

By: Representative Newman

To: Judiciary B

HOUSE BILL NO. 300
(As Passed the House)

1 AN ACT TO BRING FORWARD SECTIONS 21-23-8, 99-5-9, AND
2 99-5-11, MISSISSIPPI CODE OF 1972, WHICH PROVIDE BAIL PROCEDURES
3 FOR MUNICIPAL, COUNTY AND JUSTICE COURTS, FOR PURPOSES OF
4 AMENDMENT; AND FOR RELATED PURPOSES.

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

6 **SECTION 1.** Section 21-23-8, Mississippi Code of 1972, is
7 brought forward as follows:

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

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



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

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

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

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



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

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

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

65 (b) In instances where the municipal judge is
66 unavailable and has not provided a bail schedule or otherwise
67 provided for the setting of bail, it is lawful for any officer or
68 officers designated by order of the municipal judge to take bond,
69 cash, property or recognizance, with or without sureties, in a sum



70 to be determined by the officer, payable to the municipality and
71 conditioned for the appearance of the person on the return day and
72 time of the writ before the court to which the warrant is
73 returnable, or in cases of arrest without a warrant, on the day
74 and time set by the court or officer for arraignment, and there
75 remain from day to day and term to term until discharged.

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

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

87 **SECTION 2.** Section 99-5-9, Mississippi Code of 1972, is
88 brought forward as follows:

89 99-5-9. (1) In addition to any type of bail allowed by
90 statute, any committing court, in its discretion, may allow any
91 defendant, to whom bail is allowable, to deposit cash as bail bond
92 in lieu of a surety or property bail bond, by depositing such cash
93 sum as the court may direct with the sheriff or officer having
94 custody of defendant, who shall receipt therefor and who shall



95 forthwith deliver the said monies to the county treasurer, who
96 shall receipt therefor in duplicate. The sheriff, or other
97 officer, upon receipt of the county treasurer, shall forthwith
98 deliver one (1) copy of such receipt to the committing court who
99 shall then order the release of such defendant.

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

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

107 (4) If the committing court authorizes bail by a cash
108 deposit under subsection (1) of this section, but anyone
109 authorized to release a criminal defendant allows the deposit of
110 an amount less than the full amount of the bail ordered by the
111 court, the defendant may post bail by a professional bail agent in
112 an amount equal to one-fourth (1/4) of the full amount fixed under
113 subsection (1) or the amount of the actual deposit whichever is
114 greater.

115 **SECTION 3.** Section 99-5-11, Mississippi Code of 1972, is
116 brought forward as follows:

117 99-5-11. **All conservators of the peace may take recognizance**
118 **or bond; certificate of default; alias warrant; when protection**
119 **order registry must be checked; when bond not required.** (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. And 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.

(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



145 recognizance or bond is taken before ordering bail in the
146 Mississippi Protection Order Registry authorized under Section
147 93-21-25, and the existence of a domestic abuse protection order
148 against the accused shall be considered when determining
149 appropriate bail.

150 (3) After the court considers the provisions of subsection
151 (2) of this section, a misdemeanant may be released on his or her
152 own recognizance unless:

153 (a) The misdemeanant:

154 (i) Is on probation or parole;

155 (ii) Has other unresolved charges pending; or

156 (iii) Has a history of nonappearance; or

157 (b) The court finds that:

158 (i) The release of the misdemeanant would
159 constitute a special danger to any other person or to the
160 community; or

161 (ii) Release of the misdemeanant on his or her own
162 recognizance is highly unlikely to assure the appearance of the
163 misdemeanant as required.

164 **SECTION 4.** This act shall take effect and be in force from
165 and after July 1, 2021, and shall stand repealed on June 30, 2021.

