

By: Representative Formby

To: Judiciary B

HOUSE BILL NO. 16

1 AN ACT TO AMEND SECTION 97-3-19, MISSISSIPPI CODE OF 1972, TO
 2 PROVIDE THAT MURDER OF TWO OR MORE PERSONS SHALL BE CAPITAL
 3 MURDER; TO AMEND SECTION 99-19-51, MISSISSIPPI CODE OF 1972, TO
 4 PROVIDE THAT ALL EXECUTIONS SHALL BE BY LETHAL INJECTION; TO AMEND
 5 SECTION 99-19-101, MISSISSIPPI CODE OF 1972, TO REVISE AGGRAVATING
 6 AND MITIGATING CIRCUMSTANCES IN CAPITAL CASES; TO AMEND SECTION
 7 99-19-105, MISSISSIPPI CODE OF 1972, TO REVISE DEATH PENALTY
 8 REVIEW BY THE SUPREME COURT; TO AMEND SECTION 99-39-5, MISSISSIPPI
 9 CODE OF 1972, TO REVISE THE TIME LIMITATION ON POST-CONVICTION
 10 RELIEF; TO REQUIRE THE MISSISSIPPI BAR ASSOCIATION TO DEVELOP A
 11 LIST OF ATTORNEYS FOR DEATH PENALTY CASES AND TO PROVIDE FOR THEIR
 12 COMPENSATION; AND FOR RELATED PURPOSES.

13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

14 SECTION 1. Section 97-3-19, Mississippi Code of 1972, is
 15 amended as follows:

16 97-3-19. (1) The killing of a human being without the
 17 authority of law by any means or in any manner shall be murder in
 18 the following cases:

19 (a) When done with deliberate design to effect the
 20 death of the person killed, or of any human being;

21 (b) When done in the commission of an act eminently
 22 dangerous to others and evincing a depraved heart, regardless of
 23 human life, although without any premeditated design to effect the
 24 death of any particular individual;

25 (c) When done without any design to effect death by any
 26 person engaged in the commission of any felony other than rape,
 27 kidnapping, burglary, arson, robbery, sexual battery, unnatural
 28 intercourse with any child under the age of twelve (12), or
 29 nonconsensual unnatural intercourse with mankind, or felonious
 30 abuse and/or battery of a child in violation of subsection (2) of
 31 Section 97-5-39, or in any attempt to commit such felonies.

32 (2) The killing of a human being without the authority of
33 law by any means or in any manner shall be capital murder in the
34 following cases:

35 (a) Murder which is perpetrated by killing a peace
36 officer or fireman while such officer or fireman is acting in his
37 official capacity or by reason of an act performed in his official
38 capacity, and with knowledge that the victim was a peace officer
39 or fireman. For purposes of this paragraph, the term "peace
40 officer" means any state or federal law enforcement officer
41 including but not limited to a federal park ranger, the sheriff of
42 or police officer of a city or town, a game warden, a parole
43 officer, a judge, prosecuting attorney or any other court
44 official, an agent of the Alcoholic Beverage Control Division of
45 the State Tax Commission, an agent of the Bureau of Narcotics,
46 personnel of the Mississippi Highway Patrol, and the employees of
47 the Department of Corrections who are designated as peace officers
48 by the Commissioner of Corrections pursuant to Section 47-5-54,
49 and the superintendent and his deputies, guards, officers and
50 other employees of the Mississippi State Penitentiary;

51 (b) Murder which is perpetrated by a person who is
52 under sentence of life imprisonment;

53 (c) Murder which is perpetrated by use or detonation of
54 a bomb or explosive device;

55 (d) Murder which is perpetrated by any person who has
56 been offered or has received anything of value for committing the
57 murder, and all parties to such a murder, are guilty as
58 principals;

59 (e) When done with or without any design to effect
60 death, by any person engaged in the commission of the crime of
61 rape, burglary, kidnapping, arson, robbery, sexual battery,
62 unnatural intercourse with any child under the age of twelve (12),
63 or nonconsensual unnatural intercourse with mankind, or in any
64 attempt to commit such felonies;

65 (f) When done with or without any design to effect
66 death, by any person engaged in the commission of the crime of
67 felonious abuse and/or battery of a child in violation of
68 subsection (2) of Section 97-5-39, or in any attempt to commit
69 such felony;

70 (g) Murder which is perpetrated on educational property
71 as defined in Section 97-37-17;

72 (h) Murder which is perpetrated by the killing of any
73 elected official of a county, municipal, state or federal
74 government with knowledge that the victim was such public
75 official.

