

By: Representatives Newman, Karriem

To: Judiciary B

HOUSE BILL NO. 1021
(As Passed the House)

1 AN ACT TO AMEND SECTIONS 21-23-8, 99-5-9 AND 99-5-11,
2 MISSISSIPPI CODE OF 1972, TO PROVIDE A PROCEDURE TO DETERMINE BAIL
3 FOR INDIGENT DEFENDANTS; AND FOR RELATED PURPOSES.

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

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

7 21-23-8. (1) (a) The purpose of bail is to guarantee
8 appearance and a bail bond shall not be forfeited for any other
9 reason.

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



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

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

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

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



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

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

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

64 (b) The court shall not set the financial conditions of
65 bail solely for the purpose of detaining the defendant. When bail
66 is set, it is presumed that the amount of bail is both necessary
67 to reasonably assure the safety of a victim, witness or the
68 general public and to guarantee the appearance of a defendant as



69 required by the court. The amount of bail is also presumed to be
70 attainable by the defendant. The presumption that bail is
71 attainable by the defendant may be rebutted by the defendant who
72 may file a motion to reduce or set aside the bail requirement with
73 the court due to lack of financial means, which shall also
74 consider the availability of a third-party support system to
75 obtain the defendant's release. The court shall rule on any such
76 motion within forty-eight (48) hours of the filing.

77 (c) If the defendant or his counsel asserts that the
78 defendant is indigent and cannot afford the amount of bail, the
79 municipal judge shall make a determination of whether the
80 defendant can be released on recognizance, based on the standards
81 enumerated in the Mississippi Rules of Criminal Procedure and any
82 other factors considered relevant by the municipal judge. No
83 misdemeanor defendant shall be incarcerated solely because the
84 defendant cannot afford to post bail; nor shall a misdemeanor
85 defendant be released solely because the defendant cannot afford
86 bail. It is the duty of the municipal judge to ensure that
87 release of the defendant does not jeopardize the community.

88 (d) The accused may waive an appearance before the
89 judge and execute an appearance bond in an amount determined by
90 the court from the bond guidelines set out in the Mississippi
91 Rules of Criminal Procedure and agree to appear at a specified
92 time and place.



93 (* * *e) * * * If the municipal judge is unavailable
94 and has not provided a bail schedule or otherwise provided for the
95 setting of bail, it is lawful for any officer or officers
96 designated by order of the municipal judge to take bond, cash,
97 property or recognizance, with or without sureties, * * * in the
98 amount of the minimum bail specified in the bond guidelines set
99 out in the Mississippi Rules of Civil Procedure, payable to the
100 municipality and conditioned for the appearance of the person on
101 the return day and time of the writ before the court to which the
102 warrant is returnable, or in cases of arrest without a warrant, on
103 the day and time set by the court or officer for arraignment, and
104 there remain from day to day and term to term until discharged.

105 (f) In circumstances involving an offense against any
106 of the following: (i) a current or former spouse of the accused
107 or child of that person; (ii) a person living as a spouse or who
108 formerly lived as a spouse with the accused or a child of that
109 person; (iii) a parent, grandparent, child, grandchild or someone
110 similarly situated to the accused; (iv) a person who has a current
111 or former dating relationship with the accused; or (v) a person
112 with whom the accused has had a biological or legally adopted
113 child, the municipal judge shall check, or cause to be made a
114 check of the status of the person for whom recognizance or bond is
115 taken before ordering bail in the Mississippi Protection Order
116 Registry authorized under Section 93-21-25, and the existence of a



117 domestic abuse protection order against the accused shall be
118 considered when determining appropriate bail.

119 (* * *g) All bonds shall be promptly returned to the
120 court, together with any cash deposited, and be filed and
121 proceeded on by the court in a case of forfeiture. The chief of
122 the municipal police or a police officer or officers designated by
123 order of the municipal judge may approve bonds or recognizances.

124 (* * *h) All bonds and recognizances in municipal
125 court where the municipal court shall have the jurisdiction to
126 hear and determine the case may be made payable to the
127 municipality and shall have the effect to bind the principal and
128 any sureties on the bond or recognizance until they shall be
129 discharged by due course of law without renewal.

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

132 99-5-9. (1) In addition to any type of bail allowed by
133 statute, any committing court, in its discretion, may allow, but
134 not require, any defendant, to whom bail is allowable, to deposit
135 cash as bail bond in lieu of a surety or property bail bond, by
136 depositing such cash sum as the court may direct with the sheriff
137 or officer having custody of defendant, who shall receipt therefor
138 and who shall forthwith deliver the said monies to the county
139 treasurer, who shall receipt therefor in duplicate. The sheriff,
140 or other officer, upon receipt of the county treasurer, shall



141 forthwith deliver one (1) copy of such receipt to the committing
142 court who shall then order the release of such defendant.

