

By: Representative Johnson (87th)

To: Judiciary B

HOUSE BILL NO. 1135

1 AN ACT TO AMEND SECTIONS 21-23-8, 99-5-9 AND 99-5-11,
2 MISSISSIPPI CODE OF 1972, TO REVISE BAIL PROCEDURES FOR MUNICIPAL,
3 COUNTY AND JUSTICE COURTS; 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) (a) The purpose of bail is to guarantee
8 appearance and a bail bond shall not be forfeited for any other
9 reason.

10 (b) (i) If a defendant in any criminal case,
11 proceeding or matter fails to appear for any proceeding as ordered
12 by the municipal court, then the court shall order the bail
13 forfeited and a judgment nisi and a bench warrant issued at the
14 time of nonappearance. The clerk of the municipal court shall
15 notify the surety of the forfeiture by writ of scire facias, with
16 a copy of the judgment nisi and bench warrant attached thereto,
17 within ten (10) working days of such order of judgment nisi either
18 by personal service or by certified mail. Failure of the clerk to



19 provide the required notice within ten (10) working days shall
20 constitute prima facie evidence that the order should be set
21 aside.

22 (ii) 1. The judgment nisi shall be returnable for
23 ninety (90) days from the date of issuance. If during that period
24 the defendant appears before the municipal court, or is arrested
25 and surrendered, then the judgment nisi shall be set aside. If
26 the surety produces the defendant or provides to the municipal
27 court reasonable mitigating circumstances upon such showing, then
28 the forfeiture shall not be made final. If the forfeiture is made
29 final, a copy of the final judgment shall be served on the surety
30 within ten (10) working days by either personal service or
31 certified mail.

32 2. Reasonable mitigating circumstances shall
33 be that the defendant is incarcerated in another jurisdiction;
34 that the defendant is hospitalized under a doctor's care; that the
35 defendant is in a recognized drug rehabilitation program; that the
36 defendant has been placed in a witness protection program, in
37 which case it shall be the duty of any agency placing the
38 defendant into a witness protection program to notify the
39 municipal court and the municipal court to notify the surety; or
40 any other reason justifiable to the municipal court.

41 (2) If a final judgment is entered against a surety licensed
42 by the Department of Insurance and has not been set aside after
43 ninety (90) days, or later if such time is extended by the



44 municipal court issuing the judgment nisi, then the municipal
45 court shall order the department to revoke the authority of the
46 surety to write bail bonds. The Commissioner of Insurance shall,
47 upon notice of the municipal court, notify the surety within five
48 (5) working days of receipt of the order of revocation. If after
49 ten (10) working days of the notification the revocation order has
50 not been set aside by the municipal court, then the commissioner
51 shall revoke the authority of the surety and all agents of the
52 surety and shall notify the sheriff of every county of such
53 revocation.

54 (3) If within eighteen (18) months of the date of the final
55 forfeiture the defendant appears for municipal court, is arrested
56 or surrendered to the municipal court, or if the defendant is
57 found to be incarcerated in another jurisdiction and a hold order
58 placed on the defendant, then the amount of bail, less reasonable
59 extradition cost, excluding attorney fees, shall be refunded by
60 the municipal court upon application by the surety.

61 (4) (a) The municipal judge shall set the amount of bail
62 for persons charged with offenses in municipal court and may
63 approve the bond or recognizance therefor. Any defendant who has
64 previously failed to appear on a criminal charge within the
65 previous twelve (12) months or who has previously failed to appear
66 on a criminal charge two (2) or more times within the previous
67 five (5) years shall only be released with a secured appearance
68 bond as defined in the Mississippi Rules of Criminal Procedure.



69 (b) * * * If the municipal judge is unavailable and has
70 not * * * otherwise provided for the setting of bail, it is lawful
71 for any officer or officers designated by order of the municipal
72 judge to take bond, cash, property or recognizance, with or
73 without sureties, in a sum to be determined by the officer from
74 the bond guidelines set out in the Mississippi Rules of Criminal
75 Procedure, payable to the municipality and conditioned for the
76 appearance of the person on the return day and time of the writ
77 before the court to which the warrant is returnable, or in cases
78 of arrest without a warrant, on the day and time set by the court
79 or officer for arraignment, and there remain from day to day and
80 term to term until discharged.

