

By: Senator(s) Walls

To: Judiciary, Division A

SENATE BILL NO. 2397

1 AN ACT TO AMEND SECTION 99-19-101, MISSISSIPPI CODE OF 1972,
2 TO ELIMINATE THE DEATH PENALTY FOR INDIVIDUALS WHO ARE MENTALLY
3 RETARDED; AND FOR RELATED PURPOSES.

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

5 **SECTION 1.** Section 99-19-101, Mississippi Code of 1972, is
6 amended as follows:

7 99-19-101. (1) Upon conviction or adjudication of guilt of
8 a defendant of capital murder or other capital offense, the court
9 shall conduct a separate sentencing proceeding to determine
10 whether the defendant should be sentenced to death, life
11 imprisonment without eligibility for parole, or life imprisonment.
12 The proceeding shall be conducted by the trial judge before the
13 trial jury as soon as practicable. If, through impossibility or
14 inability, the trial jury is unable to reconvene for a hearing on
15 the issue of penalty, having determined the guilt of the accused,
16 the trial judge may summon a jury to determine the issue of the
17 imposition of the penalty. If the trial jury has been waived, or
18 if the defendant pleaded guilty, the sentencing proceeding shall
19 be conducted before a jury impaneled for that purpose or may be
20 conducted before the trial judge sitting without a jury if both
21 the State of Mississippi and the defendant agree thereto in
22 writing. In the proceeding, evidence may be presented as to any
23 matter that the court deems relevant to sentence, and shall
24 include matters relating to any of the aggravating or mitigating
25 circumstances. However, this subsection shall not be construed to
26 authorize the introduction of any evidence secured in violation of
27 the Constitutions of the United States or of the State of

28 Mississippi. The state and the defendant and/or his counsel shall
29 be permitted to present arguments for or against the sentence of
30 death.

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

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

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

37 (c) Whether sufficient mitigating circumstances exist
38 as enumerated in subsection (6) of this section, which outweigh
39 the aggravating circumstances found to exist; * * *

40 (d) Based on these considerations, whether the
41 defendant should be sentenced to life imprisonment, life
42 imprisonment without eligibility for parole, or death; and

43 (e) That the defendant is not mentally retarded.

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

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

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

50 (c) That there are insufficient mitigating
51 circumstances, as enumerated in subsection (6), to outweigh the
52 aggravating circumstances.

53 In each case in which the jury imposes the death sentence,
54 the determination of the jury shall be supported by specific
55 written findings of fact based upon the circumstances in
56 subsections (5) and (6) of this section and upon the records of
57 the trial and the sentencing proceedings. If, after the trial of
58 the penalty phase, the jury does not make the findings requiring
59 the death sentence or life imprisonment without eligibility for

60 parole, or is unable to reach a decision, the court shall impose a
61 sentence of life imprisonment.

62 (4) The judgment of conviction and sentence of death shall
63 be subject to automatic review by the Supreme Court of Mississippi
64 within sixty (60) days after certification by the sentencing court
65 of entire record, unless the time is extended for an additional
66 period by the Supreme Court for good cause shown. Such review by
67 the Supreme Court shall have priority over all other cases and
68 shall be heard in accordance with rules promulgated by the Supreme
69 Court.

70 (5) Aggravating circumstances shall be limited to the
71 following:

72 (a) The capital offense was committed by a person under
73 sentence of imprisonment.

74 (b) The defendant was previously convicted of another
75 capital offense or of a felony involving the use or threat of
76 violence to the person.

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

79 (d) The capital offense was committed while the
80 defendant was engaged, or was an accomplice, in the commission of,
81 or an attempt to commit, or flight after committing or attempting
82 to commit, any robbery, rape, arson, burglary, kidnapping,
83 aircraft piracy, sexual battery, unnatural intercourse with any
84 child under the age of twelve (12), or nonconsensual unnatural
85 intercourse with mankind, or felonious abuse and/or battery of a
86 child in violation of subsection (2) of Section 97-5-39,
87 Mississippi Code of 1972, or the unlawful use or detonation of a
88 bomb or explosive device.

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

92 (f) The capital offense was committed for pecuniary
93 gain.

94 (g) The capital offense was committed to disrupt or
95 hinder the lawful exercise of any governmental function or the
96 enforcement of laws.

97 (h) The capital offense was especially heinous,
98 atrocious or cruel.

99 (6) Mitigating circumstances shall be the following:

100 (a) The defendant has no significant history of prior
101 criminal activity.

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

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

106 (d) The defendant was an accomplice in the capital
107 offense committed by another person and his participation was
108 relatively minor.

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

111 (f) The capacity of the defendant to appreciate the
112 criminality of his conduct or to conform his conduct to the
113 requirements of law was substantially impaired.

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

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

117 (a) The defendant actually killed;

118 (b) The defendant attempted to kill;

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

120 (d) The defendant contemplated that lethal force would
121 be employed.

122 (8) For purposes of this section, "mentally retarded" means
123 significantly subaverage general intellectual functioning which
124 exists concurrently with defects in adaptive behavior and which is

125 manifested during the developmental period. No person who is
126 mentally retarded, as defined in this subsection, shall be
127 sentenced to death or executed.

128 **SECTION 2.** This act shall take effect and be in force from
129 and after July 1, 2005.