocence Database*, *supra* note 45.

<sup>56</sup> *Innocence Database*, Death Penalty Information Center, <https://deathpenaltyinfo.org/innocence-cases#125> (last visited May 22, 2017).

<sup>57</sup> *Id.*; See Shaila Dewan, *New Suspect Is Arrested in Two Mississippi Killings*, N.Y. Times, (Feb. 8, 2008), [http://www.nytimes.com/2008/02/08/us/08dna.html?\\_r=1&oref=slogin](http://www.nytimes.com/2008/02/08/us/08dna.html?_r=1&oref=slogin).

<sup>58</sup> *Innocence Database*, *supra* note 59.

<sup>59</sup> *New Suspect Is Arrested in Two Mississippi Killings*, *supra* note 60.

#### 4. Willie Manning

On April 21, 2015, District Attorney Forrest Allgood announced that he would drop charges against death row prisoner **Willie Manning**.<sup>60</sup> Manning was convicted in 1994 for two sets of murders that occurred a month apart, one occurring in December 1992 and the other in January 1993.<sup>61</sup> The victims of the December 1992 killings were two young, white students at Mississippi State, and the victims of the January 1993 killings were an African-American mother and daughter killed in their apartment.<sup>62</sup>

In February 2015, the Mississippi Supreme Court granted Manning a new trial for the 1993 killings after finding that the prosecution withheld key exculpatory evidence from the defense.<sup>63</sup> A witness testified that he saw Manning enter the victims' apartment, but undisclosed police records showed that the apartment from which he claimed to see Manning was vacant at the time, and records from the apartment complex did not list the witness as a tenant.<sup>64</sup> The witness later recanted his testimony.<sup>65</sup> Two months later, prosecutors announced that they would drop charges in that case. Manning remains on death row for the 1992 killings; however, the evidence in that case consists of FBI hair and ballistics analysis that was recently identified as flawed.<sup>66</sup> Manning came within hours of being executed in May 2013, receiving a stay of execution after the FBI sent separate letters disclosing flaws in its ballistics and hair comparison testimony.<sup>67</sup>

##### c. Public Opinion Polling

Mississippi-specific polls related to public opinion on the death penalty are not available.

#### IV. Additional Information for Consideration in Clemency

##### a. Significant Past Capital Clemency Decisions

##### i. Grants

There have not been any grants of capital clemency in Mississippi since 1976.<sup>68</sup>

<sup>60</sup> See *Order of Nolle Prosequi*, Cir. Ct. of Oktibbeha County, Miss., (April 20, 2015), available at <https://justice4williemanning.files.wordpress.com/2015/05/order-of-nolle-prosequi.pdf>.

<sup>61</sup> R.L. Nave, *Why Does the State Still Want to Kill Willie Jerome Manning?*, Jackson Free Press, (Apr. 29, 2015), <http://www.jacksonfreepress.com/news/2015/apr/29/why-does-state-still-want-kill-willie-jerome-manni/>.

<sup>62</sup> *Id.*

<sup>63</sup> *Manning v. State*, NO. 2013-CA-00882-SCT (Feb. 12, 2015).

<sup>64</sup> Nave, *supra* note 64.

<sup>65</sup> *Id.*

<sup>66</sup> See Andrew Cohen, *A Ghost of Mississippi: The Willie Manning Capital Case*, The Atlantic, (May 2, 2013), <http://www.theatlantic.com/national/archive/2013/05/a-ghost-of-mississippi-the-willie-manning-capital-case/275442/>; *Feds Acknowledge Scientific Errors in Testimony in Willie Manning Case*, The Atlantic, (Apr. 5, 2013), <http://www.theatlantic.com/national/archive/2013/05/feds-acknowledge-scientific-errors-in-testimony-in-willie-manning-case/275559/>.

