

By: Representative Newman

To: Judiciary B

HOUSE BILL NO. 366

1 AN ACT TO AMEND SECTION 21-23-8, MISSISSIPPI CODE OF 1972, TO
 2 PROVIDE THAT THE AMOUNT OF BAIL SHALL BE PRESUMED TO BE ATTAINABLE
 3 BY THE DEFENDANT; TO REQUIRE THE COURT TO MAKE A DETERMINATION OF
 4 WHETHER THE DEFENDANT CAN BE RELEASED ON RECOGNIZANCE IN CASES OF
 5 INDIGENCY; TO PROVIDE THAT NO MISDEMEANOR DEFENDANT SHALL BE
 6 INCARCERATED OR RELEASED SOLELY BECAUSE HE CANNOT AFFORD TO POST
 7 BAIL; TO PROVIDE THAT THE COURT MAY NOT REQUIRE CASH BAIL FROM THE
 8 DEFENDANT; TO AMEND SECTION 99-5-9, MISSISSIPPI CODE OF 1972, TO
 9 CONFORM TO THE PRECEDING SECTION; AND FOR RELATED PURPOSES.

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

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

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

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



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

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

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



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

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

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

70 (b) Financial conditions of bail shall not be set for
71 the sole purpose of detaining the defendant. When bail is set, it



72 is presumed that the amount of bail is both necessary to
73 reasonably assure the safety of a victim, witness or general
74 public, and to guarantee the appearance of a defendant as required
75 by the court. The amount of bail is also presumed to be
76 attainable by the defendant. The presumption that bail is
77 attainable by the defendant may be rebutted by the defendant who
78 may file a motion to reduce or set aside the bail requirement with
79 the court due to lack of financial means, which shall also
80 consider the availability of a third-party support system to
81 obtain the defendant's release. The court shall rule on any such
82 motion within forty-eight (48) hours of the filing.

83 (c) In cases in which the defendant or his counsel
84 asserts that the defendant is indigent and cannot afford the
85 amount of bail, the municipal judge shall make a determination of
86 whether the defendant can be released on recognizance, based on
87 the standards enumerated in the Mississippi Rules of Criminal
88 Procedure and any other factors considered relevant by the
89 municipal judge. No misdemeanor defendant shall be incarcerated
90 solely because the defendant cannot afford to post bail; nor shall
91 a misdemeanor defendant be released solely because the defendant
92 cannot afford bail. It is the duty of the municipal judge to
93 ensure that release of the defendant does not jeopardize the
94 community. A defendant who has previously failed to appear on a
95 criminal charge shall be released only with secured bail.



96 (* * *d) * * * If the municipal judge is
97 unavailable * * *, it is lawful for any officer or officers
98 designated by order of the municipal judge to take bond, cash,
99 property or recognizance, with or without sureties, in a sum * * *
100 as set by the * * * bail schedule, payable to the municipality and
101 conditioned for the appearance of the person on the return day and
102 time of the writ before the court to which the warrant is
103 returnable, or in cases of arrest without a warrant, on the day
104 and time set by the court or officer for arraignment, and there
105 remain from day to day and term to term until discharged.

106 (* * *e) All bonds shall be promptly returned to the
107 court, together with any cash deposited, and be filed and
108 proceeded on by the court in a case of forfeiture. The chief of
109 the municipal police or a police officer or officers designated by
110 order of the municipal judge may approve bonds or recognizances.

111 (* * *f) All bonds and recognizances in municipal
112 court where the municipal court shall have the jurisdiction to
113 hear and determine the case may be made payable to the
114 municipality and shall have the effect to bind the principal and
115 any sureties on the bond or recognizance until they shall be
116 discharged by due course of law without renewal.

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

119 99-5-9. (1) In addition to any type of bail allowed by
120 statute, any committing court, in its discretion, may allow, but



121 not require, any defendant, to whom bail is allowable, to deposit
122 cash as bail bond in lieu of a surety or property bail bond, by
123 depositing such cash sum as the court may direct with the sheriff
124 or officer having custody of defendant, who shall receipt therefor
125 and who shall forthwith deliver the said monies to the county
126 treasurer, who shall receipt therefor in duplicate. The sheriff,
127 or other officer, upon receipt of the county treasurer, shall
128 forthwith deliver one (1) copy of such receipt to the committing
129 court who shall then order the release of such defendant.

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

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

137 (4) If the committing court authorizes bail by a cash
138 deposit under subsection (1) of this section, but anyone
139 authorized to release a criminal defendant allows the deposit of
140 an amount less than the full amount of the bail ordered by the
141 court, the defendant may post bail by a professional bail agent in
142 an amount equal to one-fourth (1/4) of the full amount fixed under
143 subsection (1) or the amount of the actual deposit whichever is
144 greater.



145 **SECTION 3.** This act shall take effect and be in force from
146 and after July 1, 2022.

