

By: Senator(s) Huggins

To: Judiciary, Division A

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 2438

1 AN ACT TO AMEND SECTION 97-3-19, MISSISSIPPI CODE OF 1972, TO
2 REVISE THE DEFINITION OF PEACE OFFICER TO INCLUDE SPECIAL AND
3 SENIOR STATUS JUDGES WITH THE RESULT THAT MURDER OF SUCH PERSON
4 ACTING IN HIS OFFICIAL CAPACITY OR BY REASON OF AN ACT PERFORMED
5 IN HIS OFFICIAL CAPACITY WILL CONSTITUTE A CAPITAL OFFENSE AND TO
6 SPECIFY THAT MANSLAUGHTER SHALL BE A LESSER INCLUDED OFFENSE OF
7 MURDER AND CAPITAL MURDER; TO AMEND SECTIONS 99-7-37 AND 99-19-5,
8 MISSISSIPPI CODE OF 1972, TO CONFORM; AND FOR RELATED PURPOSES.

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

10 **SECTION 1.** Section 97-3-19, Mississippi Code of 1972, is
11 amended as follows:

12 97-3-19. (1) The killing of a human being without the
13 authority of law by any means or in any manner shall be murder in
14 the following cases:

15 (a) When done with deliberate design to effect the
16 death of the person killed, or of any human being;

17 (b) When done in the commission of an act eminently
18 dangerous to others and evincing a depraved heart, regardless of
19 human life, although without any premeditated design to effect the
20 death of any particular individual;

21 (c) When done without any design to effect death by any
22 person engaged in the commission of any felony other than rape,
23 kidnapping, burglary, arson, robbery, sexual battery, unnatural
24 intercourse with any child under the age of twelve (12), or
25 nonconsensual unnatural intercourse with mankind, or felonious
26 abuse and/or battery of a child in violation of subsection (2) of
27 Section 97-5-39, or in any attempt to commit such felonies.

28 (2) The killing of a human being without the authority of
29 law by any means or in any manner shall be capital murder in the
30 following cases:

31 (a) Murder which is perpetrated by killing a peace
32 officer or fireman while such officer or fireman is acting in his
33 official capacity or by reason of an act performed in his official
34 capacity, and with knowledge that the victim was a peace officer
35 or fireman. For purposes of this paragraph, the term "peace
36 officer" means any state or federal law enforcement officer,
37 including, but not limited to, a federal park ranger, the sheriff
38 of or police officer of a city or town, a conservation officer, a
39 parole officer, a judge, senior status judge, special judge,
40 district attorney, legal assistant to a district attorney, county
41 prosecuting attorney or any other court official, an agent of the
42 Alcoholic Beverage Control Division of the State Tax Commission,
43 an agent of the Bureau of Narcotics, personnel of the Mississippi
44 Highway Patrol, and the employees of the Department of Corrections
45 who are designated as peace officers by the Commissioner of
46 Corrections pursuant to Section 47-5-54, and the superintendent
47 and his deputies, guards, officers and other employees of the
48 Mississippi State Penitentiary;

49 (b) Murder which is perpetrated by a person who is
50 under sentence of life imprisonment;

51 (c) Murder which is perpetrated by use or detonation of
52 a bomb or explosive device;

53 (d) Murder which is perpetrated by any person who has
54 been offered or has received anything of value for committing the
55 murder, and all parties to such a murder, are guilty as
56 principals;

57 (e) When done with or without any design to effect
58 death, by any person engaged in the commission of the crime of
59 rape, burglary, kidnapping, arson, robbery, sexual battery,
60 unnatural intercourse with any child under the age of twelve (12),
61 or nonconsensual unnatural intercourse with mankind, or in any
62 attempt to commit such felonies;

63 (f) When done with or without any design to effect
64 death, by any person engaged in the commission of the crime of
65 felonious abuse and/or battery of a child in violation of
66 subsection (2) of Section 97-5-39, or in any attempt to commit
67 such felony;

68 (g) Murder which is perpetrated on educational property
69 as defined in Section 97-37-17;

70 (h) Murder which is perpetrated by the killing of any
71 elected official of a county, municipal, state or federal
72 government with knowledge that the victim was such public
73 official.

74 (3) An indictment for murder or capital murder shall serve
75 as notice to the defendant that the indictment may include any and
76 all lesser included offenses thereof, including, but not limited
77 to, manslaughter.

78 **SECTION 2.** Section 99-7-37, Mississippi Code of 1972, is
79 amended as follows:

80 99-7-37. (1) In an indictment for homicide it shall not be
81 necessary to set forth the manner in which or the means by which
82 the death of the deceased was caused, but it shall be sufficient
83 to charge in an indictment for murder, that the defendant did
84 feloniously, willfully, and of his malice aforethought, kill and
85 murder the deceased. * * * It shall be sufficient, in an
86 indictment for manslaughter, to charge that the defendant did
87 feloniously kill and slay the deceased, concluding in all cases as
88 required by the Constitution of this state.

89 (2) An indictment for murder or capital murder shall be
90 sufficient to also charge the lesser offense of manslaughter
91 without a specific allegation of such lesser crime and without any
92 necessity for an additional count charging such lesser crime.

93 **SECTION 3.** Section 99-19-5, Mississippi Code of 1972, is
94 amended as follows:

95 99-19-5. (1) On an indictment for any offense the jury may
96 find the defendant guilty of the offense as charged, or of any
97 attempt to commit the same offense, or may find him guilty of an
98 inferior offense, or other offense, the commission of which is
99 necessarily included in the offense with which he is charged in
100 the indictment, whether the same be a felony or misdemeanor,
101 without any additional count in the indictment for that purpose.

102 (2) For purposes of this section, manslaughter shall be
103 considered a lesser included offense of murder and capital murder,
104 and the jury may be properly instructed thereon, upon request by
105 either party or upon the court's own motion, in any case in which
106 the giving of such instruction would be justified by the proof,
107 consistent with the wording of the applicable manslaughter
108 statute.

109 **SECTION 4.** This act shall take effect and be in force from
110 and after its passage.