

By: Representatives Brown, Mayo

To: Judiciary En Banc

HOUSE BILL NO. 703

1 AN ACT TO AMEND SECTION 99-17-20, MISSISSIPPI CODE OF 1972,
2 TO REQUIRE DNA TESTING IN DEATH PENALTY CASES BASED ON THE
3 AVAILABILITY OF EVIDENCE; TO ESTABLISH PROCEDURE FOR OBTAINING DNA
4 SAMPLES; TO AMEND SECTION 99-19-101, MISSISSIPPI CODE OF 1972, TO
5 REQUIRE THAT DNA EVIDENCE LINK THE DEFENDANT TO THE CRIME IN DEATH
6 PENALTY CASES; TO AMEND SECTIONS 99-39-5 AND 99-39-9, MISSISSIPPI
7 CODE OF 1972, TO PROVIDE FOR POST-CONVICTION MOTIONS FOR DNA
8 TESTING FOR ALL CAPITAL DEATH PENALTY CASES; AND FOR RELATED
9 PURPOSES.

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

11 **SECTION 1.** Section 99-17-20, Mississippi Code of 1972, is
12 amended as follows:

13 99-17-20. (1) No person shall be tried for capital murder,
14 or any other crime punishable by death as provided by law, unless
15 such offense was specifically cited in the indictment returned
16 against the accused by setting forth the section and subsection
17 number of the code defining the offense alleged to have been
18 committed by the accused. The judge, in cases where the offense
19 cited in the indictment is punishable by death, may grant an
20 instruction for the state or the defendant which instructs the
21 jury as to their discretion to convict the accused of the
22 commission of an offense not specifically set forth in the
23 indictment returned against the accused. Any conviction of the
24 accused for an offense punishable by death shall not be valid
25 unless the offense for which the accused is convicted shall have
26 been set forth in the indictment by section and subsection number
27 of the code which defined the offense allegedly committed by the
28 accused.

29 (2) When significant evidence is present, the Mississippi
30 Department of Corrections shall administer DNA (deoxyribonucleic

31 acid) tests to those persons indicted or convicted of a crime
32 punishable by death as provided by law. Any person currently
33 -serving a death sentence, and who has not previously submitted a
34 biological sample, under Section 47-5-183, Mississippi Code of
35 1972, may request a post-conviction DNA test be administered upon
36 the discovery and availability of new evidence. The accused or
37 convicted shall have a sample of his or her blood, an oral swab,
38 or a sample obtained from a noninvasive procedure taken at the
39 time of indictment or if such person is incarcerated in a state
40 correctional facility, shall at the time of entering the prison
41 system have the sample taken for purposes of DNA identification
42 analysis.

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

45 99-19-101. (1) Upon conviction or adjudication of guilt of
46 a defendant of capital murder or other capital offense, the court
47 shall conduct a separate sentencing proceeding to determine
48 whether the defendant should be sentenced to death, life
49 imprisonment without eligibility for parole, or life imprisonment.
50 The proceeding shall be conducted by the trial judge before the
51 trial jury as soon as practicable. If, through impossibility or
52 inability, the trial jury is unable to reconvene for a hearing on
53 the issue of penalty, having determined the guilt of the accused,
54 the trial judge may summon a jury to determine the issue of the
55 imposition of the penalty. If the trial jury has been waived, or
56 if the defendant pleaded guilty, the sentencing proceeding shall
57 be conducted before a jury impaneled for that purpose or may be
58 conducted before the trial judge sitting without a jury if both
59 the State of Mississippi and the defendant agree thereto in
60 writing. In the proceeding, evidence may be presented as to any
61 matter that the court deems relevant to sentence, and shall
62 include matters relating to any of the aggravating or mitigating
63 circumstances. However, this subsection shall not be construed to

64 authorize the introduction of any evidence secured in violation of
65 the Constitution of the United States or of the State of
66 Mississippi. The state and the defendant and/or his counsel shall
67 be permitted to present arguments for or against the sentence of
68 death.

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

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

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

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

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

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

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

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

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

90 In each case in which the jury imposes the death sentence,
91 the determination of the jury shall be supported by specific
92 written findings of fact based upon the circumstances in
93 subsections (5) and (6) of this section and upon the records of
94 the trial and the sentencing proceedings. If, after the trial of
95 the penalty phase, the jury does not make the findings requiring
96 the death sentence or life imprisonment without eligibility for

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

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

107 (5) Aggravating circumstances shall be limited to the
108 following:

109 (a) The capital offense was committed by a person under
110 sentence of imprisonment.

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

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

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

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

129 (f) The capital offense was committed for pecuniary
130 gain.

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

134 (h) The capital offense was especially heinous,
135 atrocious or cruel.

136 (6) Mitigating circumstances shall be the following:

137 (a) The defendant has no significant history of prior
138 criminal activity.

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

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

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

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

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

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

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

154 (a) The defendant actually killed;

155 (b) The defendant attempted to kill;

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

157 (d) The defendant contemplated that lethal force would
158 be employed; and

159 (e) DNA evidence links the defendant to the killing.

