

By: Senator(s) Fillingane, Simmons (13th),
Jackson (11th)

To: Judiciary, Division B

SENATE BILL NO. 2117
(As Passed the Senate)

1 AN ACT TO AMEND SECTIONS 97-3-21 AND 99-19-101, MISSISSIPPI
2 CODE OF 1972, TO PROVIDE ALTERNATIVE SENTENCING AND PAROLE OPTIONS
3 FOR JUVENILE OFFENDERS IN COMPLIANCE WITH THE UNITED STATES
4 SUPREME COURT HOLDING IN THE CASE OF *MILLER V. ALABAMA*; AND FOR
5 RELATED PURPOSES.

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

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

9 97-3-21. (1) Except as otherwise provided for a juvenile
10 offender in subsection (2) of this section, every person who * * *
11 is:

12 (a) Convicted of first-degree murder shall be sentenced
13 by the court to imprisonment for life in the custody of the
14 Department of Corrections.

15 (* * * b) * * * Convicted of second-degree murder shall
16 be imprisoned for life in the custody of the Department of
17 Corrections if the punishment is so fixed by the jury in its
18 verdict after a separate sentencing proceeding. If the jury fails
19 to agree on fixing the penalty at imprisonment for life, the court



20 shall fix the penalty at not less than twenty (20) nor more than
21 forty (40) years in the custody of the Department of Corrections.

22 (* * * c) * * * Convicted of capital murder shall be
23 sentenced (* * * i) to death; (* * * ii) to imprisonment for life
24 in the State Penitentiary without parole; or (* * * iii) to
25 imprisonment for life in the State Penitentiary with eligibility
26 for parole as provided in Section 47-7-3(1) (* * * e).

27 (2) (a) For the purposes of this section, "juvenile
28 offender" means a person who had not reached the age of eighteen
29 (18) years at the time of the commission of the offense.

30 (b) A juvenile offender who is convicted of
31 first-degree or second-degree murder or capital murder may be
32 sentenced to life imprisonment or life imprisonment without
33 eligibility for parole in the custody of the Department of
34 Corrections if the punishment is so fixed by the judge after a
35 separate sentencing proceeding held without a jury as provided in
36 Section 99-19-101.

37 (c) If the court, sitting without a jury, finds the
38 imposition of a sentence to life imprisonment or life imprisonment
39 without eligibility for parole to be unjustified, the court shall
40 fix the penalty as follows:

41 (i) For first-degree murder, at not less than
42 twenty (20) nor more than forty (40) years in the custody of the
43 Department of Corrections.



44 (ii) For second-degree murder, at not less than
45 fifteen (15) nor more than thirty (30) years in the custody of the
46 Department of Corrections.

47 (iii) For capital murder, at not less than
48 twenty-five (25) nor more than fifty (50) years in the custody of
49 the Department of Corrections.

50 (d) The provisions of this subsection (2) apply
51 retroactively irrespective of the dates of the commission of the
52 offense, an arrest was made, or a judgment of conviction was
53 entered.

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

56 99-19-101. (1) Upon conviction or adjudication of guilt of
57 a defendant of capital murder or other capital offense, the court
58 shall conduct a separate sentencing proceeding to determine
59 whether the defendant should be sentenced to death, life
60 imprisonment without eligibility for parole, or life imprisonment;
61 a sentence of death cannot be imposed if the defendant was not at
62 least eighteen (18) years of age at the time of the commission of
63 the offense. If the defendant was under eighteen (18) years of
64 age at the time of the commission of the offense, subsection (9)
65 of this section applies; otherwise the proceeding shall be
66 conducted by the trial judge before the trial jury as soon as
67 practicable. If, through impossibility or inability, the trial
68 jury is unable to reconvene for a hearing on the issue of penalty,



69 having determined the guilt of the accused, the trial judge may
70 summon a jury to determine the issue of the imposition of the
71 penalty. If the trial jury has been waived, or if the defendant
72 pleaded guilty, the sentencing proceeding shall be conducted
73 before a jury impaneled for that purpose or may be conducted
74 before the trial judge sitting without a jury if both the State of
75 Mississippi and the defendant agree thereto in writing. In the
76 proceeding, evidence may be presented as to any matter that the
77 court deems relevant to sentence, and shall include matters
78 relating to any of the aggravating or mitigating circumstances.
79 However, this subsection shall not be construed to authorize the
80 introduction of any evidence secured in violation of the
81 Constitution of the United States or of the State of Mississippi.
82 The state and the defendant and the defendant's counsel shall be
83 permitted to present arguments for or against the sentence of
84 death.

