

By: Representative Watson

To: Judiciary En Banc

## HOUSE BILL NO. 1068

1 AN ACT TO ELIMINATE THE DEATH PENALTY FOR PERSONS WHO ARE  
2 MENTALLY RETARDED; TO DEFINE MENTAL RETARDATION; TO PROVIDE  
3 PROCEEDINGS TO DETERMINE MENTAL RETARDATION; TO PROVIDE FOR THE  
4 COMMUTATION OF DEATH SENTENCES FOR PERSONS WHO ARE MENTALLY  
5 RETARDED; TO AMEND SECTION 99-19-101, MISSISSIPPI CODE OF 1972, IN  
6 CONFORMITY TO THE PROVISIONS OF THIS ACT; AND FOR RELATED  
7 PURPOSES.

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

9 **SECTION 1.** (1) No person with mental retardation is  
10 eligible for the death penalty. For purposes of this section,  
11 "mental retardation" means a disability characterized by  
12 significant limitations both in intellectual functioning and in  
13 adaptive behavior as expressed in conceptual, social and practical  
14 adaptive skills. Mental retardation originates before age  
15 eighteen (18).

16 (2) If defense counsel has a good faith belief that the  
17 defendant in a capital case has mental retardation, counsel shall  
18 file a motion with the court, requesting a finding that the  
19 defendant is not death eligible because of mental retardation.  
20 Such a motion shall be filed at least sixty (60) days prior to the  
21 date for trial, unless the information in support of the motion  
22 came to counsel's attention at a later date.

23 Upon receipt of such a motion, the trial court shall conduct  
24 a hearing for the presentation of evidence regarding the  
25 defendant's possible mental retardation. The hearing shall be  
26 conducted before a jury, which shall be specially empanelled for  
27 this issue only. Both the defense and the prosecution shall have  
28 the opportunity to present evidence, including expert testimony.  
29 After considering the evidence, the jury shall be asked, by

30 special verdict, "Do you unanimously find, beyond a reasonable  
31 doubt, that the defendant does not have mental retardation?" If  
32 the jury finds, beyond a reasonable doubt, that the defendant does  
33 not have mental retardation, the case may be certified for a  
34 capital trial. Such a trial shall be conducted before a separate  
35 jury. The trial jury shall not be informed of the prior  
36 proceedings or the findings concerning the defendant's claim of  
37 mental retardation, and the defendant shall not be precluded from  
38 offering evidence of the defendant's mental disability in the  
39 guilt/innocence phase or the penalty phase of the trial.

40 If the defendant is not eligible for the death penalty  
41 because of mental retardation, the trial may proceed as a  
42 noncapital trial, and, if convicted, the defendant may be  
43 sentenced to any penalty available under state law, other than  
44 death.

45 (3) In cases in which the defendant has been convicted of  
46 first degree murder, sentenced to death, and is in custody pending  
47 execution of the sentence of death, the following procedures  
48 apply:

49 Notwithstanding any other provision of law or rule of court,  
50 a defendant may seek appropriate relief from the defendant's death  
51 sentence upon the ground that the defendant was an individual with  
52 mental retardation at the time of the commission of the capital  
53 offense.

54 A motion seeking appropriate relief from a death sentence on  
55 the ground that the defendant was an individual with mental  
56 retardation shall be filed:

57 (a) Within one hundred eighty (180) days of the  
58 effective date of this act; or

59 (b) Within one hundred eighty (180) days of the  
60 imposition of the sentence of death if the trial was in progress  
61 at the time of the enactment of this act. For purposes of this

62 section, a trial is considered to be in progress if the process of  
63 jury selection has begun.

64 The petition seeking relief from a sentence of death under  
65 this section shall be in substantial compliance with the rules for  
66 petitions for relief in capital cases. Upon receipt of a petition  
67 under this section, the court shall invite a response from the  
68 Attorney General. Following briefing from the parties, the court  
69 shall conduct a hearing on the petition in compliance with the  
70 rules for post-conviction proceedings.

71 Findings by a trial court under this section that a defendant  
72 either is or is not entitled to relief may be appealed to the  
73 Supreme Court.

74 **SECTION 2.** Notwithstanding any other provision of state law,  
75 the Governor shall have full authority to grant clemency and  
76 commute a capital sentence to a noncapital sentence for any inmate  
77 whom the Governor and Parole Board determines to have mental  
78 retardation.

