

By: Representative Scott

To: Judiciary B

HOUSE BILL NO. 964

1 AN ACT TO AMEND SECTIONS 99-39-5 AND 99-39-27, MISSISSIPPI  
2 CODE OF 1972, TO PROVIDE THAT THE DISMISSAL OR DENIAL OF  
3 POST-CONVICTION RELIEF IS NOT A BAR TO A SECOND OR SUCCESSIVE  
4 APPLICATION OR MOTION FOR RELIEF WHEN THERE HAS BEEN AN ADOPTION  
5 OR ENACTMENT OF STATE LAW THAT WOULD HAVE ACTUALLY ADVERSELY  
6 AFFECTED THE OUTCOME OF THE CONVICTION OR SENTENCE; AND FOR  
7 RELATED PURPOSES.

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

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

11 99-39-5. (1) Any person sentenced by a court of record of  
12 the State of Mississippi, including a person currently  
13 incarcerated, civilly committed, on parole or probation or subject  
14 to sex offender registration for the period of the registration or  
15 for the first five (5) years of the registration, whichever is the  
16 shorter period, may file a motion to vacate, set aside or correct  
17 the judgment or sentence, a motion to request forensic DNA testing  
18 of biological evidence, or a motion for an out-of-time appeal if  
19 the person claims:



20 (a) That the conviction or the sentence was imposed in  
21 violation of the Constitution of the United States or the  
22 Constitution or laws of Mississippi;

23 (b) That the trial court was without jurisdiction to  
24 impose sentence;

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

27 (d) That the sentence exceeds the maximum authorized by  
28 law;

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

32 (f) That there exists biological evidence secured in  
33 relation to the investigation or prosecution attendant to the  
34 petitioner's conviction not tested, or, if previously tested, that  
35 can be subjected to additional DNA testing, that would provide a  
36 reasonable likelihood of more probative results, and that testing  
37 would demonstrate by reasonable probability that the petitioner  
38 would not have been convicted or would have received a lesser  
39 sentence if favorable results had been obtained through such  
40 forensic DNA testing at the time of the original  
41 prosecution \* \* \*;

42 (g) That his plea was made involuntarily;



43 (h) That his sentence has expired; his probation,  
44 parole or conditional release unlawfully revoked; or he is  
45 otherwise unlawfully held in custody;

46 (i) That he is entitled to an out-of-time appeal; or

47 (j) That the conviction or sentence is otherwise  
48 subject to collateral attack upon any grounds of alleged error  
49 heretofore available under any common law, statutory or other  
50 writ, motion, petition, proceeding or remedy.

51 (2) A motion for relief under this article shall be made  
52 within three (3) years after the time in which the petitioner's  
53 direct appeal is ruled upon by the Supreme Court of Mississippi  
54 or, in case no appeal is taken, within three (3) years after the  
55 time for taking an appeal from the judgment of conviction or  
56 sentence has expired, or in case of a guilty plea, within three  
57 (3) years after entry of the judgment of conviction. Excepted  
58 from this three-year statute of limitations are those cases in  
59 which the petitioner can demonstrate either:

60 (a) (i) That there has been an intervening decision of  
61 the Supreme Court of either the State of Mississippi or the United  
62 States which would have actually adversely affected the outcome of  
63 his conviction or sentence or that he has evidence, not reasonably  
64 discoverable at the time of trial, which is of such nature that it  
65 would be practically conclusive that had such been introduced at  
66 trial it would have caused a different result in the conviction or  
67 sentence; or



68 (ii) That, even if the petitioner pled guilty or  
69 nolo contendere, or confessed or admitted to a crime, there exists  
70 biological evidence not tested, or, if previously tested, that can  
71 be subjected to additional DNA testing that would provide a  
72 reasonable likelihood of more probative results, and that testing  
73 would demonstrate by reasonable probability that the petitioner  
74 would not have been convicted or would have received a lesser  
75 sentence if favorable results had been obtained through such  
76 forensic DNA testing at the time of the original  
77 prosecution \* \* \*; or

78 (iii) That there has been an adoption or enactment  
79 of state law that would have actually adversely affected the  
80 outcome of the conviction or sentence.

81 (b) Likewise excepted are those cases in which the  
82 petitioner claims that his sentence has expired or his probation,  
83 parole or conditional release has been unlawfully revoked.  
84 Likewise excepted are filings for post-conviction relief in  
85 capital cases which shall be made within one (1) year after  
86 conviction.