85 (2) After hearing all the evidence, the jury, or the judge
86 sitting without a jury, shall deliberate on the following matters:

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

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

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



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

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

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

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

103 (c) That there are insufficient mitigating
104 circumstances, as enumerated in subsection (6), to outweigh the
105 aggravating circumstances * * *; and

106 (d) That the defendant was eighteen (18) years of age
107 or older at the time of the commission of the offense.

108 In each case in which the jury imposes the death sentence,
109 the determination of the jury shall be supported by specific
110 written findings of fact based upon the circumstances in
111 subsections (5) and (6) of this section and upon the records of
112 the trial and the sentencing proceedings. If, after the trial of
113 the penalty phase, the jury does not make the findings requiring
114 the death sentence or life imprisonment without eligibility for
115 parole, or is unable to reach a decision, the court shall impose a
116 sentence of life imprisonment.

117 (4) The judgment of conviction and sentence of death shall
118 be subject to automatic review by the Supreme Court of Mississippi



119 within sixty (60) days after certification by the sentencing court
120 of the entire record, unless the time is extended for an
121 additional period by the Supreme Court for good cause shown. The
122 review by the Supreme Court shall have priority over all other
123 cases and shall be heard in accordance with rules promulgated by
124 the Supreme Court.

125 (5) Aggravating circumstances shall be limited to the
126 following:

127 (a) The capital offense was committed by a person under
128 sentence of imprisonment.

129 (b) The defendant was previously convicted of another
130 capital offense or of a felony involving the use or threat of
131 violence to the person.

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

134 (d) The capital offense was committed while the
135 defendant was engaged, or was an accomplice, in the commission of,
136 or an attempt to commit, or flight after committing or attempting
137 to commit, any robbery, rape, arson, burglary, kidnapping,
138 aircraft piracy, sexual battery, unnatural intercourse with any
139 child under the age of twelve (12), or nonconsensual unnatural
140 intercourse with mankind, or felonious abuse or battery of a child
141 in violation of subsection (2) of Section 97-5-39, or the unlawful
142 use or detonation of a bomb or explosive device.



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

146 (f) The capital offense was committed for pecuniary
147 gain.

148 (g) The capital offense was committed to disrupt or
149 hinder the lawful exercise of any governmental function or the
150 enforcement of laws.

151 (h) The capital offense was committed to influence the
152 policy of a governmental entity by intimidation or coercion, or to
153 affect the conduct of a governmental entity by mass destruction or
154 assassination.

155 (i) The capital offense was especially heinous,
156 atrocious or cruel.

157 (j) The capital offense was committed to intimidate or
158 coerce a civilian population.

159 (6) Mitigating circumstances shall be the following:

160 (a) The defendant has no significant history of prior
161 criminal activity.

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

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



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

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

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

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

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

(a) The defendant actually killed;

(b) The defendant attempted to kill;

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

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

(8) For the purposes of this section, to "intimidate" or "coerce" do not include peaceful picketing, boycotts or other nonviolent action.

(9) If the defendant was under the age of eighteen (18) at the time of the commission of the offense, the court sitting without a jury must conduct a separate sentencing proceeding to determine whether the defendant should be sentenced to life imprisonment, life imprisonment without eligibility for parole, or imprisonment for a term of years. The court in its deliberations



191 in deciding ineligibility for parole must consider not only the
192 aggravating and mitigating circumstances set forth in this section
193 but must also take into consideration the defendant's youth, the
194 nature of the crime for which convicted, the defendant's criminal
195 intent and understanding of the full consequences of a course of
196 action, the defendant's capacity or potential for change, and
197 whether the defendant is incorrigible.

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

