MISSISSIPPI LEGISLATURE REGULAR SESSION 2021

By: Senator(s) Simmons (12th)

To: Judiciary, Division B

SENATE BILL NO. 2154

AN ACT TO AUTHORIZE A PROCEDURE CONSISTENT WITH DECISIONS OF THE UNITED STATES SUPREME COURT AND THE MISSISSIPPI SUPREME COURT FOR THE PAROLE OF CERTAIN OFFENDERS WHO WERE UNDER THE AGE OF EIGHTEEN WHEN THEY COMMITTED THE CRIMES FOR WHICH THEY ARE SENTENCED; TO PROVIDE FOR THE PROCEDURE TO BE FOLLOWED BEFORE CERTAIN JUVENILE OFFENDERS MAY BE SENTENCED TO LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE; TO AMEND SECTION 47-7-3, MISSISSIPPI CODE OF 1972, TO CONFORM; AND FOR RELATED PURPOSES.

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

SECTION 1. (1) This section shall apply only to those offenders who are in the custody of the Mississippi Department of Corrections for felony offenses that were committed when they were under the age of eighteen (18).

(2) An offender not otherwise eligible for parole may be released on parole under this section if the offender's record of conduct shows that he has observed the rules of the department and:

(a) If the offender is sentenced to a definite term or terms of less than thirty (30) years, after serving twenty-five percent (25%) of the term or terms; or

(b) If the offender is sentenced to a definite term or terms of thirty (30) years or more or to a term of life imprisonment, after serving at least ten (10) years of the term or terms.

(3) The State Parole Board shall promulgate rules and regulations that establish a method to determine a tentative parole hearing date for offenders in the custody of the Department of Corrections who are eligible under this section. From and after July 1, 2017, the tentative parole hearing date shall be determined within ninety (90) days after the department has assumed custody of the offender. The parole hearing date shall occur when the offender is within thirty (30) days of the month of his parole eligibility date.

(4) Any offender within twenty-four (24) months of his parole eligibility date and who meets the criteria established by the classification board shall receive priority for placement in any educational development and job-training programs that are part of his parole case plan. Any offender refusing to participate in an educational development or job-training program in his case plan may be denied parole.

SECTION 2. (1) Upon conviction or adjudication of guilt of a defendant who was under the age of eighteen (18) when he committed capital murder, the court shall conduct a separate sentencing proceeding to determine whether the defendant should be sentenced to life imprisonment without eligibility for parole or

life imprisonment. The 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 without eligibility for parole.

(2) After hearing all the evidence, the statutory instructions as determined by the trial judge to be warranted by the evidence shall be given in the charge and in writing to the jury for its deliberation. The jury shall deliberate on the following matters:

(a) Whether sufficient factors exist as enumerated in subsection (6) of this section;

(b) Whether sufficient aggravating circumstances exist as enumerated in subsection (4) of this section;

(c) Whether sufficient mitigating circumstances exist as enumerated in subsection (5) of this section, which outweigh the aggravating circumstances found to exist; and

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

(3) For the jury to impose a sentence of life imprisonment without eligibility for parole, it must unanimously find in writing the following:

(a) That sufficient factors exist as enumerated in subsection (6) of this section;

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

(c) That, taking into account how juveniles differ from adults and how those differences counsel against sentencing juveniles to life imprisonment without parole, there are insufficient mitigating circumstances, as enumerated in subsection (5) of this section, to outweigh the aggravating circumstances.

In each case in which the jury imposes the sentence of life imprisonment without eligibility for parole, the determination of the jury shall be supported by specific written findings of fact

based upon the circumstances in subsections (4) through (6) of this section and upon the records of the trial and the sentencing proceedings. If, after the trial of the penalty phase, the jury does not make the findings requiring life imprisonment without eligibility for parole, or is unable to reach a decision, the court shall impose a sentence of life imprisonment.

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

(a) The capital murder was committed by a person under sentence of imprisonment.

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

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

(d) The capital murder was committed while the defendant was engaged, or was an accomplice, in the commission of, or an attempt to commit, or flight after committing or attempting to commit, any robbery, rape, arson, burglary, kidnapping, aircraft piracy, sexual battery, unnatural intercourse with any child under the age of twelve (12), or nonconsensual unnatural intercourse with mankind, or felonious abuse or battery of a child in violation of Section 97-5-39(2), or the unlawful use or detonation of a bomb or explosive device.

