

By: Representative Roberson

To: Judiciary B

HOUSE BILL NO. 451

1 AN ACT TO AMEND SECTION 21-23-8, MISSISSIPPI CODE OF 1972, TO
 2 REVISE HOW BAIL FOR A DEFENDANT MAY BE DETERMINED BY THE COURT; TO
 3 ALLOW A DEFENDANT TO FILE A MOTION TO REDUCE OR SET ASIDE THE BAIL
 4 REQUIREMENT; TO AUTHORIZE THE DEFENDANT TO WAIVE AN APPEARANCE
 5 BEFORE THE JUDGE AND EXECUTE AN APPEARANCE BOND IN AN AMOUNT
 6 DETERMINED BY THE COURT FROM THE BOND GUIDELINES SET OUT IN THE
 7 MISSISSIPPI RULES OF CIVIL PROCEDURE AND AGREE TO APPEAR AT A
 8 SPECIFIED TIME AND PLACE; TO AMEND SECTION 99-5-11, MISSISSIPPI
 9 CODE OF 1972, TO PROVIDE THAT THE AMOUNT OF BAIL FOR A DEFENDANT
 10 SHALL BE PRESUMED NECESSARY AND REASONABLE; AND FOR RELATED
 11 PURPOSES.

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

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

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

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



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

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

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



47 municipal court and the municipal court to notify the surety; or
48 any other reason justifiable to the municipal court.

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

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

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



72 (b) The court shall not set the financial conditions of
73 bail solely for the purpose of detaining the defendant. When bail
74 is set, it is presumed that the amount of bail is both necessary
75 to reasonably assure the safety of a victim, witness or the
76 general public; and to guarantee the appearance of a defendant as
77 required by the court. The amount of bail is also presumed to be
78 attainable by the defendant. The presumption that bail is
79 attainable by the defendant may be rebutted by the defendant who
80 may file a motion with the court to reduce or set aside the bail
81 requirement due to lack of financial means. The court shall also
82 consider the availability of a third-party support system to
83 obtain the defendant's release. The court shall rule on any such
84 motion within forty-eight (48) hours of the filing.

85 (c) If the defendant or his or her counsel asserts that
86 the defendant is indigent and cannot afford the amount of bail,
87 the municipal judge shall determine whether the defendant can be
88 released on his or her own recognizance based on the standards
89 enumerated in the Mississippi Rules of Criminal Procedure and any
90 other factors considered relevant by the municipal judge. No
91 misdemeanor defendant shall be incarcerated solely because the
92 defendant cannot afford to post bail; nor shall a misdemeanor
93 defendant be released solely because the defendant cannot afford
94 bail. It is the duty of the municipal judge to ensure that
95 release of the defendant does not jeopardize the community.



96 (d) The defendant may waive an appearance before the
97 judge and execute an appearance bond in an amount determined by
98 the court from the bond guidelines set out in the Mississippi
99 Rules of Criminal Procedure and agree to appear at a specified
100 time and place.

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

113 (f) In circumstances involving an offense against: (i)
114 a current or former spouse of the accused or child of that person;
115 (ii) a person living as a spouse or who formerly lived as a spouse
116 with the accused or a child of that person; (iii) a parent,
117 grandparent, child, grandchild or someone similarly situated to
118 the accused; (iv) a person who has a current or former dating
119 relationship with the accused; or (v) a person with whom the
120 accused has had a biological or legally adopted child, the



121 municipal judge shall check, or cause to be made a check of the
122 status of the person for whom recognizance or bond is taken before
123 ordering bail in the Mississippi Protection Order Registry
124 authorized under Section 93-21-25, and the existence of a domestic
125 abuse protection order against the accused shall be considered
126 when determining appropriate bail.

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

132 (* * *h) All bonds and recognizances in municipal
133 court where the municipal court shall have the jurisdiction to
134 hear and determine the case may be made payable to the
135 municipality and shall have the effect to bind the principal and
136 any sureties on the bond or recognizance until they shall be
137 discharged by due course of law without renewal.

