

By: Representative Anderson

To: Judiciary B

HOUSE BILL NO. 1081

1 AN ACT TO AMEND SECTIONS 21-23-8, 99-5-11 AND 99-5-13,
2 MISSISSIPPI CODE OF 1972, TO PROVIDE DEFINITIONS RELATED TO BAIL;
3 TO REVISE THE PROCEDURES FOR INITIAL BAIL APPEARANCES; TO REVISE
4 PROCEDURES FOR PRETRIAL RELEASE; TO CLARIFY HOW THE AMOUNT OF BAIL
5 FOR A MINOR IS DETERMINED; TO REQUIRE CERTAIN INFORMATION TO BE
6 PROVIDED TO DEFENDANTS UPON RELEASE; AND FOR RELATED PURPOSES.

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

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

10 21-23-8. (1) The following words shall have the meanings
11 ascribed herein, unless the context indicates otherwise:

12 (a) "Bail" means a monetary amount for or condition of
13 pretrial release from custody, normally set by a judge at the
14 initial appearance.

15 (b) "Cash deposit bond" means an appearance bond
16 secured by deposit with the clerk of security, in the form of a
17 cash deposit or certified funds, in an amount set by the judge.

18 (c) "Personal recognizance" means release of a
19 defendant without any condition relating to a deposit of any
20 financial or monetary security.



21 (d) "Unsecured appearance bond" means an undertaking to
22 pay a specified sum of money to the clerk of the circuit, county,
23 justice, or municipal court, for the use of the State of
24 Mississippi or the municipality, on the failure of a person
25 released to comply with its conditions.

26 (e) "Secured appearance bond" means an appearance bond
27 secured by deposit with the clerk of security equal to the full
28 amount thereof.

29 (f) "Surety" means someone, other than the person
30 seeking release, who executes an appearance bond, and is therefore
31 bound to pay its amount, if the person released fails to appear
32 for any proceeding as ordered by the court.

33 (* * *2) (a) The purpose of bail is to guarantee
34 appearance and a bail bond shall not be forfeited for any other
35 reason. Any defendant charged with an offense that is eligible
36 for bail shall be released as a matter of right before or during
37 trial with nonfinancial or monetary conditions, including, but not
38 limited to, the defendant's personal recognizance, an unsecured
39 appearance bond, or other nonfinancial condition, unless the court
40 before which the charge is filed or pending determines in writing
41 or evidences such in the record that such a release will not
42 reasonably assure the defendant's appearance as required, or that
43 the defendant's release poses a risk of imminent serious physical
44 harm to a reasonably identifiable person.



45 (b) (i) A bail hearing shall be held at the initial
46 appearance within forty-eight (48) hours of arrest. Nothing shall
47 prohibit a judicial officer from issuing a standing order
48 authorizing release on recognizance, on an unsecured appearance
49 bond, or nonfinancial condition for individuals charged with
50 misdemeanor offenses prior to the initial appearance. When a
51 court orders nonfinancial conditions, the court shall impose the
52 least onerous restrictive condition or set of conditions, as
53 described in subsection (5) of this section that will reasonably
54 assure the defendant's appearance, or will eliminate or minimize
55 the risk of imminent serious physical harm to a reasonably
56 identifiable person.

57 (* * * ii) If a defendant in any criminal case,
58 proceeding or matter fails to * * * make a first appearance for
59 any proceeding as ordered by the municipal * * * judge, * * * the
60 court shall issue a notice to the defendant that he or she failed
61 to appear as required by law in a documented form, including, but
62 not limited to, an email, certified mailed letter, text message or
63 personal service; and shall issue a summons by certified mail or
64 personal service to that defendant that requires appearance in
65 court on a new date.

66 If the defendant in any misdemeanor criminal case, proceeding
67 or matter fails to make a second appearance, the court shall serve
68 the defendant by certified mail or personal service with a notice
69 to appear in court for a bail forfeiture hearing. During such



70 hearing, the court shall consider any information specific to the
71 individual defendant's circumstances, including, but not limited
72 to, the date, location and time of the appearance, or any other
73 justifiable mitigating circumstances. Before the court
74 orders * * * bail forfeited and a judgment nisi and a bench
75 warrant issued at the time of nonappearance, the court shall
76 provide a record to establish that a defendant's failure to appear
77 was willful. Only upon a determination that the failure to appear
78 was willful, shall the clerk of the municipal court * * * notify
79 the surety of the forfeiture by writ of scire facias, with a copy
80 of the judgment nisi and bench warrant attached thereto, within
81 ten (10) working days of such order of judgment nisi either by
82 personal service or by certified mail. Failure of the clerk to
83 provide the required notice within ten (10) working days shall
84 constitute prima facie evidence that the order should be set
85 aside.