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

(f) The capital murder was committed for pecuniary gain.

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

(h) The capital murder 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.

(i) The capital murder was especially heinous, atrocious or cruel.

(j) The capital murder was committed to intimidate or coerce a civilian population.

(5) Mitigating circumstances shall be the following:

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

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

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

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

(e) The defendant acted under duress or under the domination of another person.

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

(g) The age of the defendant at the time of the crime, including the defendant's immaturity, impetuosity and ability to appreciate the risks and consequences of his conduct.

(h) The defendant could have been charged with or convicted of a lesser offense if not for the incompetency associated with youth.

(i) The family and home environment in which the defendant was reared.

(j) The possibility that the defendant may be rehabilitated.

(6) In order to return and impose a sentence of life imprisonment without the possibility of parole, the jury must make a written finding of the following:

(a) The defendant actually killed; and

(b) The defendant intended that a killing take place; or

(c) The defendant contemplated that lethal force would be employed.

(7) For the purposes of this section, to "intimidate" or "coerce" do not include peaceful picketing, boycotts or other nonviolent action.

SECTION 3. Section 47-7-3, Mississippi Code of 1972, is amended as follows:

47-7-3. (1) Every prisoner who has been convicted of any offense against the State of Mississippi, and is confined in the execution of a judgment of such conviction in the Mississippi Department of Corrections for a definite term or terms of one (1) year or over, or for the term of his or her natural life, whose record of conduct shows that such prisoner has observed the rules of the department, and who has served not less than one-fourth (1/4) of the total of such term or terms for which such prisoner was sentenced, or, if sentenced to serve a term or terms of thirty (30) years or more, or, if sentenced for the term of the natural life of such prisoner, has served not less than ten (10) years of such life sentence, may be released on parole as hereinafter provided, except that:

(a) No prisoner convicted as a confirmed and habitual criminal under the provisions of Sections 99-19-81 through 99-19-87 shall be eligible for parole;

(b) Any person who shall have been convicted of a sex crime shall not be released on parole except for a person under

the age of nineteen (19) who has been convicted under Section 97-3-67;

(c) (i) No person shall be eligible for parole who shall, on or after January 1, 1977, be convicted of robbery or attempted robbery through the display of a firearm until he shall have served ten (10) years if sentenced to a term or terms of more than ten (10) years or if sentenced for the term of the natural life of such person. If such person is sentenced to a term or terms of ten (10) years or less, then such person shall not be eligible for parole. The provisions of this paragraph (c)(i) shall also apply to any person who shall commit robbery or attempted robbery on or after July 1, 1982, through the display of a deadly weapon. This paragraph (c)(i) shall not apply to persons convicted after September 30, 1994;

(ii) No person shall be eligible for parole who shall, on or after October 1, 1994, be convicted of robbery, attempted robbery or carjacking as provided in Section 97-3-115 et seq., through the display of a firearm or drive-by shooting as provided in Section 97-3-109. The provisions of this paragraph (c)(ii) shall also apply to any person who shall commit robbery, attempted robbery, carjacking or a drive-by shooting on or after October 1, 1994, through the display of a deadly weapon. This paragraph (c)(ii) shall not apply to persons convicted after July 1, 2014;

(d) No person shall be eligible for parole who, on or after July 1, 1994, is charged, tried, convicted and sentenced to life imprisonment without eligibility for parole under the provisions of Section 99-19-101;

(e) No person shall be eligible for parole who is charged, tried, convicted and sentenced to life imprisonment under the provisions of Section 99-19-101;

(f) No person shall be eligible for parole who is convicted or whose suspended sentence is revoked after June 30, 1995, except that an offender convicted of only nonviolent crimes after June 30, 1995, may be eligible for parole if the offender meets the requirements in this subsection (1) and this paragraph. In addition to other requirements, if an offender is convicted of a drug or driving under the influence felony, the offender must complete a drug and alcohol rehabilitation program prior to parole or the offender may be required to complete a post-release drug and alcohol program as a condition of parole. For purposes of this paragraph, "nonviolent crime" means a felony other than homicide, robbery, manslaughter, sex crimes, arson, burglary of an occupied dwelling, aggravated assault, kidnapping, felonious abuse of vulnerable adults, felonies with enhanced penalties, except enhanced penalties for the crime of possession of a controlled substance under Section 41-29-147, the sale or manufacture of a controlled substance under the Uniform Controlled Substances Law, felony child abuse, or exploitation or any crime under Section

