

By: Representative Fleming

To: Judiciary En Banc

HOUSE BILL NO. 5

1 AN ACT TO AMEND SECTIONS 99-39-5 AND 99-39-9, MISSISSIPPI  
2 CODE OF 1972, TO PROVIDE FOR POST-CONVICTION MOTIONS FOR DNA FOR  
3 ALL CAPITAL DEATH PENALTY CASES; AND FOR RELATED PURPOSES.

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

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

7 99-39-5. (1) Any prisoner in custody under sentence of a  
8 court of record of the State of Mississippi who claims:

9 (a) That the conviction or the sentence was imposed in  
10 violation of the Constitution of the United States or the  
11 Constitution or laws of Mississippi;

12 (b) That the trial court was without jurisdiction to  
13 impose sentence;

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

16 (d) That the sentence exceeds the maximum authorized by  
17 law;

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

21 (f) That his plea was made involuntarily;

22 (g) That his sentence has expired; his probation,  
23 parole or conditional release unlawfully revoked; or he is  
24 otherwise unlawfully held in custody;

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

26 (i) That the conviction or sentence is otherwise  
27 subject to collateral attack upon any grounds of alleged error

28 heretofore available under any common law, statutory or other  
29 writ, motion, petition, proceeding or remedy; may file a motion to  
30 vacate, set aside or correct the judgment or sentence, or for an  
31 out-of-time appeal.

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

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

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

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

61           **SECTION 2.** Section 99-39-9, Mississippi Code of 1972, is  
62 amended as follows:

63           99-39-9. (1) A motion under this article shall name the  
64 State of Mississippi as respondent and shall contain all of the  
65 following:

66                   (a) The identity of the proceedings in which the  
67 prisoner was convicted.

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

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

72                   (d) A separate statement of the specific facts which  
73 are within the personal knowledge of the prisoner and which shall  
74 be sworn to by the prisoner.

75                   (e) A specific statement of the facts which are not  
76 within the prisoner's personal knowledge. The motion shall state  
77 how or by whom said facts will be proven. Affidavits of the  
78 witnesses who will testify and copies of documents or records that  
79 will be offered shall be attached to the motion. The affidavits  
80 of other persons and the copies of documents and records may be  
81 excused upon a showing, which shall be specifically detailed in  
82 the motion, of good cause why they cannot be obtained. This  
83 showing shall state what the prisoner has done to attempt to  
84 obtain the affidavits, records and documents, the production of  
85 which he requests the court to excuse.

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

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

94           (3) The motion shall be verified by the oath of the  
95 prisoner.

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

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

105           **SECTION 3.** This act shall take effect and be in force from  
106 and after July 1, 2006.