

By: Representatives Brown, Mayo, Whittington To: Judiciary En Banc

HOUSE BILL NO. 551

1 AN ACT TO AMEND SECTIONS 99-17-20 AND 99-19-101, MISSISSIPPI
2 CODE OF 1972, TO REQUIRE THE USE OF DNA EVIDENCE IN ORDER TO
3 IMPOSE A SENTENCE OF DEATH; AND FOR RELATED PURPOSES.

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

5 **SECTION 1.** Section 99-17-20, Mississippi Code of 1972, is
6 amended as follows:

7 99-17-20. (1) No person shall be tried for capital murder,
8 or any other crime punishable by death as provided by law, unless
9 such offense was specifically cited in the indictment returned
10 against the accused by setting forth the section and subsection
11 number of the code defining the offense alleged to have been
12 committed by the accused. The judge, in cases where the offense
13 cited in the indictment is punishable by death, may grant an
14 instruction for the state or the defendant which instructs the
15 jury as to their discretion to convict the accused of the
16 commission of an offense not specifically set forth in the
17 indictment returned against the accused. Any conviction of the
18 accused for an offense punishable by death shall not be valid
19 unless the offense for which the accused is convicted shall have
20 been set forth in the indictment by section and subsection number
21 of the code which defined the offense allegedly committed by the
22 accused.

23 (2) No person shall be tried for capital murder or any other
24 crime punishable by death unless a DNA (deoxyribonucleic acid)
25 test has been administered to the person indicted of a crime
26 punishable by death.

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

29 99-19-101. (1) Upon conviction or adjudication of guilt of
30 a defendant of capital murder or other capital offense, the court
31 shall conduct a separate sentencing proceeding to determine
32 whether the defendant should be sentenced to death, life
33 imprisonment without eligibility for parole, or life imprisonment.
34 The proceeding shall be conducted by the trial judge before the
35 trial jury as soon as practicable. If, through impossibility or
36 inability, the trial jury is unable to reconvene for a hearing on
37 the issue of penalty, having determined the guilt of the accused,
38 the trial judge may summon a jury to determine the issue of the
39 imposition of the penalty. If the trial jury has been waived, or
40 if the defendant pleaded guilty, the sentencing proceeding shall
41 be conducted before a jury impaneled for that purpose or may be
42 conducted before the trial judge sitting without a jury if both
43 the State of Mississippi and the defendant agree thereto in
44 writing. In the proceeding, evidence may be presented as to any
45 matter that the court deems relevant to sentence, and shall
46 include matters relating to any of the aggravating or mitigating
47 circumstances. However, this subsection shall not be construed to
48 authorize the introduction of any evidence secured in violation of
49 the Constitution of the United States or of the State of
50 Mississippi. The state and the defendant and/or his counsel shall
51 be permitted to present arguments for or against the sentence of
52 death.

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

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

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

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

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

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

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

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

71 (c) That there are insufficient mitigating
72 circumstances, as enumerated in subsection (6), to outweigh the
73 aggravating circumstances; and

74 (d) That DNA evidence proving the defendant's guilt was
75 used at the trial.

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

85 (4) The judgment of conviction and sentence of death shall
86 be subject to automatic review by the Supreme Court of Mississippi
87 within sixty (60) days after certification by the sentencing court
88 of entire record, unless the time is extended for an additional
89 period by the Supreme Court for good cause shown. Such review by
90 the Supreme Court shall have priority over all other cases and

91 shall be heard in accordance with rules promulgated by the Supreme
92 Court.

93 (5) Aggravating circumstances shall be limited to the
94 following:

95 (a) The capital offense was committed by a person under
96 sentence of imprisonment.

97 (b) The defendant was previously convicted of another
98 capital offense or of a felony involving the use or threat of
99 violence to the person.

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

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

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

115 (f) The capital offense was committed for pecuniary
116 gain.

117 (g) The capital offense was committed to disrupt or
118 hinder the lawful exercise of any governmental function or the
119 enforcement of laws.

120 (h) The capital offense was especially heinous,
121 atrocious or cruel.

122 (6) Mitigating circumstances shall be the following:

123 (a) The defendant has no significant history of prior
124 criminal activity.

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

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

129 (d) The defendant was an accomplice in the capital
130 offense committed by another person and his participation was
131 relatively minor.

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

134 (f) The capacity of the defendant to appreciate the
135 criminality of his conduct or to conform his conduct to the
136 requirements of law was substantially impaired.

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

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

140 (a) The defendant actually killed;

141 (b) The defendant attempted to kill;

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

143 (d) The defendant contemplated that lethal force would
144 be employed.