

By: Representative Horan

To: Judiciary B

HOUSE BILL NO. 1440

1 AN ACT TO AMEND SECTIONS 97-3-21 AND 99-19-101, MISSISSIPPI
2 CODE OF 1972, TO PROVIDE ALTERNATIVE SENTENCING OPTIONS FOR
3 JUVENILE OFFENDERS IN COMPLIANCE WITH UNITED STATES SUPREME COURT
4 HOLDINGS IN THE CASES OF *MILLER V. ALABAMA* AND *ROPER V. SIMMONS*;
5 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 capital
31 murder may be sentenced to life imprisonment or life imprisonment
32 without eligibility for parole in the custody of the Mississippi
33 Department of Corrections if the punishment is so fixed by the
34 jury.

35 (c) If the jury fails to affix the sentence for capital
36 murder as set out under subsection (b) of this section for a
37 juvenile offender, then the court shall impose a sentence of not
38 less than twenty-five (25) years but no more than fifty (50) years
39 in the custody of the Mississippi Department of Corrections.

40 (d) (i) For a juvenile offender who is convicted of
41 first-degree murder, the court shall impose a sentence of not less
42 than twenty (20) nor more than forty (40) years in the custody of
43 the Mississippi Department of Corrections.



44 (ii) For a juvenile offender who is convicted of
45 second-degree murder, the court shall impose a sentence of not
46 less than fifteen (15) nor more than thirty (30) years in the
47 custody of the Mississippi Department of Corrections.

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

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

54 99-19-101. (1) Upon conviction or adjudication of guilt of
55 a defendant of capital murder * * *, the court shall conduct a
56 separate sentencing proceeding to determine whether the defendant
57 should be sentenced to death, life imprisonment without
58 eligibility for parole, or life imprisonment; a sentence of death
59 cannot be imposed if the defendant was not at least eighteen (18)
60 years of age at the time of the commission of the offense. The
61 proceeding shall be conducted by the trial judge before the trial
62 jury as soon as practicable. If, through impossibility or
63 inability, the trial jury is unable to reconvene for a hearing on
64 the issue of penalty, having determined the guilt of the accused,
65 the trial judge may summon a jury to determine the issue of the
66 imposition of the penalty. If the trial jury has been waived, or
67 if the defendant pleaded guilty, the sentencing proceeding shall
68 be conducted before a jury impaneled for that purpose or may be



69 conducted before the trial judge sitting without a jury if both
70 the State of Mississippi and the defendant agree thereto in
71 writing. In the proceeding, evidence may be presented as to any
72 matter that the court deems relevant to sentence, and shall
73 include matters relating to any of the aggravating or mitigating
74 circumstances. However, this subsection shall not be construed to
75 authorize the introduction of any evidence secured in violation of
76 the Constitution of the United States or of the State of
77 Mississippi. The state and the defendant and the defendant's
78 counsel shall be permitted to present arguments for or against the
79 sentence of death.

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

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

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

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

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

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



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

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

98 (c) That there are insufficient mitigating
99 circumstances, as enumerated in subsection (6), to outweigh the
100 aggravating circumstances * * *; and

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

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

112 (4) The judgment of conviction and sentence of death shall
113 be subject to automatic review by the Supreme Court of Mississippi
114 within sixty (60) days after certification by the sentencing court
115 of the entire record, unless the time is extended for an
116 additional period by the Supreme Court for good cause shown. The
117 review by the Supreme Court shall have priority over all other



118 cases and shall be heard in accordance with rules promulgated by
119 the Supreme Court.

120 (5) Aggravating circumstances shall be limited to the
121 following:

122 (a) The capital offense was committed by a person under
123 sentence of imprisonment.

124 (b) The defendant was previously convicted of another
125 capital offense or of a felony involving the use or threat of
126 violence to the person.

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

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

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

141 (f) The capital offense was committed for pecuniary
142 gain.



143 (g) The capital offense was committed to disrupt or
144 hinder the lawful exercise of any governmental function or the
145 enforcement of laws.

146 (h) The capital offense was committed to influence the
147 policy of a governmental entity by intimidation or coercion, or to
148 affect the conduct of a governmental entity by mass destruction or
149 assassination.

150 (i) The capital offense was especially heinous,
151 atrocious or cruel.

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

154 (6) Mitigating circumstances shall be the following:

155 (a) The defendant has no significant history of prior
156 criminal activity.

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

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

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

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



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

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

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

172 (a) The defendant actually killed;

173 (b) The defendant attempted to kill;

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

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

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

180 **SECTION 3.** This act shall take effect and be in force from
181 and after July 1, 2024, and shall stand repealed on June 30, 2024.

