

By: Representatives Bomgar, Gibbs (36th),  
Sykes

To: Judiciary B

HOUSE BILL NO. 720

1 AN ACT TO CREATE A NEW CODE SECTION THAT PROVIDES A COURT,  
2 WHEN DETERMINING THE LEAST ONEROUS CONDITIONS OF RELEASE, SHALL  
3 IMPOSE FINANCIAL CONDITIONS OF RELEASE UPON A DEFENDANT ONLY WHEN  
4 NO OTHER CONDITIONS WILL ENSURE A DEFENDANT'S APPEARANCE IN COURT;  
5 TO PROVIDE THAT IF SUCH FINANCIAL CONDITIONS ARE IMPOSED FOR  
6 RELEASE, A COURT SHALL FIRST CONSIDER AN UNSECURED BOND THAT IS  
7 SET AT AN AMOUNT THAT TAKES INTO CONSIDERATION A DEFENDANT'S  
8 ABILITY TO PAY; TO AMEND SECTIONS 21-23-8 AND 99-5-11, MISSISSIPPI  
9 CODE OF 1972, IN CONFORMITY TO THE PRECEDING SECTION; AND FOR  
10 RELATED PURPOSES.

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

12 **SECTION 1.** When determining the least onerous conditions of  
13 release pursuant to the Mississippi Rules of Criminal Procedure, a  
14 court shall impose financial conditions of release only when no  
15 other conditions will ensure the defendant's appearance. When  
16 financial conditions are imposed, the court shall first consider  
17 releasing the defendant on an unsecured bond. If unsecured bond  
18 is not deemed a sufficient condition of release, and the court  
19 still seeks to impose monetary conditions, bail shall be set at  
20 the lowest level necessary to ensure the defendant's appearance  
21 and with regard to the defendant's financial ability to post bond.  
22 The court shall not impose a financial condition of release that



23 results in the pretrial detention of a defendant solely due to the  
24 defendant's inability to pay. Courts may also use a verified,  
25 evidence-based risk assessment tool to determine conditions for  
26 release.

27 **SECTION 2.** Section 21-23-8, Mississippi Code of 1972, is  
28 amended as follows:

29 21-23-8. (1) (a) The purpose of bail is to guarantee  
30 appearance and a bail bond shall not be forfeited for any other  
31 reason.

32 (b) (i) If a defendant in any criminal case,  
33 proceeding or matter fails to appear for any proceeding as ordered  
34 by the municipal court, then the court shall order the bail  
35 forfeited and a judgment nisi and a bench warrant issued at the  
36 time of nonappearance. The clerk of the municipal court shall  
37 notify the surety of the forfeiture by writ of scire facias, with  
38 a copy of the judgment nisi and bench warrant attached thereto,  
39 within ten (10) working days of such order of judgment nisi either  
40 by personal service or by certified mail. Failure of the clerk to  
41 provide the required notice within ten (10) working days shall  
42 constitute prima facie evidence that the order should be set  
43 aside.

44 (ii) 1. The judgment nisi shall be returnable for  
45 ninety (90) days from the date of issuance. If during that period  
46 the defendant appears before the municipal court, or is arrested  
47 and surrendered, then the judgment nisi shall be set aside. If



48 the surety produces the defendant or provides to the municipal  
49 court reasonable mitigating circumstances upon such showing, then  
50 the forfeiture shall not be made final. If the forfeiture is made  
51 final, a copy of the final judgment shall be served on the surety  
52 within ten (10) working days by either personal service or  
53 certified mail.

54                   2. Reasonable mitigating circumstances shall  
55 be that the defendant is incarcerated in another jurisdiction;  
56 that the defendant is hospitalized under a doctor's care; that the  
57 defendant is in a recognized drug rehabilitation program; that the  
58 defendant has been placed in a witness protection program, in  
59 which case it shall be the duty of any agency placing the  
60 defendant into a witness protection program to notify the  
61 municipal court and the municipal court to notify the surety; or  
62 any other reason justifiable to the municipal court.

63           (2) If a final judgment is entered against a surety licensed  
64 by the Department of Insurance and has not been set aside after  
65 ninety (90) days, or later if such time is extended by the  
66 municipal court issuing the judgment nisi, then the municipal  
67 court shall order the department to revoke the authority of the  
68 surety to write bail bonds. The Commissioner of Insurance shall,  
69 upon notice of the municipal court, notify the surety within five  
70 (5) working days of receipt of the order of revocation. If after  
71 ten (10) working days of the notification the revocation order has  
72 not been set aside by the municipal court, then the commissioner



73 shall revoke the authority of the surety and all agents of the  
74 surety and shall notify the sheriff of every county of such  
75 revocation.

76 (3) If within eighteen (18) months of the date of the final  
77 forfeiture the defendant appears for municipal court, is arrested  
78 or surrendered to the municipal court, or if the defendant is  
79 found to be incarcerated in another jurisdiction and a hold order  
80 placed on the defendant, then the amount of bail, less reasonable  
81 extradition cost, excluding attorney fees, shall be refunded by  
82 the municipal court upon application by the surety.

