

By: Senator(s) Jordan

To: Judiciary, Division B

SENATE BILL NO. 2228

1 AN ACT TO AMEND SECTION 41-29-147, MISSISSIPPI CODE OF 1972,
 2 TO CLARIFY THE MEANING OF SECOND OR SUBSEQUENT OFFENSE FOR CERTAIN
 3 DRUG CONVICTIONS; TO AMEND SECTIONS 99-39-5 AND 99-39-27,
 4 MISSISSIPPI CODE OF 1972, TO PROVIDE THAT THE DISMISSAL OR DENIAL
 5 OF POST-CONVICTION RELIEF SHALL NOT BE A BAR TO A SECOND OR
 6 SUCCESSIVE APPLICATION OR MOTION FOR RELIEF WHEN THERE HAS BEEN AN
 7 INTERVENING ADOPTION OR ENACTMENT OF STATE LAW THAT WOULD HAVE
 8 ACTUALLY AFFECTED THE OUTCOME OF THE CONVICTION OR SENTENCE; AND
 9 FOR RELATED PURPOSES.

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

11 **SECTION 1.** Section 41-29-147, Mississippi Code of 1972, is
 12 amended as follows:

13 41-29-147. Except as otherwise provided in Section
 14 41-29-142, any person convicted of a second or subsequent offense
 15 under this article may be imprisoned for a term up to twice the
 16 term otherwise authorized, fined an amount up to twice that
 17 otherwise authorized, or both.

18 For purposes of this section, an offense is considered a
 19 second or subsequent offense, if, prior to his conviction of the
 20 offense, the offender has at any time been convicted upon charges
 21 separately brought arising out of separate incidents at different



22 times under this article or under any statute of the United States
23 or of any state relating to narcotic drugs, * * * marijuana,
24 depressant, stimulant or hallucinogenic drugs.

25 **SECTION 2.** Section 99-39-5, Mississippi Code of 1972, is
26 amended as follows:

27 99-39-5. (1) Any person sentenced by a court of record of
28 the State of Mississippi, including a person currently
29 incarcerated, civilly committed, on parole or probation or subject
30 to sex offender registration for the period of the registration or
31 for the first five (5) years of the registration, whichever is the
32 shorter period, may file a motion to vacate, set aside or correct
33 the judgment or sentence, a motion to request forensic DNA testing
34 of biological evidence, or a motion for an out-of-time appeal if
35 the person claims:

36 (a) That the conviction or the sentence was imposed in
37 violation of the Constitution of the United States or the
38 Constitution or laws of Mississippi;

39 (b) That the trial court was without jurisdiction to
40 impose sentence;

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

43 (d) That the sentence exceeds the maximum authorized by
44 law;



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

48 (f) That there exists biological evidence secured in
49 relation to the investigation or prosecution attendant to the
50 petitioner's conviction not tested, or, if previously tested, that
51 can be subjected to additional DNA testing, that would provide a
52 reasonable likelihood of more probative results, and that testing
53 would demonstrate by reasonable probability that the petitioner
54 would not have been convicted or would have received a lesser
55 sentence if favorable results had been obtained through such
56 forensic DNA testing at the time of the original
57 prosecution * * *;

58 (g) That his plea was made involuntarily;

59 (h) That his sentence has expired; his probation,
60 parole or conditional release unlawfully revoked; or he is
61 otherwise unlawfully held in custody;

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

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

67 (2) A motion for relief under this article shall be made
68 within three (3) years after the time in which the petitioner's
69 direct appeal is ruled upon by the Supreme Court of Mississippi



70 or, in case no appeal is taken, within three (3) years after the
71 time for taking an appeal from the judgment of conviction or
72 sentence has expired, or in case of a guilty plea, within three
73 (3) years after entry of the judgment of conviction. Excepted
74 from this three-year statute of limitations are those cases in
75 which the petitioner can demonstrate either:

76 (a) (i) That there has been an intervening decision of
77 the Supreme Court of either the State of Mississippi or the United
78 States which would have actually adversely affected the outcome of
79 his conviction or sentence or that he has evidence, not reasonably
80 discoverable at the time of trial, which is of such nature that it
81 would be practically conclusive that had such been introduced at
82 trial it would have caused a different result in the conviction or
83 sentence; * * *

