

By: Senator(s) Walls (By Request), Dawkins
(By Request)

To: Judiciary

SENATE BILL NO. 2249

1 AN ACT TO AMEND SECTION 97-3-21, MISSISSIPPI CODE OF 1972, TO
2 ELIMINATE DEATH AS A PENALTY FOR CAPITAL MURDER; TO AMEND SECTIONS
3 99-19-101 AND 99-19-103, MISSISSIPPI CODE OF 1972, TO CONFORM; TO
4 REPEAL SECTION 99-19-87, MISSISSIPPI CODE OF 1972, WHICH PROVIDES
5 FOR NONABROGATION OF THE DEATH PENALTY; TO REPEAL SECTION
6 99-19-105, MISSISSIPPI CODE OF 1972, WHICH PROVIDES THE MANNER IN
7 WHICH AUTOMATIC APPEAL OF THE DEATH PENALTY TO THE SUPREME COURT
8 IS HAD; TO REPEAL SECTION 99-19-106, MISSISSIPPI CODE OF 1972,
9 WHICH PROVIDES FOR THE MANNER OF EXECUTION OF THE DEATH SENTENCE;
10 TO AMEND SECTION 99-19-107, MISSISSIPPI CODE OF 1972, WHICH
11 PROVIDES FOR THE EVENTUALITY THAT THE DEATH SENTENCE IS FOUND
12 UNCONSTITUTIONAL; AND FOR RELATED PURPOSES.

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

14 SECTION 1. Section 97-3-21, Mississippi Code of 1972, is
15 amended as follows:

16 97-3-21. Every person who shall be convicted of murder shall
17 be sentenced by the court to imprisonment for life in the State
18 Penitentiary.

19 Every person who shall be convicted of capital murder shall
20 be sentenced * * * (a) to imprisonment for life in the State
21 Penitentiary without parole; or (b) to imprisonment for life in
22 the State Penitentiary with eligibility for parole as provided in
23 Section 47-7-3(1)(f).

24 SECTION 2. Section 99-19-101, Mississippi Code of 1972, is
25 amended as follows:

26 99-19-101. (1) Upon conviction or adjudication of guilt of
27 a defendant of capital murder or other capital offense, the court
28 shall conduct a separate sentencing proceeding to determine
29 whether the defendant should be sentenced to * * * life
30 imprisonment without eligibility for parole or life imprisonment.
31 The proceeding shall be conducted by the trial judge before the
32 trial jury as soon as practicable. If, through impossibility or



33 inability, the trial jury is unable to reconvene for a hearing on
34 the issue of penalty, having determined the guilt of the accused,
35 the trial judge may summon a jury to determine the issue of the
36 imposition of the penalty. If the trial jury has been waived, or
37 if the defendant pleaded guilty, the sentencing proceeding shall
38 be conducted before a jury impaneled for that purpose or may be
39 conducted before the trial judge sitting without a jury if both
40 the State of Mississippi and the defendant agree thereto in
41 writing. In the proceeding, evidence may be presented as to any
42 matter that the court deems relevant to sentence, and shall
43 include matters relating to any of the aggravating or mitigating
44 circumstances. However, this subsection shall not be construed to
45 authorize the introduction of any evidence secured in violation of
46 the Constitutions of the United States or of the State of
47 Mississippi. The state and the defendant and/or his counsel shall
48 be permitted to present arguments for or against the sentence

49 * * *.

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

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

54 (b) Whether sufficient aggravating circumstances exist
55 as enumerated in subsection (4) of this section;

56 (c) Whether sufficient mitigating circumstances exist
57 as enumerated in subsection (5) of this section, which outweigh
58 the aggravating circumstances found to exist; and

59 (d) Based on these considerations, whether the
60 defendant should be sentenced to life imprisonment or life
61 imprisonment without eligibility for parole * * *.

62 (3) For the jury to impose a sentence of life imprisonment
63 without eligibility for parole, it must unanimously find in
64 writing the following:



65 (a) That sufficient aggravating circumstances exist as
66 enumerated in subsection (4) of this section; and

67 (b) That there are insufficient mitigating
68 circumstances, as enumerated in subsection (5), to outweigh the
69 aggravating circumstances.

70 * * * If, after the trial of the penalty phase, the
71 jury does not make the findings requiring * * * life imprisonment
72 without eligibility for parole, or is unable to reach a decision,
73 the court shall impose a sentence of life imprisonment.

74 (4) Aggravating circumstances shall be limited to the
75 following:

76 (a) The capital offense was committed by a person under
77 sentence of imprisonment.

78 (b) The defendant was previously convicted of another
79 capital offense or of a felony involving the use or threat of
80 violence to the person.

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

83 (d) The capital offense was committed while the
84 defendant was engaged, or was an accomplice, in the commission of,
85 or an attempt to commit, or flight after committing or attempting
86 to commit, any robbery, rape, arson, burglary, kidnapping,
87 aircraft piracy, sexual battery, unnatural intercourse with any
88 child under the age of twelve (12), or nonconsensual unnatural
89 intercourse with mankind, or felonious abuse and/or battery of a
90 child in violation of subsection (2) of Section 97-5-39,
91 Mississippi Code of 1972, or the unlawful use or detonation of a
92 bomb or explosive device.

93 (e) The capital offense was committed for the purpose
94 of avoiding or preventing a lawful arrest or effecting an escape
95 from custody.

96 (f) The capital offense was committed for pecuniary
97 gain.



98 (g) The capital offense was committed to disrupt or
99 hinder the lawful exercise of any governmental function or the
100 enforcement of laws.

101 (h) The capital offense was especially heinous,
102 atrocious or cruel.

103 (5) Mitigating circumstances shall be the following:

104 (a) The defendant has no significant history of prior
105 criminal activity.

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

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

110 (d) The defendant was an accomplice in the capital
111 offense committed by another person and his participation was
112 relatively minor.

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

115 (f) The capacity of the defendant to appreciate the
116 criminality of his conduct or to conform his conduct to the
117 requirements of law was substantially impaired.

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

119 * * *

120 SECTION 3. Section 99-19-103, Mississippi Code of 1972, is
121 amended as follows:

122 99-19-103. The statutory instructions as determined by the
123 trial judge to be warranted by the evidence shall be given in the
124 charge and in writing to the jury for its deliberation. The
125 jury * * * shall designate in writing, signed by the foreman of
126 the jury, the statutory aggravating circumstance or circumstances
127 which it unanimously found beyond a reasonable doubt. * * * If
128 the jury cannot, within a reasonable time, agree as to punishment,
129 the judge shall dismiss the jury and impose a sentence of
130 imprisonment for life.



131 SECTION 4. Section 99-19-87, Mississippi Code of 1972, which
132 provides that nothing in Sections 99-19-81 through 99-19-87 shall
133 abrogate or affect punishment by death, is repealed.

134 SECTION 5. Section 99-19-105, Mississippi Code of 1972, which provides
135 the manner in which automatic appeal of the death penalty to the Supreme Court
136 is had, is repealed.

137 SECTION 6. Section 99-19-106, Mississippi Code of 1972, which provides
138 for the manner of the execution of the death sentence, is repealed.

139 SECTION 7. Section 99-19-107, Mississippi Code of 1972, which provides
140 for the eventuality that the death sentence is found unconstitutional, is
141 repealed.

142 SECTION 8. This act shall take effect and be in force from and after
143 July 1, 2001.

