

By: Senator(s) Fillingane

To: Judiciary, Division B

SENATE BILL NO. 2244

1 AN ACT TO AMEND SECTIONS 97-3-21, 99-19-101 AND 47-7-3,  
2 MISSISSIPPI CODE OF 1972, TO PROVIDE ALTERNATIVE SENTENCING AND  
3 PAROLE OPTIONS FOR JUVENILE OFFENDERS IN COMPLIANCE WITH THE  
4 UNITED STATES SUPREME COURT HOLDING IN THE CASE OF *MILLER V.*  
5 *ALABAMA*; AND FOR 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) ( \* \* \*c) (iii).

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.



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

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

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

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

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

177 (a) The defendant actually killed;

178 (b) The defendant attempted to kill;

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

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

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

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





191           **SECTION 3.** Section 47-7-3, Mississippi Code of 1972, is  
192 amended as follows:

193           47-7-3. (1) Every prisoner who has been convicted of any  
194 offense against the State of Mississippi, and is confined in the  
195 execution of a judgment of such conviction in the Mississippi  
196 Department of Corrections for a definite term or terms of one (1)  
197 year or over, or for the term of his or her natural life, whose  
198 record of conduct shows that such prisoner has observed the rules  
199 of the department, and who has served the minimum required time  
200 for parole eligibility, may be released on parole as set forth  
201 herein:

202           (a) **Habitual offenders.** Except as provided by Sections  
203 99-19-81 through 99-19-87, no person sentenced as a confirmed and  
204 habitual criminal shall be eligible for parole;

205           (b) **Sex offenders.** Any person who has been sentenced  
206 for a sex offense as defined in Section 45-33-23(h) shall not be  
207 released on parole except for a person under the age of nineteen  
208 (19) who has been convicted under Section 97-3-67;

209           (c) **Capital offenders.** No person sentenced for the  
210 following offenses shall be eligible for parole:

211           (i) Capital murder committed on or after July 1,  
212 1994, as defined in Section 97-3-19(2);

213           (ii) Any offense to which an offender is sentenced  
214 to life imprisonment under the provisions of Section 99-19-101; or



215 (iii) Any offense to which an offender is  
216 sentenced to life imprisonment without eligibility for parole  
217 under the provisions of Section 99-19-101, whose crime was  
218 committed on or after July 1, 1994;

219 (d) **Murder.** No person sentenced for murder in the  
220 first degree, whose crime was committed on or after June 30, 1995,  
221 or murder in the second degree, as defined in Section 97-3-19,  
222 shall be eligible for parole;

223 (e) **Human trafficking.** No person sentenced for human  
224 trafficking, as defined in Section 97-3-54.1, whose crime was  
225 committed on or after July 1, 2014, shall be eligible for parole;

226 (f) **Drug trafficking.** No person sentenced for  
227 trafficking and aggravated trafficking, as defined in Section  
228 41-29-139(f) through (g), shall be eligible for parole;

229 (g) **Offenses specifically prohibiting parole release.**  
230 No person shall be eligible for parole who is convicted of any  
231 offense that specifically prohibits parole release;

232 (h) (i) **Offenders eligible for parole consideration**  
233 **for offenses committed after June 30, 1995.** Except as provided in  
234 paragraphs (a) through (g) of this subsection, offenders may be  
235 considered eligible for parole release as follows:

236 1. **Nonviolent crimes.** All persons sentenced  
237 for a nonviolent offense shall be eligible for parole only after  
238 they have served twenty-five percent (25%) or ten (10) years,  
239 whichever is less, of the sentence or sentences imposed by the



240 trial court. For purposes of this paragraph, "nonviolent crime"  
241 means a felony not designated as a crime of violence in Section  
242 97-3-2.

243                   2. **Violent crimes.** A person who is sentenced  
244 for a violent offense as defined in Section 97-3-2, except robbery  
245 with a deadly weapon as defined in Section 97-3-79, drive-by  
246 shooting as defined in Section 97-3-109, and carjacking as defined  
247 in Section 97-3-117, shall be eligible for parole only after  
248 having served fifty percent (50%) or twenty (20) years, whichever  
249 is less, of the sentence or sentences imposed by the trial court.  
250 Those persons sentenced for robbery with a deadly weapon as  
251 defined in Section 97-3-79, drive-by shooting as defined in  
252 Section 97-3-109, and carjacking as defined in Section 97-3-117,  
253 shall be eligible for parole only after having served sixty  
254 percent (60%) or twenty-five (25) years, whichever is less, of the  
255 sentence or sentences imposed by the trial court.

256                   3. **Nonviolent and nonhabitual drug offenses.**  
257 A person who has been sentenced to a drug offense pursuant to  
258 Section 41-29-139(a) through (d), whose crime was committed after  
259 June 30, 1995, shall be eligible for parole only after he has  
260 served twenty-five percent (25%) or ten (10) years, whichever is  
261 less, of the sentence or sentences imposed.

262                   (ii) **Parole hearing required.** All persons  
263 eligible for parole under subparagraph (i) of this paragraph (h)  
264 who are serving a sentence or sentences for a crime of violence,



265 as defined in Section 97-3-2, shall be required to have a parole  
266 hearing before the Parole Board pursuant to Section 47-7-17, prior  
267 to parole release.