84 (ii) That, even if the petitioner pled guilty or
85 nolo contendere, or confessed or admitted to a crime, there exists
86 biological evidence not tested, or, if previously tested, that can
87 be subjected to additional DNA testing that would provide a
88 reasonable likelihood of more probative results, and that testing
89 would demonstrate by reasonable probability that the petitioner
90 would not have been convicted or would have received a lesser
91 sentence if favorable results had been obtained through such
92 forensic DNA testing at the time of the original
93 prosecution * * *; or



94 (iii) That there has been an adoption or enactment
95 of state law that would actually result in a lesser sentence if
96 the same offense were to be committed after the adoption or
97 enactment of the new state law.

98 (b) Likewise excepted are those cases in which the
99 petitioner claims that his sentence has expired or his probation,
100 parole or conditional release has been unlawfully revoked.
101 Likewise excepted are filings for post-conviction relief in
102 capital cases which shall be made within one (1) year after
103 conviction.

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

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

109 (5) For the purposes of this article:

110 (a) "Biological evidence" means the contents of a
111 sexual assault examination kit and any item that contains blood,
112 semen, hair, saliva, skin tissue, fingernail scrapings, bone,
113 bodily fluids or other identifiable biological material that was
114 collected as part of the criminal investigation or may reasonably
115 be used to incriminate or exculpate any person for the offense.
116 This definition applies whether that material is catalogued
117 separately, such as on a slide, swab or in a test tube, or is
118 present on other evidence, including, but not limited to,



119 clothing, ligatures, bedding or other household material, drinking
120 cups, cigarettes or other items * * *.

121 (b) "DNA" means deoxyribonucleic acid.

122 **SECTION 3.** Section 99-39-27, Mississippi Code of 1972, is
123 amended as follows:

124 99-39-27. (1) The application for leave to proceed in the
125 trial court filed with the Supreme Court under Section 99-39-7
126 shall name the State of Mississippi as the respondent.

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

131 (3) The prisoner shall serve an executed copy of the
132 application upon the Attorney General simultaneously with the
133 filing of the application with the court.

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

137 (5) Unless it appears from the face of the application,
138 motion, exhibits and the prior record that the claims presented by
139 those documents are not procedurally barred under Section 99-39-21
140 and that they further present a substantial showing of the denial
141 of a state or federal right, the court shall by appropriate order
142 deny the application. The court may, in its discretion, require



143 the Attorney General upon sufficient notice to respond to the
144 application.

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

147 (7) In granting the application the court, in its
148 discretion, may:

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

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

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

158 (9) Except as otherwise provided in this subsection, the
159 dismissal or denial of an application under this section is a
160 final judgment and shall be a bar to a second or successive
161 application under this article. Excepted from this prohibition is
162 an application filed under Section 99-19-57(2), raising the issue
163 of the offender's supervening mental illness before the execution
164 of a sentence of death. A dismissal or denial of an application
165 relating to mental illness under Section 99-19-57(2) shall be res
166 judicata on the issue and shall likewise bar any second or
167 successive applications on the issue. Likewise excepted from this



168 prohibition are those cases in which the prisoner can demonstrate
169 either that there has been an intervening decision of the Supreme
170 Court of either the State of Mississippi or the United States that
171 would have actually adversely affected the outcome of his
172 conviction or sentence or that he has evidence, not reasonably
173 discoverable at the time of trial, that is of such nature that it
174 would be practically conclusive that, if it had been introduced at
175 trial, it would have caused a different result in the conviction
176 or sentence. Likewise * * * excepted are those cases in which the
177 prisoner claims that his sentence has expired or his probation,
178 parole or conditional release has been unlawfully revoked. The
179 dismissal or denial of an application under this section is not a
180 bar to a second or successive application under this article when
181 there has been an adoption or enactment of state law that would
182 actually result in a lesser sentence for the same offense if
183 committed after the adoption or enactment of the new state law.

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

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

189 **SECTION 4.** This act shall take effect and be in force from
190 and after July 1, 2022.

