

By: Representative Ward

To: Municipalities;
Judiciary B

HOUSE BILL NO. 1520

1 AN ACT TO AMEND SECTIONS 21-23-8 AND 99-5-9, MISSISSIPPI CODE
2 OF 1972, TO CLARIFY THAT CASH BOND IS ALLOWABLE IN MUNICIPAL
3 COURT; AND FOR RELATED PURPOSES.

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

5 **SECTION 1.** Section 21-23-8, Mississippi Code of 1972, is
6 amended as follows:

7 21-23-8. (1) The municipal judge shall set the amount of
8 bail for persons charged with offenses in municipal court and may
9 approve the bond or recognizance therefor including cash bond. In
10 instances where the municipal judge is unavailable and has not
11 provided a bail schedule or otherwise provided for the setting of
12 bail, it is lawful for any officer or officers designated by order
13 of the municipal judge to take bond, cash, property or
14 recognizance, with or without sureties, in a sum to be determined
15 by such officer, of not less than Fifty Dollars (\$50.00) nor more
16 than One Thousand Dollars (\$1,000.00), payable to the municipality
17 and conditioned for the appearance of such person on the return
18 day and time of the writ before the court before whom the warrant
19 is returnable, or in cases of arrest without a warrant, on the day
20 and time set by the court or officer for arraignment, and there
21 remain from day to day and term to term until discharged. All
22 bonds shall be promptly returned to the court, together with any
23 cash deposited, and be filed and proceeded on by the court in a
24 case of forfeiture. The chief of the municipal police or a police
25 officer or officers designated by order of the municipal judge may
26 approve bonds or recognizances.

27 (2) (a) All bonds and recognizances in municipal court
28 where the municipal court shall have the jurisdiction to hear and
29 determine the case may be made payable to the municipality and
30 shall have the effect to bind the principal and any sureties on
31 the bond or recognizance until they shall be discharged by due
32 course of law without renewal.

33 (b) If a defendant fails to appear for any proceeding
34 as ordered by the court, then the court shall order the bail
35 forfeited and a bench warrant issued at the time of nonappearance.
36 The purpose of bail is to guarantee appearance and bail shall not
37 be forfeited for any other reason. Upon declaration of such
38 forfeiture, the court shall issue a judgment nisi. The clerk of
39 the court shall notify the surety of the forfeiture by writ of
40 scire facias, with a copy of the judgment nisi and bench warrant
41 attached thereto, within ten (10) working days of such order of
42 judgment nisi either by personal service or by certified mail.
43 Failure of the clerk to provide the required notice within ten
44 (10) working days shall constitute prima facie evidence that the
45 order should be set aside.

46 (c) The judgment nisi shall be returnable for ninety
47 (90) days from the date of issuance. If during such period the
48 defendant appears before the court, or is arrested and
49 surrendered, then the judgment nisi shall be set aside. If the
50 surety fails to produce the defendant and does not provide to the
51 court reasonable mitigating circumstances upon such showing, then
52 the forfeiture shall be made final with a copy of the final
53 judgment to be served on the surety. Reasonable mitigating
54 circumstances shall be that the defendant is incarcerated in
55 another jurisdiction, that the defendant is hospitalized under a
56 doctor's care, that the defendant is in a recognized drug
57 rehabilitation program, that the defendant has been placed in a
58 witness protection program and it shall be the duty of any such
59 agency placing such defendant into a witness protection program to

60 notify the court and the court to notify the surety, or any other
61 reason justifiable to the court.

62 **SECTION 2.** Section 99-5-9, Mississippi Code of 1972, is
63 amended as follows:

64 99-5-9. In addition to any type of bail allowed by statute,
65 any committing court including municipal courts, in its
66 discretion, may allow any defendant, to whom bail is allowable, to
67 deposit cash as bail bond in lieu of a surety or property bail
68 bond, by depositing such cash sum as the court may direct with the
69 sheriff or officer having custody of defendant, who shall receipt
70 therefor and who shall forthwith deliver the said monies to the
71 county treasurer, who shall receipt therefor in duplicate. The
72 sheriff, or other officer, upon receipt of the county treasurer,
73 shall forthwith deliver one (1) copy of such receipt to the
74 committing court who shall then order the release of such
75 defendant.

76 The order of the court shall set forth the conditions upon
77 which such cash bond is allowed and shall be determined to be the
78 agreement upon which the bailee has agreed.

79 The sums received by the county treasurer shall be deposited
80 by him in a special fund to be known as "Cash Bail Fund," and
81 shall be received by him subject to the terms and conditions of
82 the order of the court.

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