

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

HOUSE BILL NO. 702

1 AN ACT TO AMEND SECTION 99-17-20, MISSISSIPPI CODE OF 1972,
2 TO REQUIRE DNA TESTING IN DEATH PENALTY CASES BASED ON THE
3 AVAILABILITY OF EVIDENCE; TO ESTABLISH PROCEDURE FOR OBTAINING DNA
4 SAMPLES; TO AMEND SECTION 47-5-183, MISSISSIPPI CODE OF 1972, IN
5 CONFORMITY; AND FOR RELATED PURPOSES.

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

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

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

25 (2) The Mississippi Department of Corrections or law
26 enforcement agency shall administer DNA (deoxyribonucleic acid)
27 tests to any person indicted or convicted of a crime punishable by
28 death as provided by law. Any person currently serving a death

29 sentence, and who has not previously submitted a biological sample
30 under Section 47-5-183, may request a post-conviction DNA test be
31 administered upon the discovery and availability of new evidence.
32 The accused or convicted shall have a sample of his or her blood,
33 an oral swab, or a sample obtained from a noninvasive procedure
34 taken at the time of indictment or if such person is incarcerated
35 in a state correctional facility, shall at the time of entering
36 the prison system have the sample taken for purposes of DNA
37 identification analysis. The DNA evidence shall be preserved by
38 the department or the law enforcement agency in possession of such
39 evidence. The DNA evidence shall be made available to the
40 indicted or convicted person for use in any legal proceeding.

41 **SECTION 2.** Section 47-5-183, Mississippi Code of 1972, is
42 amended as follows:

43 47-5-183. Except as provided in Section 99-17-20, the
44 Mississippi Department of Corrections is authorized, subject to
45 the availability of funds, to secure a biological sample for
46 purposes of DNA identification analysis from every individual
47 convicted of a felony or in its custody before release from or
48 transfer to a state correctional facility or county jail or other
49 detention facility.

50 **SECTION 3.** This act shall take effect and be in force from
51 and after its passage.