76 (i) When any person murders two (2) or more persons
77 during the same criminal transaction or during different criminal
78 transactions but which are committed pursuant to the same scheme
79 or course of conduct.

80 SECTION 2. Section 99-19-51, Mississippi Code of 1972, is
81 amended as follows:

82 99-19-51. * * * Except as provided in subsection (2) of this
83 section, the manner of inflicting the punishment of death shall be
84 by continuous intravenous administration of a lethal quantity of
85 an ultra short-acting barbiturate or other similar drug in
86 combination with a chemical paralytic agent until death is
87 pronounced by the county coroner where the execution takes place
88 or by a licensed physician according to accepted standards of
89 medical practice.

90 * * *

91 SECTION 3. Section 99-19-101, Mississippi Code of 1972, is
92 amended as follows:

93 99-19-101. (1) Upon conviction or adjudication of guilt of
94 a defendant of capital murder or other capital offense, the court
95 shall conduct a separate sentencing proceeding to determine
96 whether the defendant should be sentenced to death or life
97 imprisonment without eligibility for parole * * *. The proceeding

98 shall be conducted by the trial judge before the trial jury as
99 soon as practicable. If, through impossibility or inability, the
100 trial jury is unable to reconvene for a hearing on the issue of
101 penalty, having determined the guilt of the accused, the trial
102 judge may summon a jury to determine the issue of the imposition
103 of the penalty. If the trial jury has been waived, or if the
104 defendant pleaded guilty, the sentencing proceeding shall be
105 conducted before a jury impaneled for that purpose or may be
106 conducted before the trial judge sitting without a jury if both
107 the State of Mississippi and the defendant agree thereto in
108 writing. In the proceeding, evidence may be presented as to any
109 matter that the court deems relevant to sentence, and shall
110 include matters relating to any of the aggravating or mitigating
111 circumstances. However, this subsection shall not be construed to
112 authorize the introduction of any evidence secured in violation of
113 the Constitution of the United States or of the State of
114 Mississippi. The state and the defendant and/or his counsel shall
115 be permitted to present arguments for or against the sentence of
116 death.

117 (2) After hearing all the evidence, the jury shall
118 deliberate on the following matters:

119 (a) Whether sufficient factors exist as enumerated in
120 subsection (7) of this section;

121 (b) Whether sufficient aggravating circumstances exist
122 as enumerated in subsection (5) of this section;

123 (c) Whether sufficient mitigating circumstances exist
124 as enumerated in subsection (6) of this section * * *; and

125 (d) Based on these considerations, whether the
126 defendant should be sentenced to life imprisonment, life
127 imprisonment without eligibility for parole, or death.

128 (3) For the jury to impose a sentence of death, it must
129 unanimously find in writing the following:

130 (a) That sufficient factors exist as enumerated in

131 subsection (7) of this section;

132 (b) That sufficient aggravating circumstances exist as
133 enumerated in subsection (5) of this section; and

134 (c) That there are insufficient mitigating
135 circumstances, as enumerated in subsection (6) * * *.

136 In each case in which the jury imposes the death sentence,
137 the determination of the jury shall be supported by specific
138 written findings of fact based upon the circumstances in
139 subsections (5) and (6) of this section and upon the records of
140 the trial and the sentencing proceedings. If, after the trial of
141 the penalty phase, the jury does not make the findings requiring
142 the death sentence * * * or is unable to reach a decision, the
143 court shall impose a sentence of life imprisonment without
144 eligibility for parole.

145 (4) The judgment of conviction and sentence of death shall
146 be subject to automatic review by the Supreme Court of Mississippi
147 within sixty (60) days after certification by the sentencing court
148 of entire record, unless the time is extended for an additional
149 period by the Supreme Court for good cause shown. Such review by
150 the Supreme Court shall have priority over all other cases and
151 shall be heard in accordance with rules promulgated by the Supreme
152 Court.

153 (5) Aggravating circumstances shall be limited to the
154 following:

155 (a) The capital offense was committed by a person under
156 sentence of imprisonment.

157 (b) The defendant was previously convicted of another
158 capital offense or of a felony involving the use or threat of
159 violence to the person.

160 (c) The defendant knowingly created a great risk of
161 death to many persons.

162 (d) The capital offense was committed while the
163 defendant was engaged, or was an accomplice, in the commission of,

164 or an attempt to commit, or flight after committing or attempting
165 to commit, any robbery, rape, arson, burglary, kidnapping,
166 aircraft piracy, sexual battery, unnatural intercourse with any
167 child under the age of twelve (12), or nonconsensual unnatural
168 intercourse with mankind, or felonious abuse and/or battery of a
169 child in violation of subsection (2) of Section 97-5-39,
170 Mississippi Code of 1972, or the unlawful use or detonation of a
171 bomb or explosive device.

