

By: Representative Moak

To: Judiciary En Banc

HOUSE BILL NO. 1559

1 AN ACT TO AMEND SECTIONS 97-3-19, 99-7-37 AND 99-19-5,
2 MISSISSIPPI CODE OF 1972, TO PROVIDE FOR THE INCLUSION OF LESSER
3 INCLUDED OFFENSES IN MURDER AND CAPITAL MURDER CASES; AND FOR
4 RELATED PURPOSES.

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

6 **SECTION 1.** Section 97-3-19, Mississippi Code of 1972, is
7 amended as follows:

8 97-3-19. (1) The killing of a human being without the
9 authority of law by any means or in any manner shall be murder in
10 the following cases:

11 (a) When done with deliberate design to effect the
12 death of the person killed, or of any human being;

13 (b) When done in the commission of an act eminently
14 dangerous to others and evincing a depraved heart, regardless of
15 human life, although without any premeditated design to effect the
16 death of any particular individual;

17 (c) When done without any design to effect death by any
18 person engaged in the commission of any felony other than rape,
19 kidnapping, burglary, arson, robbery, sexual battery, unnatural
20 intercourse with any child under the age of twelve (12), or
21 nonconsensual unnatural intercourse with mankind, or felonious
22 abuse and/or battery of a child in violation of subsection (2) of
23 Section 97-5-39, or in any attempt to commit such felonies.

24 (2) The killing of a human being without the authority of
25 law by any means or in any manner shall be capital murder in the
26 following cases:

27 (a) Murder which is perpetrated by killing a peace
28 officer or fireman while such officer or fireman is acting in his

29 official capacity or by reason of an act performed in his official
30 capacity, and with knowledge that the victim was a peace officer
31 or fireman. For purposes of this paragraph, the term "peace
32 officer" means any state or federal law enforcement officer
33 including but not limited to a federal park ranger, the sheriff of
34 or police officer of a city or town, a conservation officer, a
35 parole officer, a judge, prosecuting attorney or any other court
36 official, an agent of the Alcoholic Beverage Control Division of
37 the State Tax Commission, an agent of the Bureau of Narcotics,
38 personnel of the Mississippi Highway Patrol, and the employees of
39 the Department of Corrections who are designated as peace officers
40 by the Commissioner of Corrections pursuant to Section 47-5-54,
41 and the superintendent and his deputies, guards, officers and
42 other employees of the Mississippi State Penitentiary;

43 (b) Murder which is perpetrated by a person who is
44 under sentence of life imprisonment;

45 (c) Murder which is perpetrated by use or detonation of
46 a bomb or explosive device;

47 (d) Murder which is perpetrated by any person who has
48 been offered or has received anything of value for committing the
49 murder, and all parties to such a murder, are guilty as
50 principals;

51 (e) When done with or without any design to effect
52 death, by any person engaged in the commission of the crime of
53 rape, burglary, kidnapping, arson, robbery, sexual battery,
54 unnatural intercourse with any child under the age of twelve (12),
55 or nonconsensual unnatural intercourse with mankind, or in any
56 attempt to commit such felonies;

57 (f) When done with or without any design to effect
58 death, by any person engaged in the commission of the crime of
59 felonious abuse and/or battery of a child in violation of
60 subsection (2) of Section 97-5-39, or in any attempt to commit
61 such felony;

62 (g) Murder which is perpetrated on educational property
63 as defined in Section 97-37-17;

64 (h) Murder which is perpetrated by the killing of any
65 elected official of a county, municipal, state or federal
66 government with knowledge that the victim was such public
67 official.

68 (3) An indictment for murder or capital murder shall serve
69 as notice to the defendant therein that the indictment may include
70 any and all lesser included offenses thereof, including, but not
71 limited to, manslaughter.

72 **SECTION 2.** Section 99-7-37, Mississippi Code of 1972, is
73 amended as follows:

74 99-7-37. (1) In an indictment for homicide it shall not be
75 necessary to set forth the manner in which or the means by which
76 the death of the deceased was caused, but it shall be sufficient
77 to charge in an indictment for murder, that the defendant did
78 feloniously, wilfully, and of his malice aforethought, kill and
79 murder the deceased. And it shall be sufficient, in an indictment
80 for manslaughter, to charge that the defendant did feloniously
81 kill and slay the deceased, concluding in all cases as required by
82 the Constitution of this state.

83 (2) An indictment for murder or capital murder shall be
84 sufficient to also charge the lesser offense of manslaughter
85 without a specific allegation of such lesser crime and without any
86 necessity for an additional count charging such lesser crime.

87 **SECTION 3.** Section 99-19-5, Mississippi Code of 1972, is
88 amended as follows:

89 99-19-5. (1) On an indictment for any offense the jury may
90 find the defendant guilty of the offense as charged, or of any
91 attempt to commit the same offense, or may find him guilty of an
92 inferior offense, or other offense, the commission of which is
93 necessarily included in the offense with which he is charged in

94 the indictment, whether the same be a felony or misdemeanor,
95 without any additional count in the indictment for that purpose.

96 (2) For the purposes of this section, manslaughter shall be
97 considered a lesser included offense of murder and capital murder;
98 and the jury may be properly instructed thereon, upon request by
99 either party or upon the court's own motion, in any case in which
100 the giving of such instruction would be justified by the proof,
101 consistent with the wording of the applicable manslaughter
102 statute.

103 **SECTION 4.** This act shall take effect and be in force from
104 and after July 1, 2004.