

By: Senator(s) Fillingane

To: Judiciary, Division B

SENATE BILL NO. 2022

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  
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.** This act shall take effect and be in force from  
192 and after July 1, 2024.

