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To: Judiciary En Banc

HOUSE BILL NO. 1530

1 AN ACT TO AMEND SECTIONS 99-19-101, 99-19-103 AND 99-19-105,  
2 MISSISSIPPI CODE OF 1972, TO REVISE SENTENCING FOR CAPITAL  
3 OFFENSES TO PROVIDE FOR THE DEATH PENALTY OR LIFE WITHOUT  
4 ELIGIBILITY FOR PAROLE; AND FOR RELATED PURPOSES.

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

6 **SECTION 1.** Section 99-19-101, Mississippi Code of 1972, is  
7 amended as follows:

8 99-19-101. (1) Upon conviction or adjudication of guilt of  
9 a defendant of capital murder or other capital offense, the court  
10 shall conduct a separate sentencing proceeding to determine  
11 whether the defendant should be sentenced to death or life  
12 imprisonment without eligibility for parole \* \* \*. The  
13 proceeding shall be conducted by the trial judge before the trial  
14 jury as soon as practicable. If, through impossibility or  
15 inability, the trial jury is unable to reconvene for a hearing on  
16 the issue of penalty, having determined the guilt of the accused,  
17 the trial judge may summon a jury to determine the issue of the  
18 imposition of the penalty. If the trial jury has been waived, or  
19 if the defendant pleaded guilty, the sentencing proceeding shall  
20 be conducted before a jury impaneled for that purpose or may be  
21 conducted before the trial judge sitting without a jury if both  
22 the State of Mississippi and the defendant agree thereto in  
23 writing. In the proceeding, evidence may be presented as to any  
24 matter that the court deems relevant to sentence, and shall  
25 include matters relating to any of the aggravating or mitigating  
26 circumstances. However, this subsection shall not be construed to  
27 authorize the introduction of any evidence secured in violation of  
28 the Constitution of the United States or of the State of



29 Mississippi. The state and the defendant and/or his counsel shall  
30 be permitted to present arguments for or against the sentence of  
31 death.

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

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

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

38 (c) Whether sufficient mitigating circumstances exist  
39 as enumerated in subsection (6) of this section, which outweigh  
40 the aggravating circumstances found to exist; and

41 (d) Based on these considerations, whether the  
42 defendant should be sentenced to \* \* \* life imprisonment without  
43 eligibility for parole, or death.

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

46 (a) That sufficient factors exist as enumerated in  
47 subsection (7) of this section;

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

50 (c) That there are insufficient mitigating  
51 circumstances, as enumerated in subsection (6), to outweigh the  
52 aggravating circumstances.

53 In each case in which the jury imposes the death sentence,  
54 the determination of the jury shall be supported by specific  
55 written findings of fact based upon the circumstances in  
56 subsections (5) and (6) of this section and upon the records of  
57 the trial and the sentencing proceedings. If, after the trial of  
58 the penalty phase, the jury does not make the findings requiring  
59 the death sentence or life imprisonment without eligibility for  
60 parole, or is unable to reach a decision, the court shall impose a  
61 sentence of life imprisonment without eligibility for parole.



62           (4) The judgment of conviction and sentence of death shall  
63 be subject to automatic review by the Supreme Court of Mississippi  
64 within sixty (60) days after certification by the sentencing court  
65 of entire record, unless the time is extended for an additional  
66 period by the Supreme Court for good cause shown. Such review by  
67 the Supreme Court shall have priority over all other cases and  
68 shall be heard in accordance with rules promulgated by the Supreme  
69 Court.

70           (5) Aggravating circumstances shall be limited to the  
71 following:

72                   (a) The capital offense was committed by a person under  
73 sentence of imprisonment.

74                   (b) The defendant was previously convicted of another  
75 capital offense or of a felony involving the use or threat of  
76 violence to the person.

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

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

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

92                   (f) The capital offense was committed for pecuniary  
93 gain.



94 (g) The capital offense was committed to disrupt or  
95 hinder the lawful exercise of any governmental function or the  
96 enforcement of laws.

