

By: Representative Fleming

To: Judiciary En Banc

HOUSE BILL NO. 302

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  
3 TESTING FOR ALL CAPITAL DEATH PENALTY CASES; AND FOR RELATED  
4 PURPOSES.

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

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

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

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

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

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

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

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

22 (f) That his plea was made involuntarily;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

106           **SECTION 3.** This act shall take effect and be in force from  
107 and after July 1, 2007.