

By: Senator(s) Burton

To: Judiciary

SENATE BILL NO. 2503

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. The court shall conduct, through use of medical records
12 or expert witnesses, a separate pre-trial proceeding to make the
13 determination of mental retardation. Subsequently, no individual
14 with mental retardation shall be executed or sentenced to death.
15 This section shall not be construed to authorize the introduction
16 of any evidence secured in violation of the Constitution of the
17 United States or of the Mississippi Constitution of 1890.

18 (2) For purposes of this section:

19 (a) "Individual with mental retardation" means any
20 person who has been diagnosed as having a disability characterized
21 by significant limitations both in intellectual functioning and in
22 adaptive behavior as expressed in conceptual, social and practical
23 adaptive skills. The disability originates before the age of
24 eighteen (18) and is characterized by the determination of an IQ
25 of 70 or below before the age of eighteen (18).

26 (b) "Adaptive skills" refers to the effectiveness of
27 personal independence and social responsibility expected of that



28 person's age, cultural group and community and having an age of
29 onset of less than eighteen (18) years.

30 (c) "Expert witnesses" are limited to the appointment
31 of a psychiatrist, licensed psychologist or licensed psychiatric
32 social worker as determined by the pre-trial court or district
33 attorney.

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

36 99-19-101. (1) Upon conviction or adjudication of guilt of
37 a defendant of capital murder or other capital offense, the court
38 shall conduct a separate sentencing proceeding to determine
39 whether the defendant should be sentenced to death, life
40 imprisonment without eligibility for parole, or life imprisonment.
41 The proceeding shall be conducted by the trial judge before the
42 trial jury as soon as practicable. If, through impossibility or
43 inability, the trial jury is unable to reconvene for a hearing on
44 the issue of penalty, having determined the guilt of the accused,
45 the trial judge may summon a jury to determine the issue of the
46 imposition of the penalty. If the trial jury has been waived, or
47 if the defendant pleaded guilty, the sentencing proceeding shall
48 be conducted before a jury impaneled for that purpose or may be
49 conducted before the trial judge sitting without a jury if both
50 the State of Mississippi and the defendant agree thereto in
51 writing. In the proceeding, evidence may be presented as to any
52 matter that the court deems relevant to sentence, and shall
53 include matters relating to any of the aggravating or mitigating
54 circumstances. However, this subsection shall not be construed to
55 authorize the introduction of any evidence secured in violation of
56 the Constitutions of the United States or of the State of
57 Mississippi. The state and the defendant and/or his counsel shall
58 be permitted to present arguments for or against the sentence of
59 death.



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

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

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

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

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

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

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

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

78 (c) That there are insufficient mitigating
79 circumstances, as enumerated in subsection (6), to outweigh the
80 aggravating circumstances; and

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

83 In each case in which the jury imposes the death sentence,
84 the determination of the jury shall be supported by specific
85 written findings of fact based upon the circumstances in
86 subsections (5) and (6) of this section and upon the records of
87 the trial and the sentencing proceedings. If, after the trial of
88 the penalty phase, the jury does not make the findings requiring
89 the death sentence or life imprisonment without eligibility for
90 parole, or is unable to reach a decision, the court shall impose a
91 sentence of life imprisonment.



92 (4) The judgment of conviction and sentence of death shall
93 be subject to automatic review by the Supreme Court of Mississippi
94 within sixty (60) days after certification by the sentencing court
95 of entire record, unless the time is extended for an additional
96 period by the Supreme Court for good cause shown. Such review by
97 the Supreme Court shall have priority over all other cases and
98 shall be heard in accordance with rules promulgated by the Supreme
99 Court.

100 (5) Aggravating circumstances shall be limited to the
101 following:

102 (a) The capital offense was committed by a person under
103 sentence of imprisonment.

104 (b) The defendant was previously convicted of another
105 capital offense or of a felony involving the use or threat of
106 violence to the person.

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

109 (d) The capital offense was committed while the
110 defendant was engaged, or was an accomplice, in the commission of,
111 or an attempt to commit, or flight after committing or attempting
112 to commit, any robbery, rape, arson, burglary, kidnapping,
113 aircraft piracy, sexual battery, unnatural intercourse with any
114 child under the age of twelve (12), or nonconsensual unnatural
115 intercourse with mankind, or felonious abuse and/or battery of a
116 child in violation of subsection (2) of Section 97-5-39,
117 Mississippi Code of 1972, or the unlawful use or detonation of a
118 bomb or explosive device.

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

122 (f) The capital offense was committed for pecuniary
123 gain.



124 (g) The capital offense was committed to disrupt or
125 hinder the lawful exercise of any governmental function or the
126 enforcement of laws.

127 (h) The capital offense was especially heinous,
128 atrocious or cruel.

129 (6) Mitigating circumstances shall be the following:

130 (a) The defendant has no significant history of prior
131 criminal activity.

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

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

136 (d) The defendant was an accomplice in the capital
137 offense committed by another person and his participation was
138 relatively minor.

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

141 (f) The capacity of the defendant to appreciate the
142 criminality of his conduct or to conform his conduct to the
143 requirements of law was substantially impaired.

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

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

147 (a) The defendant actually killed;

148 (b) The defendant attempted to kill;

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

150 (d) The defendant contemplated that lethal force would
151 be employed.

152 **SECTION 3.** This act shall take effect and be in force from
153 and after July 1, 2003.

