

By: Senator(s) Fillingane

To: Judiciary, Division B

SENATE BILL NO. 2022
(As Sent to Governor)

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 TO AMEND SECTION 25-31-21, MISSISSIPPI CODE OF 1972, TO PROVIDE
6 PROCEDURES FOR RECUSAL BY ATTORNEYS FOR PURPOSES OF IMPANELING A
7 GRAND JURY; AND FOR RELATED PURPOSES.

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

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

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

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

17 (* * * b) * * * Convicted of second-degree murder shall
18 be imprisoned for life in the custody of the Department of
19 Corrections if the punishment is so fixed by the jury in its
20 verdict after a separate sentencing proceeding. If the jury fails



21 to agree on fixing the penalty at imprisonment for life, the court
22 shall fix the penalty at not less than twenty (20) nor more than
23 forty (40) years in the custody of the Department of Corrections.

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

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

32 (b) A juvenile offender who is convicted of
33 first-degree murder after July 1, 2024, may be sentenced to life
34 imprisonment in the custody of the Department of Corrections if
35 the punishment is so fixed by the jury. If the jury fails to fix
36 the penalty at life imprisonment, the court shall fix the penalty
37 at not less than twenty (20) nor more than forty (40) years in the
38 custody of the Department of Corrections.

39 (c) A juvenile offender who is convicted of capital
40 murder after July 1, 2024, may be sentenced to life imprisonment
41 in the custody of the Department of Corrections or life
42 imprisonment without eligibility for parole in the custody of the
43 Department of Corrections if the punishment is so fixed by the
44 jury. If the jury fails to fix the penalty at life imprisonment
45 or life imprisonment without parole, the court shall fix the



46 penalty at not less than twenty-five (25) nor more than fifty (50)
47 years in the custody of the Department of Corrections.

48 (d) For a juvenile offender who was convicted of
49 first-degree murder or capital murder prior to July 1, 2024, and
50 who is entitled to a hearing under this subsection, the judge who
51 presided over the trial, or a judge appointed by the senior
52 circuit judge, if the presiding judge is unavailable, shall fix
53 the penalty.

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 however, a sentence of death cannot be imposed if the defendant
62 was not at least eighteen (18) years of age at the time of the
63 commission of the offense. The proceeding shall be conducted by
64 the trial judge before the trial jury as soon as practicable. If,
65 through impossibility or inability, the trial jury is unable to
66 reconvene for a hearing on the issue of penalty, having determined
67 the guilt of the accused, the trial judge may summon a jury to
68 determine the issue of the imposition of the penalty. If the
69 trial jury has been waived, or if the defendant pleaded guilty,
70 the sentencing proceeding shall be conducted before a jury



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

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

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

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

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

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

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



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

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

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

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

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

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



120 cases and shall be heard in accordance with rules promulgated by
121 the Supreme Court.

122 (5) Aggravating circumstances shall be limited to the
123 following:

124 (a) The capital offense was committed by a person under
125 sentence of imprisonment.

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

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

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

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

143 (f) The capital offense was committed for pecuniary
144 gain.



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

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

152 (i) The capital offense was especially heinous,
153 atrocious or cruel.

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

156 (6) Mitigating circumstances shall be the following:

157 (a) The defendant has no significant history of prior
158 criminal activity.

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

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

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

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



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

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

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

174 (a) The defendant actually killed;

175 (b) The defendant attempted to kill;

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

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

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

182 (9) This section shall not apply to a juvenile offender who
183 was not at least eighteen (18) years of age at the time of the
184 commission of the offense. A juvenile offender convicted of
185 capital murder shall be sentenced pursuant to Section 97-3-21(2).

186 **SECTION 3.** The amendments made to Section 97-3-21 by this
187 act shall operate prospectively from July 1, 2024.

188 **SECTION 4.** Section 25-31-21, Mississippi Code of 1972, is
189 amended as follows:

190 25-31-21. (1) If, at the time of impaneling the grand jury
191 in any circuit court, the district attorney be absent or unable to
192 perform his duties or, if after impaneling of the grand jury, the



193 district attorney be absent or unable to perform his duties or be
194 disqualified, the court shall forthwith appoint some attorney at
195 law to act for the state in the place of the district attorney
196 during his absence or inability or disqualification, and the
197 person appointed shall have the power to discharge all the duties
198 of the office during the absence or inability or disqualification
199 of the district attorney, and shall receive a reasonable
200 compensation for his services, to be allowed by the court and
201 certified to the auditor, who shall issue his warrant therefor.
202 Such allowance shall be deducted from the salary of the district
203 attorney, and shall not exceed the amount of the salary of the
204 district attorney for the number of days allotted by law for the
205 term of the court at which such appointees shall act.

206 (2) The provisions of this section shall not be construed to
207 include and shall not be applicable if a district attorney recuses
208 himself from a case or has a conflict of interest with a case,
209 without regard to whether the case has been presented to the grand
210 jury before such recusal or whether the case had not yet been
211 presented to the grand jury.

212 (3) When the appointed attorney is required to travel beyond
213 the limits of the judicial district in which he or she is normally
214 employed, all reasonable expenses incurred in prosecuting the case
215 shall be borne by the judicial district of the district attorney
216 being assisted in the discharge of his or her duties, if not
217 already compensated by the state.



218 **SECTION 5.** This act shall take effect and be in force from
219 and after July 1, 2024.