172 (e) The capital offense was committed for the purpose
173 of avoiding or preventing a lawful arrest, preventing detection of
174 crime or effecting an escape from custody.

175 (f) The capital offense was committed for pecuniary
176 gain.

177 (g) The capital offense was committed to disrupt or
178 hinder the lawful exercise of any governmental function or the
179 enforcement of laws.

180 (h) The capital offense was especially heinous,
181 atrocious or cruel.

182 (i) The capital offense was committed by a person in,
183 or who has escaped from, the custody of a law enforcement officer
184 or place of confinement.

185 (j) The capital offense was committed upon a person who
186 was a witness to a crime and who was killed for the purpose of
187 preventing his appearance or testimony in any grand jury, criminal
188 or civil prosecution involving such crime or as a result of his
189 appearance or testifying in such proceeding.

190 (k) The defendant's course of conduct resulted in the
191 deaths of two (2) or more persons where the deaths are a probable
192 consequence of the defendant's conduct.

193 (l) The defendant caused or directed another to commit
194 the capital offense or committed the capital offense as an agent
195 or employee of another person.

196 (m) The victim was severely handicapped, severely

197 disabled or elderly.

198 (n) The victim was a peace officer or fireman within
199 the definition of subsection (2)(a) of Section 93-3-19.

200 (6) Mitigating circumstances shall be the following:

201 (a) The defendant has no significant history of prior
202 criminal activity.

203 (b) The offense was committed while the defendant was
204 under the influence of extreme mental or emotional disturbance.

205 (c) The victim was a participant in the defendant's
206 conduct or consented to the act.

207 (d) The defendant was an accomplice in the capital
208 offense committed by another person and his participation was
209 relatively minor.

210 (e) The defendant acted under extreme duress or under
211 the substantial domination of another person.

212 (f) The capacity of the defendant to appreciate the
213 criminality of his conduct or to conform his conduct to the
214 requirements of law was substantially impaired.

215 (g) The age of the defendant at the time of the crime.

216 (h) Any other circumstances of the capital offense or
217 defendant's background or character that would be mitigating of
218 sentence.

219 (7) In order to return and impose a sentence of death the
220 jury must make a written finding of one or more of the following:

221 (a) The defendant actually killed;

222 (b) The defendant attempted to kill;

223 (c) The defendant intended that a killing take place;

224 (d) The defendant contemplated that lethal force would
225 be employed;

226 (e) The defendant's actions exhibited reckless
227 disregard or extreme indifference to human life.

228 SECTION 4. Section 99-19-105, Mississippi Code of 1972, is
229 amended as follows:

230 99-19-105. (1) Whenever the death penalty is imposed, and
231 upon the judgment becoming final in the trial court, the sentence
232 shall be reviewed on the record by the Mississippi Supreme Court.
233 The clerk of the trial court, within ten (10) days after receiving
234 the transcript, shall transmit the entire record and transcript to
235 the Mississippi Supreme Court together with a notice prepared by
236 the clerk and a report prepared by the trial judge. The notice
237 shall set forth the title and docket number of the case, the name
238 of the defendant and the name and address of his attorney, a
239 narrative statement of the judgment, the offense, and the
240 punishment prescribed. The report shall be in the form of a
241 standard questionnaire prepared and supplied by the Mississippi
242 Supreme Court, a copy of which shall be served upon counsel for
243 the state and counsel for the defendant.

244 (2) The Mississippi Supreme Court shall consider the
245 punishment as well as any errors enumerated by way of appeal.

246 (3) With regard to the sentence, the court shall determine:

247 (a) Whether the sentence of death was imposed under the
248 influence of passion, prejudice or any other arbitrary factor;

249 (b) Whether the evidence supports the jury's or judge's
250 finding of a statutory aggravating circumstance as enumerated in
251 Section 99-19-101;

252 (c) Whether the sentence of death is excessive or
253 disproportionate to the penalty imposed in similar cases,
254 considering both the crime and the defendant; and

255 (d) Should one or more of the aggravating circumstances
256 be found invalid on appeal, the Mississippi Supreme Court shall
257 determine * * * whether the inclusion of any invalid circumstance
258 was harmless error * * *.

259 (4) Both the defendant and the state shall have the right to
260 submit briefs within the time provided by the court, and to
261 present oral argument to the court.