79 **SECTION 3.** Section 99-19-101, Mississippi Code of 1972, is  
80 amended as follows:

81 99-19-101. (1) Upon conviction or adjudication of guilt of  
82 a defendant of capital murder or other capital offense, the court  
83 shall conduct a separate sentencing proceeding to determine  
84 whether the defendant should be sentenced to death, life  
85 imprisonment without eligibility for parole, or life imprisonment.  
86 The proceeding shall be conducted by the trial judge before the  
87 trial jury as soon as practicable. If, through impossibility or  
88 inability, the trial jury is unable to reconvene for a hearing on  
89 the issue of penalty, having determined the guilt of the accused,  
90 the trial judge may summon a jury to determine the issue of the  
91 imposition of the penalty. If the trial jury has been waived, or  
92 if the defendant pleaded guilty, the sentencing proceeding shall  
93 be conducted before a jury impaneled for that purpose or may be  
94 conducted before the trial judge sitting without a jury if both

95 the State of Mississippi and the defendant agree thereto in  
96 writing. In the proceeding, evidence may be presented as to any  
97 matter that the court deems relevant to sentence, and shall  
98 include matters relating to any of the aggravating or mitigating  
99 circumstances. However, this subsection shall not be construed to  
100 authorize the introduction of any evidence secured in violation of  
101 the Constitution of the United States or of the State of  
102 Mississippi. The state and the defendant and/or his counsel shall  
103 be permitted to present arguments for or against the sentence of  
104 death.

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

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

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

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

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

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

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

121 (b) That sufficient aggravating circumstances exist as  
122 enumerated in subsection (5) of this section; \* \* \*

123 (c) That there are insufficient mitigating  
124 circumstances, as enumerated in subsection (6), to outweigh the  
125 aggravating circumstances; and

126           (d) That the defendant has not been found to have  
127 mental retardation as provided in Section 1 of House Bill No.  
128 \_\_\_\_, 2003 Regular Session.

129           In each case in which the jury imposes the death sentence,  
130 the determination of the jury shall be supported by specific  
131 written findings of fact based upon the circumstances in  
132 subsections (5) and (6) of this section and upon the records of  
133 the trial and the sentencing proceedings. If, after the trial of  
134 the penalty phase, the jury does not make the findings requiring  
135 the death sentence or life imprisonment without eligibility for  
136 parole, or is unable to reach a decision, the court shall impose a  
137 sentence of life imprisonment.

138           (4) The judgment of conviction and sentence of death shall  
139 be subject to automatic review by the Supreme Court of Mississippi  
140 within sixty (60) days after certification by the sentencing court  
141 of entire record, unless the time is extended for an additional  
142 period by the Supreme Court for good cause shown. Such review by  
143 the Supreme Court shall have priority over all other cases and  
144 shall be heard in accordance with rules promulgated by the Supreme  
145 Court.

146           (5) Aggravating circumstances shall be limited to the  
147 following:

148           (a) The capital offense was committed by a person under  
149 sentence of imprisonment.

150           (b) The defendant was previously convicted of another  
151 capital offense or of a felony involving the use or threat of  
152 violence to the person.

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

155           (d) The capital offense was committed while the  
156 defendant was engaged, or was an accomplice, in the commission of,  
157 or an attempt to commit, or flight after committing or attempting  
158 to commit, any robbery, rape, arson, burglary, kidnapping,

159 aircraft piracy, sexual battery, unnatural intercourse with any  
160 child under the age of twelve (12), or nonconsensual unnatural  
161 intercourse with mankind, or felonious abuse and/or battery of a  
162 child in violation of subsection (2) of Section 97-5-39,  
163 Mississippi Code of 1972, or the unlawful use or detonation of a  
164 bomb or explosive device.

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

168 (f) The capital offense was committed for pecuniary  
169 gain.

170 (g) The capital offense was committed to disrupt or  
171 hinder the lawful exercise of any governmental function or the  
172 enforcement of laws.

173 (h) The capital offense was especially heinous,  
174 atrocious or cruel.

175 (6) Mitigating circumstances shall be the following:

176 (a) The defendant has no significant history of prior  
177 criminal activity.

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

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

182 (d) The defendant was an accomplice in the capital  
183 offense committed by another person and his participation was  
184 relatively minor.

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

187 (f) The capacity of the defendant to appreciate the  
188 criminality of his conduct or to conform his conduct to the  
189 requirements of law was substantially impaired.

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

191           (7) In order to return and impose a sentence of death the  
192 jury must make a written finding of one or more of the following:  
193           (a) The defendant actually killed;  
194           (b) The defendant attempted to kill;  
195           (c) The defendant intended that a killing take place;  
196           (d) The defendant contemplated that lethal force would  
197 be employed.

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