

By: Senator(s) Burton

To: Judiciary

SENATE BILL NO. 2307

1 AN ACT TO CREATE SECTION 99-19-58, MISSISSIPPI CODE OF 1972,
2 TO ELIMINATE THE DEATH PENALTY FOR INDIVIDUALS WITH MENTAL
3 RETARDATION; TO AMEND SECTION 99-19-101, MISSISSIPPI CODE OF 1972,
4 TO CONFORM; AND FOR RELATED PURPOSES.

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

6 **SECTION 1.** The following shall be codified as Section
7 99-19-58, Mississippi Code of 1972:

8 99-19-58. (1) Upon indictment of the defendant, neither the
9 court nor jury may administer or recommend administering the death
10 penalty to offenders with mental retardation who have committed
11 murder, yet lack the culpable mental state for the imposition of
12 the death penalty. The court shall conduct, through use of
13 medical records or expert witnesses, a separate pre-trial
14 proceeding to make the determination of mental retardation.
15 Subsequently, no individual with mental retardation shall be
16 executed or sentenced to death. This section shall not be
17 construed to authorize the introduction of any evidence secured in
18 violation of the Constitution of the United States or of the State
19 of Mississippi.

20 (2) For purposes of this section, "individual with mental
21 retardation" means any person:

22 (a) Who has been diagnosed as having substantial
23 limitations in present functioning manifested before age eighteen
24 (18), characterized by significantly subaverage intellectual
25 functioning, existing concurrently with related limitations in two
26 (2) or more of the following applicable adaptive skill areas:
27 communication, self-care, home living, social skills, community



28 use, self-direction, health and safety, functional academics,
29 leisure and work; and

30 (b) Whose recent conduct is a result of mental
31 retardation and posed a substantial likelihood of physical harm to
32 himself or others in that there has been (i) a recent attempt or
33 threat to physically harm himself or others, or (ii) a failure and
34 inability to provide necessary food, clothing, shelter, safety or
35 medical care for himself. No individual with mental retardation,
36 as defined in this subsection, shall be sentenced to death or
37 executed.

38 (3) "Adaptive skill areas" refers to the effectiveness of
39 personal independence and social responsibility expected of that
40 person's age, cultural group and community and having an age of
41 onset of less than eighteen (18) years.

42 (4) "Expert witnesses" are limited to the appointment of a
43 psychiatrist, licensed psychologist or licensed psychiatric social
44 worker as determined by the pre-trial court or district attorney.

45 **SECTION 2.** Section 99-19-101, Mississippi Code of 1972, is
46 amended as follows:

47 99-19-101. (1) Upon conviction or adjudication of guilt of
48 a defendant of capital murder or other capital offense, the court
49 shall conduct a separate sentencing proceeding to determine
50 whether the defendant should be sentenced to death, life
51 imprisonment without eligibility for parole, or life imprisonment.
52 The proceeding shall be conducted by the trial judge before the
53 trial jury as soon as practicable. If, through impossibility or
54 inability, the trial jury is unable to reconvene for a hearing on
55 the issue of penalty, having determined the guilt of the accused,
56 the trial judge may summon a jury to determine the issue of the
57 imposition of the penalty. If the trial jury has been waived, or
58 if the defendant pleaded guilty, the sentencing proceeding shall
59 be conducted before a jury impaneled for that purpose or may be
60 conducted before the trial judge sitting without a jury if both



61 the State of Mississippi and the defendant agree thereto in
62 writing. In the proceeding, evidence may be presented as to any
63 matter that the court deems relevant to sentence, and shall
64 include matters relating to any of the aggravating or mitigating
65 circumstances. However, this subsection shall not be construed to
66 authorize the introduction of any evidence secured in violation of
67 the Constitutions of the United States or of the State of
68 Mississippi. The state and the defendant and/or his counsel shall
69 be permitted to present arguments for or against the sentence of
70 death.

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

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

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

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

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

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

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

87 (b) That sufficient aggravating circumstances exist as
88 enumerated in subsection (5) of this section; * * *

89 (c) That there are insufficient mitigating
90 circumstances, as enumerated in subsection (6), to outweigh the
91 aggravating circumstances; and

92 (d) That execution is not barred by reason of the
93 defendant's mental retardation as provided by Section 99-19-58.



94 In each case in which the jury imposes the death sentence,
95 the determination of the jury shall be supported by specific
96 written findings of fact based upon the circumstances in
97 subsections (5) and (6) of this section and upon the records of
98 the trial and the sentencing proceedings. If, after the trial of
99 the penalty phase, the jury does not make the findings requiring
100 the death sentence or life imprisonment without eligibility for
101 parole, or is unable to reach a decision, the court shall impose a
102 sentence of life imprisonment.

103 (4) The judgment of conviction and sentence of death shall
104 be subject to automatic review by the Supreme Court of Mississippi
105 within sixty (60) days after certification by the sentencing court
106 of entire record, unless the time is extended for an additional
107 period by the Supreme Court for good cause shown. Such review by
108 the Supreme Court shall have priority over all other cases and
109 shall be heard in accordance with rules promulgated by the Supreme
110 Court.

111 (5) Aggravating circumstances shall be limited to the
112 following:

113 (a) The capital offense was committed by a person under
114 sentence of imprisonment.

115 (b) The defendant was previously convicted of another
116 capital offense or of a felony involving the use or threat of
117 violence to the person.

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

120 (d) The capital offense was committed while the
121 defendant was engaged, or was an accomplice, in the commission of,
122 or an attempt to commit, or flight after committing or attempting
123 to commit, any robbery, rape, arson, burglary, kidnapping,
124 aircraft piracy, sexual battery, unnatural intercourse with any
125 child under the age of twelve (12), or nonconsensual unnatural
126 intercourse with mankind, or felonious abuse and/or battery of a



127 child in violation of subsection (2) of Section 97-5-39,
128 Mississippi Code of 1972, or the unlawful use or detonation of a
129 bomb or explosive device.

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

133 (f) The capital offense was committed for pecuniary
134 gain.

135 (g) The capital offense was committed to disrupt or
136 hinder the lawful exercise of any governmental function or the
137 enforcement of laws.

138 (h) The capital offense was especially heinous,
139 atrocious or cruel.

140 (6) Mitigating circumstances shall be the following:

141 (a) The defendant has no significant history of prior
142 criminal activity.

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

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

147 (d) The defendant was an accomplice in the capital
148 offense committed by another person and his participation was
149 relatively minor.

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

152 (f) The capacity of the defendant to appreciate the
153 criminality of his conduct or to conform his conduct to the
154 requirements of law was substantially impaired.

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

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

158 (a) The defendant actually killed;

159 (b) The defendant attempted to kill;



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

161 (d) The defendant contemplated that lethal force would
162 be employed.

163 **SECTION 3.** This act shall take effect and be in force from
164 and after July 1, 2002.

