

By: Senator(s) Walls

To: Judiciary, Division A

SENATE BILL NO. 2407

1 AN ACT TO AMEND SECTION 97-3-21, MISSISSIPPI CODE OF 1972, TO
 2 ELIMINATE DEATH AS A PENALTY FOR CAPITAL MURDER; TO AMEND SECTIONS
 3 99-19-101 AND 99-19-103, MISSISSIPPI CODE OF 1972, TO CONFORM; TO
 4 REPEAL SECTION 99-19-87, MISSISSIPPI CODE OF 1972, WHICH PROVIDES
 5 FOR NONABROGATION OF THE DEATH PENALTY; TO REPEAL SECTION
 6 99-19-105, MISSISSIPPI CODE OF 1972, WHICH PROVIDES THE MANNER IN
 7 WHICH AUTOMATIC APPEAL OF THE DEATH PENALTY TO THE SUPREME COURT
 8 IS HAD; TO REPEAL SECTION 99-19-106, MISSISSIPPI CODE OF 1972,
 9 WHICH PROVIDES FOR THE MANNER OF EXECUTION OF THE DEATH SENTENCE;
 10 TO AMEND SECTION 99-19-107, MISSISSIPPI CODE OF 1972, WHICH
 11 PROVIDES FOR THE EVENTUALITY THAT THE DEATH SENTENCE IS FOUND
 12 UNCONSTITUTIONAL; AND FOR RELATED PURPOSES.

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

14 **SECTION 1.** Section 97-3-21, Mississippi Code of 1972, is
 15 amended as follows:

16 97-3-21. Every person who shall be convicted of murder shall
 17 be sentenced by the court to imprisonment for life in the State
 18 Penitentiary.

19 Every person who shall be convicted of capital murder shall
 20 be sentenced * * * (a) to imprisonment for life in the State
 21 Penitentiary without parole; or (b) to imprisonment for life in
 22 the State Penitentiary with eligibility for parole as provided in
 23 Section 47-7-3(1)(f).

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

26 99-19-101. (1) Upon conviction or adjudication of guilt of
 27 a defendant of capital murder or other capital offense, the court
 28 shall conduct a separate sentencing proceeding to determine
 29 whether the defendant should be sentenced to * * * life
 30 imprisonment without eligibility for parole or life imprisonment.
 31 The proceeding shall be conducted by the trial judge before the
 32 trial jury as soon as practicable. If, through impossibility or

33 inability, the trial jury is unable to reconvene for a hearing on
34 the issue of penalty, having determined the guilt of the accused,
35 the trial judge may summon a jury to determine the issue of the
36 imposition of the penalty. If the trial jury has been waived, or
37 if the defendant pleaded guilty, the sentencing proceeding shall
38 be conducted before a jury impaneled for that purpose or may be
39 conducted before the trial judge sitting without a jury if both
40 the State of Mississippi and the defendant agree thereto in
41 writing. In the proceeding, evidence may be presented as to any
42 matter that the court deems relevant to sentence, and shall
43 include matters relating to any of the aggravating or mitigating
44 circumstances. However, this subsection shall not be construed to
45 authorize the introduction of any evidence secured in violation of
46 the Constitutions of the United States or of the State of
47 Mississippi. The state and the defendant and/or his counsel shall
48 be permitted to present arguments for or against the
49 sentence * * *.

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

52 * * *

53 (a) Whether sufficient aggravating circumstances exist
54 as enumerated in subsection (4) of this section;

55 (b) Whether sufficient mitigating circumstances exist
56 as enumerated in subsection (5) of this section, which outweigh
57 the aggravating circumstances found to exist; and

58 (c) Based on these considerations, whether the
59 defendant should be sentenced to life imprisonment or life
60 imprisonment without eligibility for parole * * *.

61 (3) For the jury to impose a sentence of life imprisonment
62 without eligibility for parole, it must unanimously find in
63 writing the following:

64 * * *

65 (a) That sufficient aggravating circumstances exist as
66 enumerated in subsection (4) of this section; and

67 (b) That there are insufficient mitigating
68 circumstances, as enumerated in subsection (5), to outweigh the
69 aggravating circumstances.

70 * * * If, after the trial of the penalty phase, the jury
71 does not make the findings requiring * * * life imprisonment
72 without eligibility for parole, or is unable to reach a decision,
73 the court shall impose a sentence of life imprisonment.

74 * * *

75 (4) Aggravating circumstances shall be limited to the
76 following:

77 (a) The capital offense was committed by a person under
78 sentence of imprisonment.

79 (b) The defendant was previously convicted of another
80 capital offense or of a felony involving the use or threat of
81 violence to the person.

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

84 (d) The capital offense was committed while the
85 defendant was engaged, or was an accomplice, in the commission of,
86 or an attempt to commit, or flight after committing or attempting
87 to commit, any robbery, rape, arson, burglary, kidnapping,
88 aircraft piracy, sexual battery, unnatural intercourse with any
89 child under the age of twelve (12), or nonconsensual unnatural
90 intercourse with mankind, or felonious abuse and/or battery of a
91 child in violation of subsection (2) of Section 97-5-39,
92 Mississippi Code of 1972, or the unlawful use or detonation of a
93 bomb or explosive device.

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

97 (f) The capital offense was committed for pecuniary
98 gain.

99 (g) The capital offense was committed to disrupt or
100 hinder the lawful exercise of any governmental function or the
101 enforcement of laws.

102 (h) The capital offense was especially heinous,
103 atrocious or cruel.

104 (5) Mitigating circumstances shall be the following:

105 (a) The defendant has no significant history of prior
106 criminal activity.

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

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

111 (d) The defendant was an accomplice in the capital
112 offense committed by another person and his participation was
113 relatively minor.

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

116 (f) The capacity of the defendant to appreciate the
117 criminality of his conduct or to conform his conduct to the
118 requirements of law was substantially impaired.

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

120 * * *

121 **SECTION 3.** Section 99-19-103, Mississippi Code of 1972, is
122 amended as follows:

123 99-19-103. The statutory instructions as determined by the
124 trial judge to be warranted by the evidence shall be given in the
125 charge and in writing to the jury for its deliberation. The
126 jury * * * shall designate in writing, signed by the foreman of
127 the jury, the statutory aggravating circumstance or circumstances
128 which it unanimously found beyond a reasonable doubt. * * * If
129 the jury cannot, within a reasonable time, agree as to punishment,

130 the judge shall dismiss the jury and impose a sentence of
131 imprisonment for life.

132 **SECTION 4.** Section 99-19-87, Mississippi Code of 1972, which
133 provides that nothing in Sections 99-19-81 through 99-19-87 shall
134 abrogate or affect punishment by death, is repealed.

135 **SECTION 5.** Section 99-19-105, Mississippi Code of 1972,
136 which provides the manner in which automatic appeal of the death
137 penalty to the Supreme Court is had, is repealed.

138 **SECTION 6.** Section 99-19-106, Mississippi Code of 1972,
139 which provides for the manner of the execution of the death
140 sentence, is repealed.

141 **SECTION 7.** Section 99-19-107, Mississippi Code of 1972,
142 which provides for the eventuality that the death sentence is
143 found unconstitutional, is repealed.

144 **SECTION 8.** This act shall take effect and be in force from
145 and after July 1, 2005.