

By: Representative Fleming

To: Judiciary En Banc

HOUSE BILL NO. 250

1 AN ACT TO AMEND SECTION 99-19-101, MISSISSIPPI CODE OF 1972,  
2 TO PROVIDE THAT A SENTENCE OF DEATH SHALL NOT BE IMPOSED WHEN  
3 EVIDENCE ESTABLISHES RACIAL BIAS IN THE PROSECUTION OR SENTENCING;  
4 AND FOR RELATED PURPOSES.

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

6 **SECTION 1.** Section 99-19-101, Mississippi Code of 1972, is  
7 amended as follows:

8 99-19-101. (1) Upon conviction or adjudication of guilt of  
9 a defendant of capital murder or other capital offense, the court  
10 shall conduct a separate sentencing proceeding to determine  
11 whether the defendant should be sentenced to death, life  
12 imprisonment without eligibility for parole, or life imprisonment.  
13 The proceeding shall be conducted by the trial judge before the  
14 trial jury as soon as practicable. If, through impossibility or  
15 inability, the trial jury is unable to reconvene for a hearing on  
16 the issue of penalty, having determined the guilt of the accused,  
17 the trial judge may summon a jury to determine the issue of the  
18 imposition of the penalty. If the trial jury has been waived, or  
19 if the defendant pleaded guilty, the sentencing proceeding shall  
20 be conducted before a jury impaneled for that purpose or may be  
21 conducted before the trial judge sitting without a jury if both  
22 the State of Mississippi and the defendant agree thereto in  
23 writing. In the proceeding, evidence may be presented as to any  
24 matter that the court deems relevant to sentence, and shall  
25 include matters relating to any of the aggravating or mitigating  
26 circumstances. However, this subsection shall not be construed to  
27 authorize the introduction of any evidence secured in violation of  
28 the Constitution of the United States or of the State of

29 Mississippi. The state and the defendant and/or his counsel shall  
30 be permitted to present arguments for or against the sentence of  
31 death.

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

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

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

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

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

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

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

48 (b) That sufficient aggravating circumstances exist as  
49 enumerated in subsection (5) of this section; and

50 (c) That there are insufficient mitigating  
51 circumstances, as enumerated in subsection (6), to outweigh the  
52 aggravating circumstances.

53 In each case in which the jury imposes the death sentence,  
54 the determination of the jury shall be supported by specific  
55 written findings of fact based upon the circumstances in  
56 subsections (5) and (6) of this section and upon the records of  
57 the trial and the sentencing proceedings. If, after the trial of  
58 the penalty phase, the jury does not make the findings requiring  
59 the death sentence or life imprisonment without eligibility for  
60 parole, or is unable to reach a decision, the court shall impose a  
61 sentence of life imprisonment.

62           (4) The judgment of conviction and sentence of death shall  
63 be subject to automatic review by the Supreme Court of Mississippi  
64 within sixty (60) days after certification by the sentencing court  
65 of entire record, unless the time is extended for an additional  
66 period by the Supreme Court for good cause shown. Such review by  
67 the Supreme Court shall have priority over all other cases and  
68 shall be heard in accordance with rules promulgated by the Supreme  
69 Court.

70           (5) Aggravating circumstances shall be limited to the  
71 following:

72                 (a) The capital offense was committed by a person under  
73 sentence of imprisonment.

74                 (b) The defendant was previously convicted of another  
75 capital offense or of a felony involving the use or threat of  
76 violence to the person.

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

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

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

92                 (f) The capital offense was committed for pecuniary  
93 gain.

94 (g) The capital offense was committed to disrupt or  
95 hinder the lawful exercise of any governmental function or the  
96 enforcement of laws.

97 (h) The capital offense was especially heinous,  
98 atrocious or cruel.

99 (6) Mitigating circumstances shall be the following:

100 (a) The defendant has no significant history of prior  
101 criminal activity.

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

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

106 (d) The defendant was an accomplice in the capital  
107 offense committed by another person and his participation was  
108 relatively minor.

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

111 (f) The capacity of the defendant to appreciate the  
112 criminality of his conduct or to conform his conduct to the  
113 requirements of law was substantially impaired.

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

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

117 (a) The defendant actually killed;

118 (b) The defendant attempted to kill;

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

120 (d) The defendant contemplated that lethal force would  
121 be employed.

122 (8) A sentence of death shall not be imposed when the  
123 evidence establishes racial bias in the prosecution or sentencing  
124 of a defendant.

125 **SECTION 2.** This act shall take effect and be in force from  
126 and after July 1, 2007.