MISSISSIPPI LEGISLATURE REGULAR SESSION 2017

By: Senator(s) Simmons (12th)

To: Judiciary, Division B; Corrections

SENATE BILL NO. 2621

AN ACT TO AMEND SECTION 99-19-83, MISSISSIPPI CODE OF 1972, TO REVISE HABITUAL OFFENDER SENTENCING; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 99-19-83, Mississippi Code of 1972, is amended as follows:

99-19-83. (1) Every person convicted in this state of a felony who shall have been convicted twice previously of any felony or federal crime upon charges separately brought and arising out of separate incidents at different times and who shall have been sentenced to and served separate terms of one (1) year or more, whether served concurrently or not, in any state and/or federal penal institution, whether in this state or elsewhere, and where any one (1) of such felonies shall have been a crime of violence, as defined by Section 97-3-2, shall be sentenced to life imprisonment, only if the jury decides, after a separate sentencing proceeding, that life imprisonment should be imposed, and such sentence shall not be reduced or suspended nor shall such person be eligible for parole, probation or any other form of

early release from actual physical custody within the Department of Corrections.

If the jury declines to sentence the defendant to life imprisonment, the court shall fix the penalty at the maximum term of imprisonment prescribed for the underlying felony, subject to any other applicable enhancements.

(2) The sentencing proceeding shall be conducted by the trial judge before the trial jury as soon as practicable. If, through impossibility or inability, the trial jury is unable to reconvene for a hearing on the issue of penalty, having determined the guilt of the accused, the trial judge may summon a jury to determine the issue of the imposition of the penalty. If the trial jury has been waived, or if the defendant pleaded guilty, the sentencing proceeding shall be conducted before a jury impaneled for that purpose or may be conducted before the trial judge sitting without a jury if both the State of Mississippi and the defendant agree thereto in writing. In the proceeding, evidence may be presented as to any matter that the court deems relevant to sentence, and shall include matters relating to any of the aggravating or mitigating circumstances. However, this subsection shall not be construed to authorize the introduction of any evidence secured in violation of the Constitution of the United States or of the State of Mississippi. The state and the defendant and the defendant's counsel shall be permitted to

present arguments for or against the sentence of life imprisonment.

(3) In making the determination whether to sentence the defendant to life imprisonment, the jury shall consider any mitigating or aggravating circumstances.

(4) Aggravating circumstances shall be limited to the following:

(a) If the offense was committed by a person under sentence of imprisonment.

(b) If the defendant knowingly created a great risk of death to many persons.

(c) If the offense was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody.

(d) If the offense was committed to disrupt or hinder the lawful exercise of any governmental function or the enforcement of laws.

(e) If the offense was committed to influence the policy of a governmental entity by intimidation or coercion, or to affect the conduct of a governmental entity by mass destruction or assassination.

(f) If the offense was especially heinous, atrocious or cruel.

(g) If the offense was committed to intimidate or coerce a civilian population.

(5) Mitigating circumstances shall include, but shall not be limited to, the following:

(a) The nature or seriousness of any prior offenses, including whether another person was harmed and the degree of harm;

(b) The nature and seriousness of the current offense, including whether another person was harmed and the degree of harm;

(c) The age of the defendant at present;

(d) The amount of time between separate prior offenses and between any prior offenses and the current offense;

(e) The age of the defendant at the commission of any prior felonies;

(f) If the current or any prior offenses were driven in part by mental health problems;

(g) If the current or any prior offenses were driven in part by substance abuse problems;

(h) The defendant's role or level of participation in the current or any prior offenses.

(6) For the jury to impose an enhanced sentence under this section, it must unanimously find in writing the following:

(a) That sufficient aggravating factors exist as enumerated in subsection (4) of this section; and

(b) That there are insufficient mitigating circumstances, as enumerated in subsection (5) of this section, to outweigh the aggravating circumstances.

SECTION 2. This act shall take effect and be in force from and after July 1, 2017.

ST: Habitual offender; revise sentencing.