

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office

April 20, 1999 LB 76

Journal page 1041.)

SENATOR BRASHEAR: Thank you, Mr. Speaker, colleagues. I'd like to just point out a couple things that are set forth in the Lotter opinion with regard to the proportionality review required by the statutes. The court says that in response to the statutes, which I've shared, gives five reasons why it cannot, in its opinion, do as set forth originally in State v. Moore, in 1982, why it cannot conduct the proportionality review the way this body indicated that it should. The five reasons are that the Legislature cannot direct the disposition of one case by the factual determination of another. Second, the court cannot independently gather the additional evidence necessary that would be required to find facts in a case not before it, that it would impinge upon the executive function of the prosecutor, and that it would restrict the appellate review process. As you read all the way through State v. Lotter, you come to several interesting points in the opinion, the last of which is that any changes that are to our statutory proportionality scheme should be effected by the Legislature and not by this court. In the course of the debate and discussion this afternoon, I intend to share with you summaries from court documents of the facts as they relate to cases where the death sentence was obviously not imposed, because I do ask that as we approach this serious subject, as we do talk about how justice will be done in our state that you begin with the global consideration that 165 people have been charged with and convicted of the crime of first degree murder, and 10 are under penalty of death. The alternative proposed by the committee amendment in its most substantive part simply provides that prior to September 1, 2001, there will be a review, an analysis, of all cases involving criminal homicide committed on or after April 20, 1973. We'll talk about some of those cases. The review and analysis shall examine the facts, including the mitigating and aggravating circumstances, to the extent such can be ascertained, the race, gender, religious preference, and economic status of the defendant, the charges filed, the result of the judicial proceedings in each case, and the sentence imposed. Upon the completion of that review the report will be transmitted to the Governor, the Clerk of the Legislature, and the Chief Justice of the Supreme Court, and the court may take judicial notice of the findings of the study in doing sentencing