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

86 (d) All bonds and recognizances in municipal court
87 where the municipal court shall have the jurisdiction to hear and
88 determine the case may be made payable to the municipality and
89 shall have the effect to bind the principal and any sureties on
90 the bond or recognizance until they shall be discharged by due
91 course of law without renewal.

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



94 99-5-9. (1) In addition to any type of bail allowed by
95 statute, any committing court, in its discretion, may allow, but
96 not require, any defendant, to whom bail is allowable, to deposit
97 cash as bail bond in lieu of a surety or property bail bond, by
98 depositing such cash sum as the court may direct with the sheriff
99 or officer having custody of defendant, who shall receipt therefor
100 and who shall forthwith deliver the said monies to the county
101 treasurer, who shall receipt therefor in duplicate. The sheriff,
102 or other officer, upon receipt of the county treasurer, shall
103 forthwith deliver one (1) copy of such receipt to the committing
104 court who shall then order the release of such defendant.

105 (2) The order of the court shall set forth the conditions
106 upon which such cash bond is allowed and shall be determined to be
107 the agreement upon which the * * * defendant has agreed.

108 (3) The sums received by the county treasurer shall be
109 deposited by him in a special fund to be known as "Cash Bail
110 Fund," and shall be received by him subject to the terms and
111 conditions of the order of the court.

112 (4) If the committing court authorizes bail by a cash
113 deposit under subsection (1) of this section, but anyone
114 authorized to release a criminal defendant allows the deposit of
115 an amount less than the full amount of the bail ordered by the
116 court, the defendant may post bail by a professional bail agent in
117 an amount equal to one-fourth (1/4) of the full amount fixed under



118 subsection (1) or the amount of the actual deposit whichever is
119 greater.

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

122 99-5-11. (1) All justice court judges and all other
123 conservators of the peace are authorized, whenever a person is
124 brought before them charged with any offense not capital for which
125 bail is allowed by law, to take the recognizance or bond of the
126 person, with sufficient sureties, in such penalty as the justice
127 court judge or conservator of the peace may require, for his
128 appearance before the justice court judge or conservator of the
129 peace for an examination of his case at some future day. Any
130 defendant who has previously failed to appear on a criminal charge
131 within the previous twelve (12) months or who has previously
132 failed to appear on a criminal charge two (2) or more times within
133 the previous five (5) years shall only be released with a secured
134 appearance bond as defined in the Mississippi Rules of Criminal
135 Procedure.

136 (2) * * * If the person thus recognized or thus giving bond
137 fails to appear at the appointed time, it shall be the duty of the
138 justice court judge or conservator of the peace to return the
139 recognizance or bond, with his certificate of default, to the
140 court having jurisdiction of the case, and a recovery may be had
141 therein by scire facias, as in other cases of forfeiture. The



142 justice court judge or other conservator of the peace shall also
143 issue an alias warrant for the defaulter.

144 (3) If the justice court judge or conservator of the peace
145 is unavailable and has not otherwise provided for the setting of
146 bail, it is lawful for any officer or officers designated by order
147 of the justice court judge or conservator of the peace to take
148 bond, cash, property or recognizance, with or without sureties, in
149 a sum to be determined by the officer from the bond guidelines set
150 out in the Mississippi Rules of Criminal Procedure, payable to the
151 county and conditioned for the appearance of the person on the
152 return day and time of the writ before the court to which the
153 warrant is returnable, or in cases of arrest without a warrant, on
154 the day and time set by the court or officer for arraignment, and
155 there remain from day-to-day and term-to-term until discharged.

156 (* * *4) In circumstances involving an offense against any
157 of the following: (a) a current or former spouse of the accused
158 or child of that person; (b) a person living as a spouse or who
159 formerly lived as a spouse with the accused or a child of that
160 person; (c) a parent, grandparent, child, grandchild or someone
161 similarly situated to the accused; (d) a person who has a current
162 or former dating relationship with the accused; or (e) a person
163 with whom the accused has had a biological or legally adopted
164 child, the justice court judge or other conservator of the peace
165 shall check, or cause to be made a check, of the status of the
166 person for whom recognizance or bond is taken before ordering bail



167 in the Mississippi Protection Order Registry authorized under
168 Section 93-21-25, and the existence of a domestic abuse protection
169 order against the accused shall be considered when determining
170 appropriate bail.

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

