

By: Representative Watson

To: Judiciary En Banc

HOUSE BILL NO. 1069

1 AN ACT TO AMEND SECTIONS 99-39-5 AND 99-39-23, MISSISSIPPI  
2 CODE OF 1972, TO REVISE FILING LIMITATIONS FOR POST-CONVICTION  
3 RELIEF IN CAPITAL CASES AND THE APPOINTMENT OF POST-CONVICTION  
4 COUNSEL; TO AMEND SECTION 99-39-103, MISSISSIPPI CODE OF 1972, TO  
5 REVISE THE PERSONNEL OF THE OFFICE OF POST-CONVICTION COUNSEL; AND  
6 FOR RELATED PURPOSES.

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

8 **SECTION 1.** Section 99-39-5, Mississippi Code of 1972, is  
9 amended as follows:

10 99-39-5. (1) Any prisoner in custody under sentence of a  
11 court of record of the State of Mississippi who claims:

12 (a) That the conviction or the sentence was imposed in  
13 violation of the Constitution of the United States or the  
14 Constitution or laws of Mississippi;

15 (b) That the trial court was without jurisdiction to  
16 impose sentence;

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

19 (d) That the sentence exceeds the maximum authorized by  
20 law;

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

24 (f) That his plea was made involuntarily;

25 (g) That his sentence has expired; his probation,  
26 parole or conditional release unlawfully revoked; or he is  
27 otherwise unlawfully held in custody;

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

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

35           (2) A motion for relief under this article shall be made  
36 within three (3) years after the time in which the prisoner's  
37 direct appeal is ruled upon by the Supreme Court of Mississippi  
38 or, in case no appeal is taken, within three (3) years after the  
39 time for taking an appeal from the judgment of conviction or  
40 sentence has expired, or in case of a guilty plea, within three  
41 (3) years after entry of the judgment of conviction. Excepted  
42 from this three-year statute of limitations are those cases in  
43 which the prisoner can demonstrate either that there has been an  
44 intervening decision of the Supreme Court of either the State of  
45 Mississippi or the United States which would have actually  
46 adversely affected the outcome of his conviction or sentence or  
47 that he has evidence, not reasonably discoverable at the time of  
48 trial, which is of such nature that it would be practically  
49 conclusive that had such been introduced at trial it would have  
50 caused a different result in the conviction or sentence. Likewise  
51 excepted are those cases in which the prisoner claims that his  
52 sentence has expired or his probation, parole or conditional  
53 release has been unlawfully revoked. Likewise excepted are  
54 filings for post-conviction relief in capital cases which shall be  
55 made within one (1) year upon judgment of death becoming final and  
56 a writ of certiorari to the United States Supreme Court having  
57 been denied of the time for filing such petition having expired.

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

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

63 **SECTION 2.** Section 99-39-23, Mississippi Code of 1972, is  
64 amended as follows:

65 99-39-23. (1) If an evidentiary hearing is required the  
66 judge may appoint counsel for a petitioner who qualifies for the  
67 appointment of counsel under Section 99-15-15, Mississippi Code of  
68 1972.

69 (2) The hearing shall be conducted as promptly as  
70 practicable, having regard for the need of counsel for both  
71 parties for adequate time for investigation and preparation.

72 (3) The parties shall be entitled to subpoena witnesses and  
73 compel their attendance, including, but not being limited to,  
74 subpoenas duces tecum.

75 (4) The court may receive proof by affidavits, depositions,  
76 oral testimony or other evidence and may order the prisoner  
77 brought before it for the hearing.

78 (5) If the court finds in favor of the prisoner, it shall  
79 enter an appropriate order with respect to the conviction or  
80 sentence under attack, and any supplementary orders as to  
81 rearraignment, retrial, custody, bail, discharge, correction of  
82 sentence or other matters that may be necessary and proper. The  
83 court shall make specific findings of fact, and state expressly  
84 its conclusions of law, relating to each issue presented.

85 (6) The order as provided in subsection (5) of this section  
86 or any order dismissing the prisoner's motion or otherwise denying  
87 relief under this article is a final judgment and shall be  
88 conclusive until reversed. It shall be a bar to a second or  
89 successive motion under this article. Excepted from this  
90 prohibition is a motion filed pursuant to Section 99-19-57(2),  
91 Mississippi Code of 1972, raising the issue of the convict's  
92 supervening insanity prior to the execution of a sentence of  
93 death. A dismissal or denial of a motion relating to insanity

94 under Section 99-19-57(2), Mississippi Code of 1972, shall be res  
95 judicata on the issue and shall likewise bar any second or  
96 successive motions on the issue. Likewise excepted from this  
97 prohibition are those cases in which the prisoner can demonstrate  
98 either that there has been an intervening decision of the Supreme  
99 Court of either the State of Mississippi or the United States  
100 which would have actually adversely affected the outcome of his  
101 conviction or sentence or that he has evidence, not reasonably  
102 discoverable at the time of trial, which is of such nature that it  
103 would be practically conclusive that had such been introduced at  
104 trial it would have caused a different result in the conviction or  
105 sentence. Likewise excepted are those cases in which the prisoner  
106 claims that his sentence has expired or his probation, parole or  
107 conditional release has been unlawfully revoked.

108 (7) No relief shall be granted under this article unless the  
109 prisoner proves by a preponderance of the evidence that he is  
110 entitled to such.

111 (8) Proceedings under this section shall be subject to the  
112 provisions of Section 99-19-42.

113 (9) In cases resulting in a sentence of death and upon a  
114 determination of indigence, appointment of post-conviction counsel  
115 shall be made by the Office of Capital Post-Conviction Counsel  
116 upon order entered by the Supreme Court promptly upon the judgment  
117 of death becoming final and a writ of certiorari to the United  
118 States Supreme Court having been denied or the time for filing  
119 such petition having expired. The order shall direct the trial  
120 court to immediately determine indigence and whether the inmate  
121 will accept counsel.

122 **SECTION 3.** Section 99-39-103, Mississippi Code of 1972, is  
123 amended as follows:

124 99-39-103. There is created the Mississippi Office of  
125 Capital Post-Conviction Counsel. This office shall consist of a  
126 minimum of three (3) and a maximum of five (5) attorneys, a

127 minimum of one (1) and a maximum of three (3) investigators, one  
128 (1) fiscal officer and a minimum of one (1) and a maximum of two  
129 (2) secretary/paralegals. One (1) of the attorneys shall serve as  
130 director of the office. The director shall be appointed by the  
131 Chief Justice of the Supreme Court with the approval of a majority  
132 of the justices voting, for a term of four (4) years, or until a  
133 successor takes office. The remaining attorneys and other staff  
134 shall be appointed by the director of the office and shall serve  
135 at the will and pleasure of the director. The director and all  
136 other attorneys in the office shall either be active members of  
137 The Mississippi Bar, or, if a member in good standing of the bar  
138 of another jurisdiction, must apply to and secure admission to The  
139 Mississippi Bar within twelve (12) months of the commencement of  
140 the person's employment by the office. At least three (3) of the  
141 attorneys in the office shall meet all qualifications necessary to  
142 serve as post-conviction counsel for persons under a sentence of  
143 death. The director may be removed from office by the Chief  
144 Justice upon finding that the director is not qualified under law  
145 to serve as post-conviction counsel for persons under sentences of  
146 death, has failed to perform the duties of the office or has acted  
147 beyond the scope of the authority granted by law for the office.

148 **SECTION 4.** This act shall take effect and be in force from  
149 and after July 1, 2004.