86 (* * *iii) 1. The judgment nisi shall be
87 returnable for ninety (90) days from the date of issuance. If
88 during that period the defendant appears before the municipal
89 court, or is arrested and surrendered, then the judgment nisi
90 shall be set aside. If the surety produces the defendant or
91 provides to the municipal court reasonable mitigating
92 circumstances upon such showing, then the forfeiture shall not be
93 made final. If the forfeiture is made final, a copy of the final



judgment shall be served on the surety within ten (10) working days by either personal service or certified mail.

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

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



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

(* * *5) (a) The municipal judge shall * * * determine the conditions, of a defendant's release at the initial appearance. Every order of release granted under the provisions of this section shall include:

(i) The date and time that the defendant is to appear in court, and clearly state that the defendant shall comply with all orders of the court;

(ii) Language that the defendant is prohibited from committing additional crimes during such release;

(iii) A requirement that the defendant promptly notify the court of any change of address; and

(iv) Language that explains to the defendant that he or she is to meet with the public defender or retained attorney as directed by such person.

(b) If, in accordance with subsection (2)(a) of this section, the judge finds in writing or on the record that the defendant cannot be released pending or during trial on the defendant's personal recognizance or on an unsecured appearance



bond, the judge may order one (1) or more of the following
conditions to secure a defendant's appearance or to protect the
public:

(i) Execution of a cash deposit bond in an amount
specified by the court, either with or without requiring that the
defendant deposit with the clerk security in an amount as required
by the court;

(ii) Execution of a secured appearance bond;

(iii) Placing the defendant in the custody of a
designated person or organization agreeing to supervise the
defendant;

(iv) Restrictions on the defendant's travel,
associations, or place of abode during the period of release;

(v) Restrictions on the defendant's direct or
indirect contact with any specified person(s);

(vi) Return to custody after specified hours;
and/or

(vii) Any other conditions which the court deems
necessary.

(6) (a) A defendant may not be detained on an unaffordable
secured money bail. A secured appearance bond shall be considered
unattainable if the defendant cannot afford to pay the secured
appearance bond within twenty-four (24) hours.

(b) Before requiring a secured appearance bond, a court
must make a substantive finding in writing or evidence in the



record whether the defendant has the present ability to pay the secured appearance bond within twenty-four (24) hours. A secured appearance bond shall be considered presumptively unattainable if the defendant (i) receives public assistance, under programs such as the Supplemental Nutrition Assistance Program (also known as food stamps), Temporary Assistance for Needy Families, or Medicaid; (ii) receives Disability Insurance; (iii) resides in public housing; or (iv) earns less than one hundred twenty-five percent (125%) of the current Federal Poverty Guidelines. The bail for any minor whose case, proceeding or matter, falls under the jurisdiction of the municipal court, shall be based on the ability of the parents or legal guardians to pay such bail. The judge shall not consider the financial ability of friends or relatives not legally responsible for the defendant when determining bail. The judge shall only consider the value in tangible personal property, including, but not limited to, motor vehicles, household goods, cash on hand, etc., other assets or monies in excess of Ten Thousand Dollars (\$10,000.00). Any such property valued up to Ten Thousand Dollars (\$10,000.00), and any such property exempt from seizure by Section 85-3-1 shall be excluded from any determination of bail. Under no circumstances shall bail be set in an amount greater than the maximum fine for a charged offense.

(* * *7) In instances where the municipal judge is unavailable * * *, the court shall provide for the setting of bail



193 by another judge to ensure individualized assessment as required
194 and provided in this section.

195 (* * *8) All bonds shall be promptly returned to the court,
196 together with any cash deposited, and be filed and proceeded on by
197 the court in a case of forfeiture. * * *

198 (* * *9) All bonds and recognizances in municipal court
199 where the municipal court shall have the jurisdiction to hear and
200 determine the case may be made payable to the municipality and
201 shall have the effect to bind the principal and any sureties on
202 the bond or recognizance until they shall be discharged by due
203 course of law without renewal.