160 **SECTION 3.** Section 99-39-5, Mississippi Code of 1972, is
161 amended as follows:

162 99-39-5. (1) Any prisoner in custody under sentence of a
163 court of record of the State of Mississippi who claims:

164 (a) That the conviction or the sentence was imposed in
165 violation of the Constitution of the United States or the
166 Constitution or laws of Mississippi;

167 (b) That the trial court was without jurisdiction to
168 impose sentence;

169 (c) That the statute under which the conviction and/or
170 sentence was obtained is unconstitutional;

171 (d) That the sentence exceeds the maximum authorized by
172 law;

173 (e) That there exists evidence of material facts, not
174 previously presented and heard, that requires vacation of the
175 conviction or sentence in the interest of justice;

176 (f) That his plea was made involuntarily;

177 (g) That his sentence has expired; his probation,
178 parole or conditional release unlawfully revoked; or he is
179 otherwise unlawfully held in custody;

180 (h) That he is entitled to an out-of-time appeal; or

181 (i) That the conviction or sentence is otherwise
182 subject to collateral attack upon any grounds of alleged error
183 heretofore available under any common law, statutory or other
184 writ, motion, petition, proceeding or remedy; may file a motion to
185 vacate, set aside or correct the judgment or sentence, or for an
186 out-of-time appeal.

187 (2) A motion for relief under this article shall be made
188 within three (3) years after the time in which the prisoner's
189 direct appeal is ruled upon by the Supreme Court of Mississippi
190 or, in case no appeal is taken, within three (3) years after the
191 time for taking an appeal from the judgment of conviction or
192 sentence has expired, or in case of a guilty plea, within three
193 (3) years after entry of the judgment of conviction. Excepted
194 from this three-year statute of limitations are those cases in

195 which the prisoner can demonstrate either that there has been an
196 intervening decision of the Supreme Court of either the State of
197 Mississippi or the United States which would have actually
198 adversely affected the outcome of his conviction or sentence or
199 that he has evidence, not reasonably discoverable at the time of
200 trial, which is of such nature that it would be practically
201 conclusive that had such been introduced at trial it would have
202 caused a different result in the conviction or sentence. Likewise
203 excepted are those cases in which the prisoner claims that his
204 sentence has expired or his probation, parole or conditional
205 release has been unlawfully revoked. Likewise excepted are
206 filings for post-conviction relief in capital cases which shall be
207 made within one (1) year after conviction.

208 (3) This motion is not a substitute for, nor does it affect,
209 any remedy incident to the proceeding in the trial court, or
210 direct review of the conviction or sentence.

211 (4) Proceedings under this article shall be subject to the
212 provisions of Section 99-19-42.

213 (5) All prisoners in custody for a capital death penalty
214 conviction shall have the right to file a post-conviction motion
215 for DNA testing.

216 **SECTION 4.** Section 99-39-9, Mississippi Code of 1972, is
217 amended as follows:

218 99-39-9. (1) A motion under this article shall name the
219 State of Mississippi as respondent and shall contain all of the
220 following:

221 (a) The identity of the proceedings in which the
222 prisoner was convicted.

223 (b) The date of the entry of the judgment of conviction
224 and sentence of which complaint is made.

225 (c) A concise statement of the claims or grounds upon
226 which the motion is based.

227 (d) A separate statement of the specific facts which
228 are within the personal knowledge of the prisoner and which shall
229 be sworn to by the prisoner.

230 (e) A specific statement of the facts which are not
231 within the prisoner's personal knowledge. The motion shall state
232 how or by whom said facts will be proven. Affidavits of the
233 witnesses who will testify and copies of documents or records that
234 will be offered shall be attached to the motion. The affidavits
235 of other persons and the copies of documents and records may be
236 excused upon a showing, which shall be specifically detailed in
237 the motion, of good cause why they cannot be obtained. This
238 showing shall state what the prisoner has done to attempt to
239 obtain the affidavits, records and documents, the production of
240 which he requests the court to excuse.

241 (f) The identity of any previous proceedings in federal
242 or state courts that the prisoner may have taken to secure relief
243 from his conviction and sentence.

244 (2) A motion shall be limited to the assertion of a claim
245 for relief against one (1) judgment only unless such motion is for
246 DNA testing as provided in subsection (5) of Section 99-39-5. If
247 a prisoner desires to attack the validity of other judgments under
248 which he is in custody, he shall do so by separate motions.

249 (3) The motion shall be verified by the oath of the
250 prisoner.

251 (4) If the motion received by the clerk does not
252 substantially comply with the requirements of this section, it
253 shall be returned to the prisoner if a judge of the court so
254 directs, together with a statement of the reason for its return.
255 The clerk shall retain a copy of the motion so returned.

256 (5) The prisoner shall deliver or serve a copy of the
257 motion, together with a notice of its filing, on the state. The
258 filing of the motion shall not require an answer or other motion
259 unless so ordered by the court under Section 99-39-11(3).

260 **SECTION 5.** This act shall take effect and be in force from
261 and after July 1, 2006.