138 **SECTION 2.** Section 99-5-11, Mississippi Code of 1972, is
139 amended as follows:

140 99-5-11. (1) All justice court judges and all other
141 conservators of the peace are authorized, whenever a person is
142 brought before them charged with any offense not capital for which
143 bail is allowed by law, to take the recognizance or bond of the
144 person, with sufficient sureties, in such penalty as the justice
145 court judge or conservator of the peace may require, for his



146 appearance before the justice court judge or conservator of the
147 peace for an examination of his case at some future day. And if
148 the person thus recognized or thus giving bond fails to appear at
149 the appointed time, it shall be the duty of the justice court
150 judge or conservator of the peace to return the recognizance or
151 bond, with his certificate of default, to the court having
152 jurisdiction of the case, and a recovery may be had therein by
153 scire facias, as in other cases of forfeiture. The justice court
154 judge or other conservator of the peace shall also issue an alias
155 warrant for the defaulter.

156 (2) (a) Financial conditions of bail shall not be set for
157 the sole purpose of detaining the defendant. When bail is set, it
158 is presumed that the amount of bail is both necessary to
159 reasonably assure the safety of a victim, witness or the general
160 public and to guarantee the appearance of a defendant as required
161 by the court. The amount of bail is also presumed to be
162 attainable by the defendant. The presumption that bail is
163 attainable by the defendant may be rebutted by the defendant who
164 may file a motion with the court to reduce or set aside the bail
165 requirement due to lack of financial means. The court shall also
166 consider the availability of a third-party support system to
167 obtain the defendant's release. The court shall rule on any such
168 motion within forty-eight (48) hours of the filing.

169 (b) If the defendant or his or her counsel asserts that
170 the defendant is indigent and cannot afford the amount of bail,



171 the justice court judge or conservator of the peace shall
172 determine whether the defendant can be released on his or her own
173 recognizance, based on the standards enumerated in the Mississippi
174 Rules of Criminal Procedure and any other factors considered
175 relevant by the municipal judge. No misdemeanor defendant shall
176 be incarcerated solely because the defendant cannot afford to post
177 bail; nor shall a misdemeanor defendant be released solely because
178 the defendant cannot afford bail. It is the duty of the justice
179 court judge or conservator of the peace to ensure that release of
180 the defendant does not jeopardize the community.

181 (c) The accused may waive an appearance before the
182 judge and execute an appearance bond in an amount determined by
183 the court from the bond guidelines set out in the Mississippi
184 Rules of Criminal Procedure and agree to appear at a specified
185 time and place.

186 (d) If the justice court judge or conservator of the
187 peace is unavailable and has not otherwise provided for the
188 setting of bail, it is lawful for any officer or officers
189 designated by order of the justice court judge or conservator of
190 the peace to take bond, cash, property or recognizance, with or
191 without sureties, in the amount of the minimum bail specified in
192 the bond guidelines set out in the Mississippi Rules of Criminal
193 Procedure, payable to the county and conditioned for the
194 appearance of the person on the return day and time of the writ
195 before the court to which the warrant is returnable, or in cases



196 of arrest without a warrant, on the day and time set by the court
197 or officer for arraignment, and there remain from day-to-day and
198 term-to-term until discharged.

199 (* * *3) In circumstances involving an offense against any
200 of the following: (a) a current or former spouse of the accused
201 or child of that person; (b) a person living as a spouse or who
202 formerly lived as a spouse with the accused or a child of that
203 person; (c) a parent, grandparent, child, grandchild or someone
204 similarly situated to the accused; (d) a person who has a current
205 or former dating relationship with the accused; or (e) a person
206 with whom the accused has had a biological or legally adopted
207 child, the justice court judge or other conservator of the peace
208 shall check, or cause to be made a check, of the status of the
209 person for whom recognizance or bond is taken before ordering bail
210 in the Mississippi Protection Order Registry authorized under
211 Section 93-21-25, and the existence of a domestic abuse protection
212 order against the accused shall be considered when determining
213 appropriate bail.

214 (* * *4) After the court considers the provisions of
215 subsection (2) of this section, a misdemeanor may be released on
216 his or her own recognizance unless:

- 217 (a) The misdemeanor:
- 218 (i) Is on probation or parole;
 - 219 (ii) Has other unresolved charges pending; or
 - 220 (iii) Has a history of nonappearance; or



221 (b) The court finds that:

222 (i) The release of the misdemeanor would
223 constitute a special danger to any other person or to the
224 community; or

225 (ii) Release of the misdemeanor on his or her own
226 recognizance is highly unlikely to assure the appearance of the
227 misdemeanor as required.

228 **SECTION 3.** This act shall take effect and be in force from
229 and after July 1, 2023.

