

By: Representative Fleming

To: Judiciary En Banc

HOUSE BILL NO. 137

1 AN ACT TO PROVIDE THAT DEFENDANTS WHO ARE DETERMINED MENTALLY
2 RETARDED OR MENTALLY CHALLENGED SHALL NOT BE ELIGIBLE FOR THE
3 DEATH PENALTY; TO AMEND SECTION 99-19-101, MISSISSIPPI CODE OF
4 1972, IN CONFORMITY THERETO; AND FOR RELATED PURPOSES.

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

6 **SECTION 1.** If defense counsel has a good faith belief that
7 the defendant in a capital case has mental retardation, counsel
8 shall file a motion with the court, requesting a finding that the
9 defendant is not death eligible because of mental retardation.
10 Such a motion shall be filed within ten (10) days after the
11 prosecution files notice of intent to seek the death penalty,
12 unless the information in support of the motion came to counsel's
13 attention at a later date.

14 Upon receipt of such a motion, the trial court shall conduct
15 a hearing for the presentation of evidence regarding the
16 defendant's possible mental retardation. Both the defense and the
17 prosecution shall have the opportunity to present evidence,
18 including expert testimony. After considering the evidence, the
19 court shall find the defendant is not death eligible if it finds,
20 by a preponderance of the evidence, that the defendant has mental
21 retardation. If the defendant is not death eligible because of
22 mental retardation, the trial may proceed as a noncapital trial,
23 and, if convicted, the defendant may be sentenced to any penalty
24 available under state law, other than death.

25 If the court finds that the defendant is death eligible, the
26 case may proceed as a capital trial. The jury shall not be
27 informed of the prior proceedings or the judge's findings
28 concerning the defendant's claim of mental retardation.

29 If the capital trial results in a verdict of guilty to a
30 capital charge, the parties shall be entitled to present evidence
31 to the jury on the issue of whether the defendant has mental
32 retardation. Having heard the evidence and arguments, the jury
33 shall be asked to render a special verdict on the issue of mental
34 retardation. The special verdict shall ask the jury to answer the
35 following question: "Do you unanimously find, beyond a reasonable
36 doubt, that the defendant does not have mental retardation?" If
37 the jury answers "yes," the case shall proceed to a penalty phase
38 under Section 99-19-101. If the jury answers the question "no,"
39 the defendant may be sentenced to any penalty available under
40 state law, other than death.

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

43 99-19-101. (1) Except for those who are determined mentally
44 retarded or mentally challenged as provided in Section 1, House
45 Bill No. , 2004 Regular Session, upon conviction or
46 adjudication of guilt of a defendant of capital murder or other
47 capital offense, the court shall conduct a separate sentencing
48 proceeding to determine whether the defendant should be sentenced
49 to death, life imprisonment without eligibility for parole, or
50 life imprisonment. The proceeding shall be conducted by the trial
51 judge before the trial jury as soon as practicable. If, through
52 impossibility or inability, the trial jury is unable to reconvene
53 for a hearing on the issue of penalty, having determined the guilt
54 of the accused, the trial judge may summon a jury to determine the
55 issue of the imposition of the penalty. If the trial jury has
56 been waived, or if the defendant pleaded guilty, the sentencing
57 proceeding shall be conducted before a jury impaneled for that
58 purpose or may be conducted before the trial judge sitting without
59 a jury if both the State of Mississippi and the defendant agree
60 thereto in writing. In the proceeding, evidence may be presented
61 as to any matter that the court deems relevant to sentence, and

62 shall include matters relating to any of the aggravating or
63 mitigating circumstances. However, this subsection shall not be
64 construed to authorize the introduction of any evidence secured in
65 violation of the Constitution of the United States or of the State
66 of Mississippi. The state and the defendant and/or his counsel
67 shall be permitted to present arguments for or against the
68 sentence of death.

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

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

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

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

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

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

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

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

87 (c) That there are insufficient mitigating
88 circumstances, as enumerated in subsection (6), to outweigh the
89 aggravating circumstances.

90 In each case in which the jury imposes the death sentence,
91 the determination of the jury shall be supported by specific
92 written findings of fact based upon the circumstances in
93 subsections (5) and (6) of this section and upon the records of
94 the trial and the sentencing proceedings. If, after the trial of

95 the penalty phase, the jury does not make the findings requiring
96 the death sentence or life imprisonment without eligibility for
97 parole, or is unable to reach a decision, the court shall impose a
98 sentence of life imprisonment.

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

107 (5) Aggravating circumstances shall be limited to the
108 following:

109 (a) The capital offense was committed by a person under
110 sentence of imprisonment.

111 (b) The defendant was previously convicted of another
112 capital offense or of a felony involving the use or threat of
113 violence to the person.

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

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

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

129 (f) The capital offense was committed for pecuniary
130 gain.

131 (g) The capital offense was committed to disrupt or
132 hinder the lawful exercise of any governmental function or the
133 enforcement of laws.

134 (h) The capital offense was especially heinous,
135 atrocious or cruel.

136 (6) Mitigating circumstances shall be the following:

137 (a) The defendant has no significant history of prior
138 criminal activity.

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

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

143 (d) The defendant was an accomplice in the capital
144 offense committed by another person and his participation was
145 relatively minor.

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

148 (f) The capacity of the defendant to appreciate the
149 criminality of his conduct or to conform his conduct to the
150 requirements of law was substantially impaired.

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

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

154 (a) The defendant actually killed;

155 (b) The defendant attempted to kill;

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

157 (d) The defendant contemplated that lethal force would
158 be employed.

159 **SECTION 3.** Section 1 of this act shall be codified as a
160 separate code section in Chapter 19, Title 99, Mississippi Code of
161 1972.

162 **SECTION 4.** This act shall take effect and be in force from
163 and after July 1, 2004.