

By: Representative Fleming

To: Judiciary En Banc

HOUSE BILL NO. 253

1 AN ACT TO PROVIDE THAT DEFENDANTS WHO ARE DETERMINED MENTALLY
2 RETARDED OR MENTALLY CHALLENGED SHALL NOT BE ELIGIBLE FOR THE
3 DEATH PENALTY; TO AMEND SECTION 99-19-101, MISSISSIPPI CODE OF
4 1972, IN CONFORMITY THERETO, AND TO PROVIDE THAT A DEFENDANT'S
5 MENTAL RETARDATION IS A MITIGATING FACTOR IN DEATH PENALTY CASES;
6 AND FOR RELATED PURPOSES.

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

8 **SECTION 1.** If defense counsel has a good faith belief that
9 the defendant in a capital case has mental retardation, counsel
10 shall file a motion with the court, requesting a finding that the
11 defendant is not death eligible because of mental retardation.
12 Such a motion shall be filed within ten (10) days after the
13 prosecution files notice of intent to seek the death penalty,
14 unless the information in support of the motion came to counsel's
15 attention at a later date.

16 Upon receipt of such a motion, the trial court shall conduct
17 a hearing for the presentation of evidence regarding the
18 defendant's possible mental retardation. Both the defense and the
19 prosecution shall have the opportunity to present evidence,
20 including expert testimony. After considering the evidence, the
21 court shall find the defendant is not death eligible if it finds,
22 by a preponderance of the evidence, that the defendant has mental
23 retardation. If the defendant is not death eligible because of
24 mental retardation, the trial may proceed as a noncapital trial,
25 and, if convicted, the defendant may be sentenced to any penalty
26 available under state law, other than death.

27 If the court finds that the defendant is death eligible, the
28 case may proceed as a capital trial. The jury shall not be

29 informed of the prior proceedings or the judge's findings
30 concerning the defendant's claim of mental retardation.

31 If the capital trial results in a verdict of guilty to a
32 capital charge, the parties shall be entitled to present evidence
33 to the jury on the issue of whether the defendant has mental
34 retardation. Having heard the evidence and arguments, the jury
35 shall be asked to render a special verdict on the issue of mental
36 retardation. The special verdict shall ask the jury to answer the
37 following question: "Do you unanimously find, beyond a reasonable
38 doubt, that the defendant does not have mental retardation?" If
39 the jury answers "yes," the case shall proceed to a penalty phase
40 under Section 99-19-101. If the jury answers the question "no,"
41 the defendant may be sentenced to any penalty available under
42 state law, other than death.

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

45 99-19-101. (1) Except for those who are determined mentally
46 retarded or mentally challenged as provided in Section 1, House
47 Bill No. 253, 2005 Regular Session, upon conviction or
48 adjudication of guilt of a defendant of capital murder or other
49 capital offense, the court shall conduct a separate sentencing
50 proceeding to determine whether the defendant should be sentenced
51 to death, life imprisonment without eligibility for parole, or
52 life imprisonment. The proceeding shall be conducted by the trial
53 judge before the trial jury as soon as practicable. If, through
54 impossibility or inability, the trial jury is unable to reconvene
55 for a hearing on the issue of penalty, having determined the guilt
56 of the accused, the trial judge may summon a jury to determine the
57 issue of the imposition of the penalty. If the trial jury has
58 been waived, or if the defendant pleaded guilty, the sentencing
59 proceeding shall be conducted before a jury impaneled for that
60 purpose or may be conducted before the trial judge sitting without
61 a jury if both the State of Mississippi and the defendant agree

62 thereto in writing. In the proceeding, evidence may be presented
63 as to any matter that the court deems relevant to sentence, and
64 shall include matters relating to any of the aggravating or
65 mitigating circumstances. However, this subsection shall not be
66 construed to authorize the introduction of any evidence secured in
67 violation of the Constitution of the United States or of the State
68 of Mississippi. The state and the defendant and/or his counsel
69 shall be permitted to present arguments for or against the
70 sentence of death.

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

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

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

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

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

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

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

87 (b) That sufficient aggravating circumstances exist as
88 enumerated in subsection (5) of this section; and

89 (c) That there are insufficient mitigating
90 circumstances, as enumerated in subsection (6), to outweigh the
91 aggravating circumstances.

92 In each case in which the jury imposes the death sentence,
93 the determination of the jury shall be supported by specific
94 written findings of fact based upon the circumstances in

95 subsections (5) and (6) of this section and upon the records of
96 the trial and the sentencing proceedings. If, after the trial of
97 the penalty phase, the jury does not make the findings requiring
98 the death sentence or life imprisonment without eligibility for
99 parole, or is unable to reach a decision, the court shall impose a
100 sentence of life imprisonment.

101 (4) The judgment of conviction and sentence of death shall
102 be subject to automatic review by the Supreme Court of Mississippi
103 within sixty (60) days after certification by the sentencing court
104 of entire record, unless the time is extended for an additional
105 period by the Supreme Court for good cause shown. Such review by
106 the Supreme Court shall have priority over all other cases and
107 shall be heard in accordance with rules promulgated by the Supreme
108 Court.

109 (5) Aggravating circumstances shall be limited to the
110 following:

111 (a) The capital offense was committed by a person under
112 sentence of imprisonment.

113 (b) The defendant was previously convicted of another
114 capital offense or of a felony involving the use or threat of
115 violence to the person.

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

118 (d) The capital offense was committed while the
119 defendant was engaged, or was an accomplice, in the commission of,
120 or an attempt to commit, or flight after committing or attempting
121 to commit, any robbery, rape, arson, burglary, kidnapping,
122 aircraft piracy, sexual battery, unnatural intercourse with any
123 child under the age of twelve (12), or nonconsensual unnatural
124 intercourse with mankind, or felonious abuse and/or battery of a
125 child in violation of subsection (2) of Section 97-5-39,
126 Mississippi Code of 1972, or the unlawful use or detonation of a
127 bomb or explosive device.

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

131 (f) The capital offense was committed for pecuniary
132 gain.

133 (g) The capital offense was committed to disrupt or
134 hinder the lawful exercise of any governmental function or the
135 enforcement of laws.

136 (h) The capital offense was especially heinous,
137 atrocious or cruel.

138 (6) Mitigating circumstances shall be the following:

139 (a) The defendant has no significant history of prior
140 criminal activity.

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

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

145 (d) The defendant was an accomplice in the capital
146 offense committed by another person and his participation was
147 relatively minor.

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

150 (f) The capacity of the defendant to appreciate the
151 criminality of his conduct or to conform his conduct to the
152 requirements of law was substantially impaired.

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

154 (h) The defendant is mentally retarded, which is
155 defined as substantial limitations in present functioning
156 characterized by significantly subaverage intellectual functioning
157 existing concurrently with related limitations in two (2) or more
158 of the following applicable adaptive skill areas: communication,
159 self-care, home living, social skills, community use,

160 self-direction, health and safety, functional academics, leisure
161 and work.

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

164 (a) The defendant actually killed;

165 (b) The defendant attempted to kill;

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

167 (d) The defendant contemplated that lethal force would
168 be employed.

169 **SECTION 3.** Section 1 of this act shall be codified as a
170 separate code section in Chapter 19, Title 99, Mississippi Code of
171 1972.

172 **SECTION 4.** This act shall take effect and be in force from
173 and after July 1, 2005.