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

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

150 (4) If the committing court authorizes bail by a cash
151 deposit under subsection (1) of this section, but anyone
152 authorized to release a criminal defendant allows the deposit of
153 an amount less than the full amount of the bail ordered by the
154 court, the defendant may post bail by a professional bail agent in
155 an amount equal to one-fourth (1/4) of the full amount fixed under
156 subsection (1) or the amount of the actual deposit whichever is
157 greater.

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

160 99-5-11. * * * (1) All justice court judges and all other
161 conservators of the peace are authorized, whenever a person is
162 brought before them charged with any offense not capital for which
163 bail is allowed by law, to take the recognizance or bond of the
164 person, with sufficient sureties, in such penalty as the justice
165 court judge or conservator of the peace may require, for his



166 appearance before the justice court judge or conservator of the
167 peace for an examination of his case at some future day.

168 (2) (a) Financial conditions of bail shall not be set for
169 the sole purpose of detaining the defendant. When bail is set, it
170 is presumed that the amount of bail is both necessary to
171 reasonably assure the safety of a victim, witness or general
172 public and to guarantee the appearance of a defendant as required
173 by the court. The amount of bail is also presumed to be
174 attainable by the defendant. The presumption that bail is
175 attainable by the defendant may be rebutted by the defendant who
176 may file a motion to reduce or set aside the bail requirement with
177 the court due to lack of financial means, which shall also
178 consider the availability of a third-party support system to
179 obtain the defendant's release. The court shall rule on any such
180 motion within forty-eight (48) hours of the filing.

181 (b) In cases in which the defendant or his counsel
182 asserts that the defendant is indigent and cannot afford the
183 amount of bail, the justice court judge or conservator of the
184 peace shall make a determination of whether the defendant can be
185 released on recognizance, based on the standards enumerated in the
186 Mississippi Rules of Criminal Procedure and any other factors
187 considered relevant by the municipal judge. No misdemeanor
188 defendant shall be incarcerated solely because the defendant
189 cannot afford to post bail; nor shall a misdemeanor defendant be
190 released solely because the defendant cannot afford bail. It is



191 the duty of the justice court judge or conservator of the peace to
192 ensure that release of the defendant does not jeopardize the
193 community.

194 (c) The accused may waive an appearance before the
195 judge and execute an appearance bond in an amount determined by
196 the court from the bond guidelines set out in the Mississippi
197 Rules of Criminal Procedure and agree to appear at a specified
198 time and place.

199 (d) If the justice court judge or conservator of the
200 peace is unavailable and has not otherwise provided for the
201 setting of bail, it is lawful for any officer or officers
202 designated by order of the justice court judge or conservator of
203 the peace to take bond, cash, property or recognizance, with or
204 without sureties, in the amount of the minimum bail specified in
205 the bond guidelines set out in the Mississippi Rules of Criminal
206 Procedure, payable to the county and conditioned for the
207 appearance of the person on the return day and time of the writ
208 before the court to which the warrant is returnable, or in cases
209 of arrest without a warrant, on the day and time set by the court
210 or officer for arraignment, and there remain from day to day and
211 term to term until discharged.

212 (3) And if the person thus recognized or thus giving bond
213 fails to appear at the appointed time, it shall be the duty of the
214 justice court judge or conservator of the peace to return the
215 recognizance or bond, with his certificate of default, to the



216 court having jurisdiction of the case, and a recovery may be had
217 therein by scire facias, as in other cases of forfeiture. The
218 justice court judge or other conservator of the peace shall also
219 issue an alias warrant for the defaulter.

220 (* * *4) In circumstances involving an offense against any
221 of the following: (a) a current or former spouse of the accused
222 or child of that person; (b) a person living as a spouse or who
223 formerly lived as a spouse with the accused or a child of that
224 person; (c) a parent, grandparent, child, grandchild or someone
225 similarly situated to the accused; (d) a person who has a current
226 or former dating relationship with the accused; or (e) a person
227 with whom the accused has had a biological or legally adopted
228 child, the justice court judge or other conservator of the peace
229 shall check, or cause to be made a check, of the status of the
230 person for whom recognizance or bond is taken before ordering bail
231 in the Mississippi Protection Order Registry authorized under
232 Section 93-21-25, and the existence of a domestic abuse protection
233 order against the accused shall be considered when determining
234 appropriate bail.

235 (* * *5) After the court considers the provisions of
236 subsection (2) of this section, a misdemeanor may be released on
237 his or her own recognizance unless:

- 238 (a) The misdemeanor:
- 239 (i) Is on probation or parole;
- 240 (ii) Has other unresolved charges pending; or



241 (iii) Has a history of nonappearance; or

242 (b) The court finds that:

243 (i) The release of the misdemeanant would
244 constitute a special danger to any other person or to the
245 community; or

246 (ii) Release of the misdemeanant on his or her own
247 recognizance is highly unlikely to assure the appearance of the
248 misdemeanant as required.

249 **SECTION 4.** This act shall take effect and be in force from
250 and after July 1, 2022, and shall stand repealed on June 30, 2022.