262 (5) The court shall include in its decision a reference to

263 those similar cases which it took into consideration. In addition
264 to its authority regarding correction of errors, the court, with
265 regard to review of death sentences, shall be authorized to:

266 (a) Affirm the sentence of death;

267 (b) * * * (i) Hold the error in the sentence phase
268 harmless error and affirm the sentence of death or (ii) remand the
269 case for a new sentencing hearing; or

270 (c) Set the sentence aside and remand the case for
271 modification of the sentence to imprisonment for life.

272 (6) The sentence review shall be in addition to direct
273 appeal, if taken, and the review and appeal shall be consolidated
274 for consideration. The court shall render its decision on legal
275 errors enumerated, the factual substantiation of the verdict, and
276 the validity of the sentence.

277 (7) Upon affirmance, and again upon rehearing if such is
278 necessary, of any sentence of death by the Mississippi Supreme
279 Court or the affirmance or denial of review by the United States
280 Supreme Court, the Mississippi Supreme Court shall reset the date
281 of execution not more than sixty (60) days from the date of the
282 Mississippi Supreme Court's affirmance of the sentence or from the
283 denial of relief by the United States Supreme Court. Unless the
284 sentence is suspended, the Clerk of the Mississippi Supreme Court
285 shall forthwith deliver to the Commissioner of Corrections a
286 warrant of execution under seal of the court, which warrant shall
287 be his authority to execute the convict.

288 SECTION 5. Section 99-39-5, Mississippi Code of 1972, is
289 amended as follows:

290 99-39-5. (1) Any prisoner in custody under sentence of a
291 court of record of the State of Mississippi who claims:

292 (a) That the conviction or the sentence was imposed in
293 violation of the Constitution of the United States or the
294 Constitution or laws of Mississippi;

295 (b) That the trial court was without jurisdiction to

296 impose sentence;

297 (c) That the statute under which the conviction and/or
298 sentence was obtained is unconstitutional;

299 (d) That the sentence exceeds the maximum authorized by
300 law;

301 (e) That there exists evidence of material facts, not
302 previously presented and heard, that requires vacation of the
303 conviction or sentence in the interest of justice;

304 (f) That his plea was made involuntarily;

305 (g) That his sentence has expired; his probation,
306 parole or conditional release unlawfully revoked; or he is
307 otherwise unlawfully held in custody;

308 (h) That he is entitled to an out-of-time appeal; or

309 (i) That the conviction or sentence is otherwise
310 subject to collateral attack upon any grounds of alleged error
311 heretofore available under any common law, statutory or other
312 writ, motion, petition, proceeding or remedy; may file a motion to
313 vacate, set aside or correct the judgment or sentence, or for an
314 out-of-time appeal.

315 (2) A motion for relief under this chapter shall be made
316 within one (1) year after the time in which the prisoner's direct
317 appeal is ruled upon by the Supreme Court of Mississippi or, in
318 case no appeal is taken, within one (1) year after the time for
319 taking an appeal from the judgment of conviction or sentence has
320 expired, or in case of a guilty plea, within one (1) year after
321 entry of the judgment of conviction. Excepted from this
322 three-year statute of limitations are those cases in which the
323 prisoner can demonstrate either that there has been an intervening
324 decision of the Supreme Court of either the State of Mississippi
325 or the United States which would have actually adversely affected
326 the outcome of his conviction or sentence or that he has evidence,
327 not reasonably discoverable at the time of trial, which is of such
328 nature that it would be practically conclusive that had such been

329 introduced at trial it would have caused a different result in the
330 conviction or sentence. Likewise excepted are those cases in
331 which the prisoner claims that his sentence has expired or his
332 probation, parole or conditional release has been unlawfully
333 revoked.

334 (3) This motion is not a substitute for, nor does it affect,
335 any remedy incident to the proceeding in the trial court, or
336 direct review of the conviction or sentence.

337 (4) Proceedings under this chapter shall be subject to the
338 provisions of Section 99-19-42.

339 SECTION 6. (1) The Mississippi Bar Association shall
340 develop a list of attorneys who are experienced in representing
341 death penalty defendants.

342 (2) The circuit judges are encouraged to appoint an attorney
343 from this list to serve as one (1) of the two (2) attorneys
344 indigent death penalty defendants are entitled to have. The
345 appointed attorneys shall be paid an hourly rate based on the pay
346 received by district attorneys which shall include fringe benefits
347 in computing the total hourly rate.

348 SECTION 7. This act shall take effect and be in force from
349 and after July 1, 1999.