

By: Senator(s) Sparks

To: Judiciary, Division B

SENATE BILL NO. 2565

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.

