

By: Senator(s) Doty

To: Judiciary, Division A

SENATE BILL NO. 2597

1 AN ACT TO AMEND SECTION 21-23-8, MISSISSIPPI CODE OF 1972, TO
2 CLARIFY WHEN RELEASE ON RECOGNIZANCE IS INAPPROPRIATE IN LIEU OF
3 BOND; TO AMEND SECTION 99-5-9, MISSISSIPPI CODE OF 1972, TO
4 CLARIFY WHEN A CASH BOND IS APPROPRIATE IN LIEU OF A SECURITY
5 BOND; TO AMEND SECTION 99-5-11, MISSISSIPPI CODE OF 1972, TO
6 CLARIFY WHEN RELEASE ON RECOGNIZANCE IS INAPPROPRIATE IN LIEU OF
7 BOND, AND WHEN AND BY WHOM BAIL MAY BE SET DURING THE
8 UNAVAILABILITY OF THE JUDGE; AND FOR RELATED PURPOSES.

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

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

12 21-23-8. (1) (a) The purpose of bail is to guarantee
13 appearance and a bail bond shall not be forfeited for any other
14 reason.

15 (b) (i) If a defendant in any criminal case,
16 proceeding or matter fails to appear for any proceeding as ordered
17 by the municipal court, then the court shall order the bail
18 forfeited and a judgment nisi and a bench warrant issued at the
19 time of nonappearance. The clerk of the municipal court shall
20 notify the surety of the forfeiture by writ of scire facias, with
21 a copy of the judgment nisi and bench warrant attached thereto,



22 within ten (10) working days of such order of judgment nisi either
23 by personal service or by certified mail. Failure of the clerk to
24 provide the required notice within ten (10) working days shall
25 constitute prima facie evidence that the order should be set
26 aside.

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

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



46 (2) If a final judgment is entered against a surety licensed
47 by the Department of Insurance and has not been set aside after
48 ninety (90) days, or later if such time is extended by the
49 municipal court issuing the judgment nisi, then the municipal
50 court shall order the department to revoke the authority of the
51 surety to write bail bonds. The Commissioner of Insurance shall,
52 upon notice of the municipal court, notify the surety within five
53 (5) working days of receipt of the order of revocation. If after
54 ten (10) working days of the notification the revocation order has
55 not been set aside by the municipal court, then the commissioner
56 shall revoke the authority of the surety and all agents of the
57 surety and shall notify the sheriff of every county of such
58 revocation.

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

66 (4) (a) The municipal judge shall set the amount of bail
67 for persons charged with offenses in municipal court and may
68 approve the bond or recognizance therefor. A defendant who failed
69 to appear on a criminal charge within the preceding twelve (12)
70 months or who failed to appear on a criminal charge two (2) or



71 more times within the preceding five (5) years is eligible for
72 release only with a secured appearance bond as defined in the
73 Mississippi Rules of Criminal Procedure.

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

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

91 (d) All bonds and recognizances in municipal court
92 where the municipal court shall have the jurisdiction to hear and
93 determine the case may be made payable to the municipality and
94 shall have the effect to bind the principal and any sureties on



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

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

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

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

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

(4) If the committing court authorizes bail by a cash deposit under subsection (1) of this section, but anyone authorized to release a criminal defendant allows the deposit of



an amount less than the full amount of the bail ordered by the court, the defendant may post bail by a professional bail agent in an amount equal to one-fourth (1/4) of the full amount fixed under subsection (1) or the amount of the actual deposit whichever is greater.

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

99-5-11. (1) All justice court judges and all other conservators of the peace are authorized, whenever a person is brought before them charged with any offense not capital for which bail is allowed by law, to take the recognizance or bond of the person, with sufficient sureties, in such penalty as the justice court judge or conservator of the peace may require, for his appearance before the justice court judge or conservator of the peace for an examination of his case at some future day. A defendant who failed to appear on a criminal charge within the preceding twelve (12) months or who failed to appear on a criminal charge two (2) or more times within the preceding five (5) years is eligible for release only with a secured appearance bond as defined in the Mississippi Rules of Criminal Procedure.

(2) * * * If the person thus recognized or thus giving bond fails to appear at the appointed time, it shall be the duty of the justice court judge or conservator of the peace to return the recognizance or bond, with his certificate of default, to the court having jurisdiction of the case, and a recovery may be had



therein by scire facias, as in other cases of forfeiture. The justice court judge or other conservator of the peace shall also issue an alias warrant for the defaulter.

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

(* * *4) In circumstances involving an offense against any of the following: (a) a current or former spouse of the accused or child of that person; (b) a person living as a spouse or who formerly lived as a spouse with the accused or a child of that person; (c) a parent, grandparent, child, grandchild or someone similarly situated to the accused; (d) a person who has a current or former dating relationship with the accused; or (e) a person with whom the accused has had a biological or legally adopted child, the justice court judge or other conservator of the peace shall check, or cause to be made a check, of the status of the



170 person for whom recognizance or bond is taken before ordering bail
171 in the Mississippi Protection Order Registry authorized under
172 Section 93-21-25, and the existence of a domestic abuse protection
173 order against the accused shall be considered when determining
174 appropriate bail.

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