268 (iii) **Geriatric parole.** Notwithstanding the  
269 provisions in subparagraph (i) of this paragraph (h), a person  
270 serving a sentence who has reached the age of sixty (60) or older  
271 and who has served no less than ten (10) years of the sentence or  
272 sentences imposed by the trial court shall be eligible for parole.  
273 Any person eligible for parole under this subparagraph (iii) shall  
274 be required to have a parole hearing before the board prior to  
275 parole release. No inmate shall be eligible for parole under this  
276 subparagraph (iii) of this paragraph (h) if:

277 1. The inmate is sentenced as a habitual  
278 offender under Sections 99-19-81 through 99-19-87;

279 2. The inmate is sentenced for a crime of  
280 violence under Section 97-3-2;

281 3. The inmate is sentenced for an offense  
282 that specifically prohibits parole release;

283 4. The inmate is sentenced for trafficking in  
284 controlled substances under Section 41-29-139(f);

285 5. The inmate is sentenced for a sex crime;

286 or

287 6. The inmate has not served one-fourth (1/4)  
288 of the sentence imposed by the court.



289                   (iv) **Parole consideration as authorized by the**  
290 **trial court.** Notwithstanding the provisions of paragraph (a) of  
291 this subsection, any offender who has not committed a crime of  
292 violence under Section 97-3-2 and has served twenty-five percent  
293 (25%) or more of his sentence may be paroled by the State Parole  
294 Board if, after the sentencing judge or if the sentencing judge is  
295 retired, disabled or incapacitated, the senior circuit judge  
296 authorizes the offender to be eligible for parole consideration;  
297 or if the senior circuit judge must be recused, another circuit  
298 judge of the same district or a senior status judge may hear and  
299 decide the matter. A petition for parole eligibility  
300 consideration pursuant to this subparagraph (iv) shall be filed in  
301 the original criminal cause or causes, and the offender shall  
302 serve an executed copy of the petition on the District Attorney.  
303 The court may, in its discretion, require the District Attorney to  
304 respond to the petition.

305           (2) The State Parole Board shall, by rules and regulations,  
306 establish a method of determining a tentative parole hearing date  
307 for each eligible offender taken into the custody of the  
308 Department of Corrections. The tentative parole hearing date  
309 shall be determined within ninety (90) days after the department  
310 has assumed custody of the offender. Except as provided in  
311 Section 47-7-18, the parole hearing date shall occur when the  
312 offender is within thirty (30) days of the month of his parole



313 eligibility date. Any parole eligibility date shall not be  
314 earlier than as required in this section.

315 (3) Notwithstanding any other provision of law, an inmate  
316 shall not be eligible to receive earned time, good time or any  
317 other administrative reduction of time which shall reduce the time  
318 necessary to be served for parole eligibility as provided in  
319 subsection (1) of this section.

320 (4) Any inmate within forty-eight (48) months of his parole  
321 eligibility date and who meets the criteria established by the  
322 classification board shall receive priority for placement in any  
323 educational development and job-training programs that are part of  
324 his or her parole case plan. Any inmate refusing to participate  
325 in an educational development or job-training program, including,  
326 but not limited to, programs required as part of the case plan,  
327 shall be in jeopardy of noncompliance with the case plan and may  
328 be denied parole.

329 (5) In addition to other requirements, if an offender is  
330 convicted of a drug or driving under the influence felony, the  
331 offender must complete a drug and alcohol rehabilitation program  
332 prior to parole, or the offender shall be required to complete a  
333 postrelease drug and alcohol program as a condition of parole.

334 (6) Except as provided in subsection (1)(a) through (h) of  
335 this section, all other persons shall be eligible for parole after  
336 serving twenty-five percent (25%) of the sentence or sentences  
337 imposed by the trial court, or, if sentenced to thirty (30) years



338 or more, after serving ten (10) years of the sentence or sentences  
339 imposed by the trial court.

340 (7) The Corrections and Criminal Justice Oversight Task  
341 Force established in Section 47-5-6 shall develop and submit  
342 recommendations to the Governor and to the Legislature annually on  
343 or before December 1st concerning issues relating to juvenile and  
344 habitual offender parole reform and to review and monitor the  
345 implementation of Chapter 479, Laws of 2021.

346 (8) The amendments contained in Chapter 479, Laws of 2021,  
347 shall apply retroactively from and after July 1, 1995.

348 (9) Notwithstanding provisions to the contrary in this  
349 section, a person who was sentenced before July 1, 2021, may be  
350 considered for parole if the person's sentence would have been  
351 parole eligible before July 1, 2021.

352 (10) Notwithstanding any other provision of law, a person  
353 who was under the age of eighteen (18) at the time of the  
354 commission of an offense for which the sentence imposed was life  
355 in prison, life in prison without parole, or imprisonment for a  
356 term of years may be considered for parole after having served at  
357 least twenty (20) years of the sentence or sentences imposed by  
358 the trial court.

359 ( \* \* \*11) This section shall stand repealed on July 1,  
360 2024.

361 **SECTION 4.** This act shall take effect and be in force from  
362 and after its passage.