97-5-33 or Section 97-5-39(2) or 97-5-39(1)(b), 97-5-39(1)(c) or a violation of Section 63-11-30(5). In addition, an offender incarcerated for committing the crime of possession of a controlled substance under the Uniform Controlled Substances Law after July 1, 1995, including an offender who receives an enhanced penalty under the provisions of Section 41-29-147 for such possession, shall be eligible for parole. An offender incarcerated for committing the crime of sale or manufacture of a controlled substance shall be eligible for parole after serving one-fourth (1/4) of the sentence imposed by the trial court. This paragraph (f) shall not apply to persons convicted on or after July 1, 2014;

(g) (i) No person who, on or after July 1, 2014, is convicted of a crime of violence pursuant to Section 97-3-2, a sex crime or an offense that specifically prohibits parole release shall be eligible for parole. All persons convicted of any other offense on or after July 1, 2014, are eligible for parole after they have served one-fourth (1/4) of the sentence or sentences imposed by the trial court.

(ii) Notwithstanding the provisions in subparagraph (i) of this paragraph (g), a person serving a sentence who has reached the age of sixty (60) or older and who has served no less than ten (10) years of the sentence or sentences imposed by the trial court shall be eligible for parole. Any person eligible for parole under this subsection shall be

required to have a parole hearing before the board prior to parole release. No inmate shall be eligible for parole under this subparagraph (ii) of this paragraph (g) if:

1. The inmate is sentenced as a habitual offender under Sections 99-19-81 through 99-19-87;

2. The inmate is sentenced for a crime of violence under Section 97-3-2;

3. The inmate is sentenced for an offense that specifically prohibits parole release;

4. The inmate is sentenced for trafficking in controlled substances under Section 41-29-139(f);

5. The inmate is sentenced for a sex crime; or

6. The inmate has not served one-fourth (1/4) of the sentence imposed by the court.

(iii) Notwithstanding the provisions of paragraph (a) of this subsection, any offender who has not committed a crime of violence under Section 97-3-2 and has served twenty-five percent (25%) or more of his sentence may be paroled by the Parole Board if, after the sentencing judge or if the sentencing judge is retired, disabled or incapacitated, the senior circuit judge authorizes the offender to be eligible for parole consideration; or if that senior circuit judge must be recused, another circuit judge of the same district or a senior status judge may hear and decide the matter;

(h) Notwithstanding any other provision of law, an inmate who has not been convicted as a habitual offender under Sections 99-19-81 through 99-19-87, has not been convicted of committing a crime of violence, as defined under Section 97-3-2, has not been convicted of a sex crime or any other crime that specifically prohibits parole release, and has not been convicted of drug trafficking under Section 41-29-139 is eligible for parole if the inmate has served twenty-five percent (25%) or more of his or her sentence, but is otherwise ineligible for parole *** * ***;

(i) The provisions of this subsection that render an offender ineligible for parole shall not apply to offenders who were under the age of eighteen (18) when they committed the felonies for which they are sentenced. These offenders may be eligible for parole consistent with Section 1 of this act.

(2) Notwithstanding any other provision of law, an inmate shall not be eligible to receive earned time, good time or any other administrative reduction of time which shall reduce the time necessary to be served for parole eligibility as provided in subsection (1) of this section.

(3) The State Parole Board shall, by rules and regulations, establish a method of determining a tentative parole hearing date for each eligible offender taken into the custody of the Department of Corrections. The tentative parole hearing date shall be determined within ninety (90) days after the department has assumed custody of the offender. The parole hearing date

shall occur when the offender is within thirty (30) days of the month of his parole eligibility date. The parole eligibility date shall not be earlier than one-fourth (1/4) of the prison sentence or sentences imposed by the court.

(4) Any inmate within twenty-four (24) months of his parole eligibility date and who meets the criteria established by the classification board shall receive priority for placement in any educational development and job-training programs that are part of his or her parole case plan. Any inmate refusing to participate in an educational development or job-training program that is part of the case plan may be in jeopardy of noncompliance with the case plan and may be denied parole.

SECTION 4. This act shall take effect and be in force from and after July 1, 2021.