83 (4) (a) (i) The municipal judge shall set the amount of  
84 bail for persons charged with offenses in municipal court and may  
85 approve the bond or recognizance therefor.

86 (ii) When determining the least onerous conditions  
87 of release pursuant to the Mississippi Rules of Criminal  
88 Procedure, the municipal judge shall impose financial conditions  
89 of release only when no other conditions will ensure the  
90 defendant's appearance. When financial conditions are imposed,  
91 the court shall first consider releasing the defendant on an  
92 unsecured bond. If unsecured bond is not deemed a sufficient  
93 condition of release, and the court still seeks to impose monetary  
94 conditions, bail shall be set at the lowest level necessary to  
95 ensure the defendant's appearance and with regard to the  
96 defendant's financial ability to post bond. The court shall not  
97 impose a financial condition of release that results in the



98 pretrial detention of a defendant solely due to the defendant's  
99 inability to pay. A municipal court judge may also use a  
100 verified, evidence-based risk assessment tool to determine  
101 conditions for release.

102 (b) In instances where the municipal judge is  
103 unavailable and has not provided a bail schedule or otherwise  
104 provided for the setting of bail, it is lawful for any officer or  
105 officers designated by order of the municipal judge to take bond,  
106 cash, property or recognizance, with or without sureties, in a sum  
107 to be determined by the officer, payable to the municipality and  
108 conditioned for the appearance of the person on the return day and  
109 time of the writ before the court to which the warrant is  
110 returnable, or in cases of arrest without a warrant, on the day  
111 and time set by the court or officer for arraignment, and there  
112 remain from day to day and term to term until discharged.

113 (c) All bonds shall be promptly returned to the court,  
114 together with any cash deposited, and be filed and proceeded on by  
115 the court in a case of forfeiture. The chief of the municipal  
116 police or a police officer or officers designated by order of the  
117 municipal judge may approve bonds or recognizances.

118 (d) All bonds and recognizances in municipal court  
119 where the municipal court shall have the jurisdiction to hear and  
120 determine the case may be made payable to the municipality and  
121 shall have the effect to bind the principal and any sureties on



122 the bond or recognizance until they shall be discharged by due  
123 course of law without renewal.

124 **SECTION 3.** Section 99-5-11, Mississippi Code of 1972, is  
125 amended as follows:

126 99-5-11. (1) All justice court judges and all other  
127 conservators of the peace are authorized, whenever a person is  
128 brought before them charged with any offense not capital for which  
129 bail is allowed by law, to take the recognizance or bond of the  
130 person, with sufficient sureties, in such penalty as the justice  
131 court judge or conservator of the peace may require, for his  
132 appearance before the justice court judge or conservator of the  
133 peace for an examination of his case at some future day. And if  
134 the person thus recognized or thus giving bond fails to appear at  
135 the appointed time, it shall be the duty of the justice court  
136 judge or conservator of the peace to return the recognizance or  
137 bond, with his certificate of default, to the court having  
138 jurisdiction of the case, and a recovery may be had therein by  
139 scire facias, as in other cases of forfeiture. The justice court  
140 judge or other conservator of the peace shall also issue an alias  
141 warrant for the defaulter.

142 (2) In circumstances involving an offense against any of the  
143 following: (a) a current or former spouse of the accused or child  
144 of that person; (b) a person living as a spouse or who formerly  
145 lived as a spouse with the accused or a child of that person; (c)  
146 a parent, grandparent, child, grandchild or someone similarly



147 situated to the accused; (d) a person who has a current or former  
148 dating relationship with the accused; or (e) a person with whom  
149 the accused has had a biological or legally adopted child, the  
150 justice court judge or other conservator of the peace shall check,  
151 or cause to be made a check, of the status of the person for whom  
152 recognizance or bond is taken before ordering bail in the  
153 Mississippi Protection Order Registry authorized under Section 93  
154 21 25, and the existence of a domestic abuse protection order  
155 against the accused shall be considered when determining  
156 appropriate bail.

157 (3) When determining the least onerous conditions of release  
158 pursuant to the Mississippi Rules of Criminal Procedure, the  
159 justice court judge or conservator of the peace shall impose  
160 financial conditions of release only when no other conditions will  
161 ensure the defendant's appearance. When financial conditions are  
162 imposed, the court shall first consider releasing the defendant on  
163 an unsecured bond. If unsecured bond is not deemed a sufficient  
164 condition of release, and the court still seeks to impose monetary  
165 conditions, bail shall be set at the lowest level necessary to  
166 ensure the defendant's appearance and with regard to the  
167 defendant's financial ability to post bond. The justice court  
168 judge or conservator of the peace shall not impose a financial  
169 condition of release that results in the pretrial detention of a  
170 defendant solely due to the defendant's inability to pay. A  
171 justice court judge or conservator of the peace may also use a



172 verified, evidence-based risk assessment tool to determine  
173 conditions for release.

174       **SECTION 4.** This act shall take effect and be in force from  
175 and after July 1, 2018.