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

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

92 (5) For the purposes of this article:



93           (a) "Biological evidence" means the contents of a  
94 sexual assault examination kit and any item that contains blood,  
95 semen, hair, saliva, skin tissue, fingernail scrapings, bone,  
96 bodily fluids or other identifiable biological material that was  
97 collected as part of the criminal investigation or may reasonably  
98 be used to incriminate or exculpate any person for the offense.  
99 This definition applies whether that material is catalogued  
100 separately, such as on a slide, swab or in a test tube, or is  
101 present on other evidence, including, but not limited to,  
102 clothing, ligatures, bedding or other household material, drinking  
103 cups, cigarettes or other items \* \* \*.

104           (b) "DNA" means deoxyribonucleic acid.

105           **SECTION 2.** Section 99-39-27, Mississippi Code of 1972, is  
106 amended as follows:

107           99-39-27. (1) The application for leave to proceed in the  
108 trial court filed with the Supreme Court under Section 99-39-7  
109 shall name the State of Mississippi as the respondent.

110           (2) The application shall contain the original and two (2)  
111 executed copies of the motion proposed to be filed in the trial  
112 court together with such other supporting pleadings and  
113 documentation as the Supreme Court by rule may require.

114           (3) The prisoner shall serve an executed copy of the  
115 application upon the Attorney General simultaneously with the  
116 filing of the application with the court.



117 (4) The original motion, together with all files, records,  
118 transcripts and correspondence relating to the judgment under  
119 attack, shall promptly be examined by the court.

120 (5) Unless it appears from the face of the application,  
121 motion, exhibits and the prior record that the claims presented by  
122 those documents are not procedurally barred under Section 99-39-21  
123 and that they further present a substantial showing of the denial  
124 of a state or federal right, the court shall by appropriate order  
125 deny the application. The court may, in its discretion, require  
126 the Attorney General upon sufficient notice to respond to the  
127 application.

128 (6) The court, upon satisfaction of the standards set forth  
129 in this article, is empowered to grant the application.

130 (7) In granting the application, the court, in its  
131 discretion, may:

132 (a) Where sufficient facts exist from the face of the  
133 application, motion, exhibits, the prior record and the state's  
134 response, together with any exhibits submitted with those  
135 documents, or upon stipulation of the parties, grant or deny any  
136 or all relief requested in the attached motion.

137 (b) Allow the filing of the motion in the trial court  
138 for further proceedings under Sections 99-39-13 through 99-39-23.

139 (8) No application or relief shall be granted without the  
140 Attorney General being given at least five (5) days to respond.



141           (9) Except as otherwise provided in this subsection, the  
142 dismissal or denial of an application under this section is a  
143 final judgment and shall be a bar to a second or successive  
144 application under this article. Excepted from this prohibition is  
145 an application filed under Section 99-19-57(2), raising the issue  
146 of the offender's supervening mental illness before the execution  
147 of a sentence of death. A dismissal or denial of an application  
148 relating to mental illness under Section 99-19-57(2) shall be res  
149 judicata on the issue and shall likewise bar any second or  
150 successive applications on the issue. Likewise excepted from this  
151 prohibition are those cases in which the prisoner can demonstrate  
152 either that there has been an intervening decision of the Supreme  
153 Court of either the State of Mississippi or the United States that  
154 would have actually adversely affected the outcome of his  
155 conviction or sentence or that he has evidence, not reasonably  
156 discoverable at the time of trial, that is of such nature that it  
157 would be practically conclusive that, if it had been introduced at  
158 trial, it would have caused a different result in the conviction  
159 or sentence. Likewise \* \* \* excepted are those cases in which the  
160 prisoner claims that his sentence has expired or his probation,  
161 parole or conditional release has been unlawfully revoked. The  
162 dismissal or denial of an application under this section is not a  
163 bar to a second or successive application under this article when  
164 there has been an adoption or enactment of state law that would



165 have actually adversely affected the outcome of the conviction or  
166 sentence.

167 (10) Proceedings under this section shall be subject to the  
168 provisions of Section 99-19-42.

169 (11) Post-conviction proceedings in which the defendant is  
170 under sentence of death shall be governed by rules established by  
171 the Supreme Court as well as the provisions of this section.

172 **SECTION 3.** This act shall take effect and be in force from  
173 and after July 1, 2019.

