

By: Representative Horan

To: Judiciary B

HOUSE BILL NO. 1089

1 AN ACT TO AMEND SECTION 99-19-83, MISSISSIPPI CODE OF 1972,  
2 TO REVISE HABITUAL OFFENDER SENTENCING; AND FOR RELATED PURPOSES.

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

4 **SECTION 1.** Section 99-19-83, Mississippi Code of 1972, is  
5 amended as follows:

6 99-19-83. (1) Every person convicted in this state of a  
7 felony who shall have been convicted twice previously of any  
8 felony or federal crime upon charges separately brought and  
9 arising out of separate incidents at different times and who shall  
10 have been sentenced to and served separate terms of one (1) year  
11 or more, whether served concurrently or not, in any state and/or  
12 federal penal institution, whether in this state or elsewhere, and  
13 where any one (1) of such felonies shall have been a crime of  
14 violence, as defined by Section 97-3-2, shall be sentenced to life  
15 imprisonment, only if the jury decides, after a separate  
16 sentencing proceeding, to apply this enhancement, and such  
17 sentence shall not be reduced or suspended nor shall such person  
18 be eligible for parole, probation or any other form of early



19 release from actual physical custody within the Department of  
20 Corrections.

21 In cases where the jury declines to apply this enhancement, the  
22 court shall fix the penalty at the maximum term of imprisonment  
23 prescribed for the underlying felony, subject to any other  
24 applicable enhancements.

25 (2) The sentencing proceeding shall be conducted by the trial  
26 judge before the trial jury as soon as practicable. If, through  
27 impossibility or inability, the trial jury is unable to reconvene  
28 for a hearing on the issue of penalty, having determined the guilt  
29 of the accused, the trial judge may summon a jury to determine the  
30 issue of the imposition of the penalty. If the trial jury has been  
31 waived, or if the defendant pleaded guilty, the sentencing  
32 proceeding shall be conducted before a jury impaneled for that  
33 purpose or may be conducted before the trial judge sitting without a  
34 jury if both the State of Mississippi and the defendant agree  
35 thereto in writing. In the proceeding, evidence may be presented as  
36 to any matter that the court deems relevant to sentence, and shall  
37 include matters relating to any of the aggravating or mitigating  
38 circumstances. However, this subsection shall not be construed to  
39 authorize the introduction of any evidence secured in violation of  
40 the Constitution of the United States or of the State of  
41 Mississippi. The state and the defendant and the defendant's  
42 counsel shall be permitted to present arguments for or against the  
43 sentence of life imprisonment without the possibility of parole.



44 This subsection shall not be construed to require that the jury find  
45 that sufficient prior felonies exist for the defendant to be  
46 eligible for the imposition of this enhancement.

47 (3) In making the determination of whether to apply this  
48 enhancement, the jury shall consider any mitigating or aggravating  
49 circumstances.

50 (4) Aggravating circumstances shall be limited to the  
51 following:

52 (a) If the offense was committed by a person under  
53 sentence of imprisonment;

54 (b) If the defendant knowingly created a great risk of  
55 death to many persons;

56 (c) If the offense was committed for the purpose of  
57 avoiding or preventing a lawful arrest or effecting an escape from  
58 custody;

59 (d) If the offense was committed to disrupt or hinder the  
60 lawful exercise of any governmental function or the enforcement of  
61 laws;

62 (e) If the offense was committed to influence the policy  
63 of a governmental entity by intimidation or coercion, or to affect  
64 the conduct of a governmental entity by mass destruction or  
65 assassination;

66 (f) If the offense was especially heinous, atrocious or  
67 cruel; and



68           (g) If the offense was committed to intimidate or coerce  
69 a civilian population.

70           (5) Mitigating circumstances shall include, but shall not be  
71 limited to, the following:

72           (a) The nature or seriousness of any prior offenses,  
73 including whether or not anyone was harmed and the degree of harm;

74           (b) The nature and seriousness of the current offense,  
75 including whether or not anyone was harmed and the degree of harm;

76           (c) The age of the defendant at present;

77           (d) The amount of time between separate prior offenses  
78 and between any prior offenses and the current offense;

79           (e) The age of the defendant at the commission of any  
80 prior felonies;

81           (f) If the current or any prior offenses were driven in  
82 part by mental health problems;

83           (g) If the current or any prior offenses were driven in  
84 part by substance abuse problems; and

85           (h) The defendant's role or level of participation in the  
86 current or any prior offenses.

87           (6) For the jury to impose an enhanced sentence under this  
88 section, it must unanimously find in writing, the following:

89           (a) That sufficient aggravating factors exist as  
90 enumerated in subsection (4) of this section; and



91                   (b) That there are insufficient mitigating circumstances,  
92 as enumerated in subsection (5), to outweigh the aggravating  
93 circumstances.

94                   **SECTION 2.** This act shall take effect and be in force from and  
95 after July 1, 2018.