<sup>67</sup> See Andrew Cohen, *Hours Before Execution, a State Court Grants Willie Manning a Stay*, The Atlantic (May 7, 2013), <https://www.theatlantic.com/national/archive/2013/05/hours-before-execution-a-state-court-grants-willie-manning-a-stay/275631/>.

<sup>68</sup> *Clemency*, Death Penalty Information Center, <http://www.deathpenaltyinfo.org/clemency> (last visited May 23, 2017).

## ii. Denials (where newsworthy or controversial)

**Dale Leo Bishop** was executed in 2008 for his role in the murder of a friend ten years earlier.<sup>69</sup> At age 34, Bishop was the youngest person executed in Mississippi in two decades.<sup>70</sup> Bishop's clemency request stated that his life should be spared because he did not swing the hammer that killed the victim.<sup>71</sup> The clemency petition also claimed that Bishop's prior attorneys provided ineffective assistance of counsel and intentionally did not disclose his bipolar disorder.<sup>72</sup> Another man admitted to striking the lethal blows, who was tried separately and was sentenced to life without parole.<sup>73</sup> Despite his clemency pleas, media coverage, and local protests, Bishop was executed on July 23, 2008.<sup>74</sup>

### b. Divisive/Important Political Issues in the State

Mississippi is the only remaining state that incorporates the Confederate flag in its state flag design.<sup>75</sup> In 2001, Mississippi voted via referendum to keep the Confederate emblem rather than replacing it with 20 white stars on a blue field to represent Mississippi's status as the twentieth state.<sup>76</sup> However, the 2015 Charleston, South Carolina massacre in which a white supremacist killed nine black churchgoers reignited the controversy over the use of the Confederate flag throughout the Southeast.<sup>77</sup> The debate resulted in removal of the Confederate flag from the South Carolina State House,<sup>78</sup> removal of the Mississippi state flag from the U.S. Capitol Complex,<sup>79</sup> and removal of the Mississippi state flag from state-funded universities, including the state's flagship school, the University of Mississippi.<sup>80</sup> State Senator Kenny Jones spoke publicly about needing a change: "In 2001, the conversation centered on the flag being disrespectful and appalling to African-Americans, but at the same time it was about the heritage to the white community . . . . Now it's about how this symbol represents hatred, violence and bigotry."<sup>81</sup> Despite the national attention and push from local lawmakers, there is no current indication that the state flag is likely to be altered.<sup>82</sup> On April 18, 2017, Mississippians again overwhelmingly voted to retain the flag's current design.<sup>83</sup>

<sup>69</sup> *Mississippi executes condemned inmate Bishop*, The Natchez Democrat, (Jul. 24, 2008), <http://www.natchezdemocrat.com/2008/07/24/mississippi-executes-condemned-inmate-bishop/>.

<sup>70</sup> *Id.*

<sup>71</sup> *Bishop asks for clemency, Miss. execution pending*, DeSoto Times-Tribune, (Jul. 24, 2008), [http://www.desototimes.com/news/bishop-asks-for-clemency-miss-execution-pending/article\\_69bcfd3c-b2a7-5c23-9a04-7ebc82de4929.html](http://www.desototimes.com/news/bishop-asks-for-clemency-miss-execution-pending/article_69bcfd3c-b2a7-5c23-9a04-7ebc82de4929.html).

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> *Mississippi executes condemned inmate Bishop*, *supra* note 72.

<sup>75</sup> Emanuela Grinberg, *Battle over Confederate symbols continues with Mississippi state flag*, CNN, (June 19, 2016), <http://www.cnn.com/2016/06/19/us/mississippi-state-flag/>.

<sup>76</sup> *Id.*

<sup>77</sup> Mike DeBonis, *Confederate controversy means Mississippi flag will not return to Capitol corridor*, The Washington Post, (Apr. 21, 2016), [https://www.washingtonpost.com/news/powerpost/wp/2016/04/21/confederate-controversy-means-mississippi-flag-will-not-return-to-capitol-corridor/?utm\\_term=.ed6b85a85e76](https://www.washingtonpost.com/news/powerpost/wp/2016/04/21/confederate-controversy-means-mississippi-flag-will-not-return-to-capitol-corridor/?utm_term=.ed6b85a85e76).