97 (h) The capital offense was especially heinous,  
98 atrocious or cruel.

99 (6) Mitigating circumstances shall be the following:

100 (a) The defendant has no significant history of prior  
101 criminal activity.

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

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

106 (d) The defendant was an accomplice in the capital  
107 offense committed by another person and his participation was  
108 relatively minor.

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

111 (f) The capacity of the defendant to appreciate the  
112 criminality of his conduct or to conform his conduct to the  
113 requirements of law was substantially impaired.

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

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

117 (a) The defendant actually killed;

118 (b) The defendant attempted to kill;

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

120 (d) The defendant contemplated that lethal force would  
121 be employed.

122 **SECTION 2.** Section 99-19-103, Mississippi Code of 1972, is  
123 amended as follows:

124 99-19-103. The statutory instructions as determined by the  
125 trial judge to be warranted by the evidence shall be given in the  
126 charge and in writing to the jury for its deliberation. The jury,



127 if its verdict be a unanimous recommendation of death, shall  
128 designate in writing, signed by the foreman of the jury, the  
129 statutory aggravating circumstance or circumstances which it  
130 unanimously found beyond a reasonable doubt. Unless at least one  
131 (1) of the statutory aggravated circumstances enumerated in  
132 Section 99-19-101 is so found or if it is found that any such  
133 aggravating circumstance is overcome by the finding of one or more  
134 mitigating circumstances, the death penalty shall not be imposed.  
135 If the jury cannot, within a reasonable time, agree as to  
136 punishment, the judge shall dismiss the jury and impose a sentence  
137 of imprisonment for life without eligibility for parole.

138 **SECTION 3.** Section 99-19-105, Mississippi Code of 1972, is  
139 amended as follows:

140 99-19-105. (1) Whenever the death penalty is imposed, and  
141 upon the judgment becoming final in the trial court, the sentence  
142 shall be reviewed on the record by the Mississippi Supreme Court.  
143 The clerk of the trial court, within ten (10) days after receiving  
144 the transcript, shall transmit the entire record and transcript to  
145 the Mississippi Supreme Court together with a notice prepared by  
146 the clerk and a report prepared by the trial judge. The notice  
147 shall set forth the title and docket number of the case, the name  
148 of the defendant and the name and address of his attorney, a  
149 narrative statement of the judgment, the offense, and the  
150 punishment prescribed. The report shall be in the form of a  
151 standard questionnaire prepared and supplied by the Mississippi  
152 Supreme Court, a copy of which shall be served upon counsel for  
153 the state and counsel for the defendant.

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

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

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



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

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

165           (d) Should one or more of the aggravating circumstances  
166 be found invalid on appeal, the Mississippi Supreme Court shall  
167 determine whether the remaining aggravating circumstances are  
168 outweighed by the mitigating circumstances or whether the  
169 inclusion of any invalid circumstance was harmless error, or both.

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

173           (5) The court shall include in its decision a reference to  
174 those similar cases which it took into consideration. In addition  
175 to its authority regarding correction of errors, the court, with  
176 regard to review of death sentences, shall be authorized to:

177           (a) Affirm the sentence of death;

178           (b) Reweigh the remaining aggravating circumstances  
179 against the mitigating circumstances should one or more of the  
180 aggravating circumstances be found to be invalid, and (i) affirm  
181 the sentence of death or (ii) hold the error in the sentence phase  
182 harmless error and affirm the sentence of death or (iii) remand  
183 the case for a new sentencing hearing; or

184           (c) Set the sentence aside and remand the case for  
185 modification of the sentence to imprisonment for life without  
186 eligibility for parole.

187           (6) The sentence review shall be in addition to direct  
188 appeal, if taken, and the review and appeal shall be consolidated  
189 for consideration. The court shall render its decision on legal  
190 errors enumerated, the factual substantiation of the verdict, and  
191 the validity of the sentence.



192           **SECTION 4.** This act shall take effect and be in force from  
193 and after July 1, 2002.