204 **SECTION 2.** Section 99-5-11, Mississippi Code of 1972, is
205 amended as follows:

206 99-5-11. (1) All justice court judges and all other
207 conservators of the peace * * * shall, whenever a person is
208 brought before them charged with any offense not capital for which
209 bail is allowed by law, to take the recognizance or bond of the
210 person, * * * as a matter of right release a defendant pending or
211 during trial on the personal recognizance or on an appearance bond
212 unless the court before which the charge is filed or pending
213 determines that such a release will not reasonably assure the
214 defendant's appearance as required, or that the defendant's
215 release poses a risk of imminent serious physical harm to a
216 reasonably identifiable person. Before requiring a secured
217 appearance bond, a court shall make a substantive finding in



218 writing or evidence in the record whether the defendant has the
219 present ability to pay the secured appearance bond within
220 twenty-four (24) hours. A secured appearance bond shall be
221 considered presumptively unattainable if the defendant (a)
222 receives public assistance, under programs such as the
223 Supplemental Nutrition Assistance Program (also known as food
224 stamps), Temporary Assistance for Needy Families, or Medicaid; (b)
225 receives Disability Insurance; (c) resides in public housing; or
226 (d) earns less than one hundred twenty-five percent (125%) of the
227 current Federal Poverty Guidelines. The bail for any minor whose
228 case, proceeding or matter falls under the jurisdiction of the
229 municipal court, shall be based on the ability of the parents or
230 legal guardians to pay such bail. The judge shall not consider
231 the financial ability of friends or relatives not legally
232 responsible for the defendant when determining bail. The judge
233 shall only consider the value in tangible personal property,
234 including, but not limited to, motor vehicles, household goods,
235 cash on hand, etc., other assets or monies in excess of Ten
236 Thousand Dollars (\$10,000.00). Any such property valued up to Ten
237 Thousand Dollars (\$10,000.00), and any such property exempt from
238 seizure by Section 85-3-1 shall be excluded from any determination
239 of bail. Under no circumstances shall bail be set in an amount
240 greater than the maximum fine for a charged offense. It shall be
241 the duty of the justice court judge or conservator of the peace to
242 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. * * *

(2) 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 person for whom recognizance or bond is taken before ordering bail in the Mississippi Protection Order Registry authorized under Section 93-21-25, and the existence of a domestic abuse protection order against the accused shall be considered when determining appropriate bail. The listing of a defendant's name on the registry shall not be the sole reason for which bail should be denied, unless the court before which the charge is filed or pending determines that such a release will not reasonably assure the defendant's appearance as required, or the defendant's release poses a risk of imminent serious physical harm to a reasonably identifiable person who is the subject of a protective order. If bail is allowed, the justice court judge or other conservator of



the peace shall provide notice to the person or persons who are protected by the order.

SECTION 3. Section 99-5-13, Mississippi Code of 1972, is amended as follows:

99-5-13. * * * When a defendant has failed to appear, after being given proper notice as specified in Section 99-5-11, or has failed to comply with the least onerous nonfinancial conditions ordered by the court, the court, only after a determination made and explained in writing or evidenced in the record about the accused's present ability to reasonably pay the secured appearance bond within twenty-four (24) hours, shall issue a summons to require the defendant to give bail as reasonably necessary to ensure court appearances.

Before determining bail, the conservator of the peace or justice of the peace shall evaluate a defendant's ability to pay a secured appearance bond. A secured appearance bond shall be considered presumptively unattainable if the defendant (i) receives public assistance, under programs such as the Supplemental Nutrition Assistance Program (also known as food stamps), Temporary Assistance for Needy Families, or Medicaid; (ii) receives Disability Insurance; (iii) resides in public housing; or (iv) earns less than one hundred twenty-five percent (125%) of the current Federal Poverty Guidelines. The bail for any minor whose case, proceeding or matter, falls under the jurisdiction of the municipal court, shall be based on the ability



of the parents or legal guardians to pay such bail. The judge
shall not consider the financial ability of friends or relatives
not legally responsible for the defendant when determining bail.
The judge shall only consider the value in tangible personal
property, including, but not limited to, motor vehicles, household
goods, cash on hand, etc., other assets or monies in excess of Ten
Thousand Dollars (\$10,000.00). Any such property valued up to Ten
Thousand Dollars (\$10,000.00), and any such property exempt from
seizure by Section 85-3-1 shall be excluded from any determination
of bail. Under no circumstances shall bail be set in an amount
greater than the maximum fine for a charged offense.

SECTION 4. This act shall take effect and be in force from
and after July 1, 2019.