<sup>78</sup> Josh Sanburn, *Why Mississippi is Unlikely to Redesign Its State Flag*, Time Magazine, (June 23, 2015), <http://time.com/3932807/mississippi-state-flag/>.

<sup>79</sup> DeBonis, *supra* note 77.

<sup>80</sup> Daniel Victor, *University of Mississippi Lowers State Flag With Confederate Symbol*, N.Y. Times, (Oct. 26, 2015), [https://www.nytimes.com/2015/10/27/us/university-mississippi-lowers-state-flag-confederate-emblem.html?\\_r=0](https://www.nytimes.com/2015/10/27/us/university-mississippi-lowers-state-flag-confederate-emblem.html?_r=0).

<sup>81</sup> Sanburn, *supra* note 81.

<sup>82</sup> *Id.*

<sup>83</sup> *Mississippi Votes to Keep Controversial Flag*, ABC News, (Apr. 18, 2017), <http://abcnews.go.com/US/story?id=93537&page=1>.

### c. Other Relevant Legal, Historical, or Social Issues

#### Execution Method Legislation

In January 2016, Mississippi Attorney General Jim Hood, a Democrat, encouraged the legislature to approve two alternative methods of execution—firing squad and gas chamber—should lethal injection drugs no longer be an option.<sup>84</sup> The Mississippi House introduced and passed a bill before sending it back to the Mississippi Senate for revision.<sup>85</sup> Governor Phil Bryant publicly supported the bill, stating, “If the senate passes a firing squad bill, I’ll certainly sign it. My belief is we need to carry out a capital punishment that when the courts say that it’s necessary; and if it takes a firing squad we’ll do exactly that.”<sup>86</sup>

In February 2017, the Mississippi House again voted for House Bill 638 that would list firing squad, electrocution, and gas chamber as additional execution methods. That bill was signed into law by Governor Bryant on April 5, 2017.<sup>87</sup>

#### State Sentencing Reform

In 2014, Mississippi enacted sentencing and corrections reforms employing research-driven criminal justice policies designed to “produce a greater public safety return on corrections spending.”<sup>88</sup> The Corrections and Criminal Justice Oversight Task Force, a bipartisan, inter-branch group of state and local officials, developed the legislative package, H.B. 585.<sup>89</sup> The legislation was expected to avert all of Mississippi’s projected prison growth over the coming decade, saving taxpayers at least \$266 million through 2024, while safely reducing the prisoner population below current levels.<sup>90</sup>

<sup>84</sup> *Mississippi could debate firing squad as execution method*, CBS News, (Jan. 28, 2016), <http://www.cbsnews.com/news/mississippi-could-debate-firing-squad-as-execution-method/>.

<sup>85</sup> *Firing squad may replace lethal injection in Mississippi*, 7News, WSPA.com, (Mar 29, 2016), <http://wspa.com/2016/03/29/mississippi-governor-supports-firing-squad-bill/>.

<sup>86</sup> *Id.*

<sup>87</sup> *HB 638*, Legiscan, <https://legiscan.com/gaits/search?state=MS&bill=638> (last visited May 23, 2017).

<sup>88</sup> *Mississippi’s 2014 Corrections and Criminal Justice Reform*, The Pew Charitable Trusts, (May 21, 2014), <http://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2014/05/21/mississippi-2014-corrections-and-criminal-justice-reform>.

<sup>89</sup> H.B. 585, available at <http://billstatus.ls.state.ms.us/2014/pdf/history/HB/HB0585.xml>.

<sup>90</sup> *Mississippi’s 2014 Corrections and Criminal Justice Reform*, *supra* note 92.