

By: Senator(s) Wiggins, England

To: Judiciary, Division B

SENATE BILL NO. 2298

1 AN ACT TO AMEND SECTION 21-23-8, MISSISSIPPI CODE OF 1972, TO  
 2 REVISE THE PROCEDURE TO DETERMINE BAIL IN MUNICIPAL COURT; TO  
 3 AMEND SECTION 99-5-11, MISSISSIPPI CODE OF 1972, TO REVISE THE  
 4 PROCEDURE TO DETERMINE BAIL IN JUSTICE COURT; AND FOR RELATED  
 5 PURPOSES.

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

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

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

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



20 by personal service or by certified mail. Failure of the clerk to  
21 provide the required notice within ten (10) working days shall  
22 constitute prima facie evidence that the order should be set  
23 aside.

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

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

43 (2) If a final judgment is entered against a surety licensed  
44 by the Department of Insurance and has not been set aside after



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

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

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

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



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

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

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



95           ( \* \* \*e) \* \* \* If the municipal judge is unavailable  
96 and has not provided a bail schedule or otherwise provided for the  
97 setting of bail, 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 the  
100 amount of the minimum bail specified in the bond guidelines set  
101 out in the Mississippi Rules of Civil Procedure, payable to the  
102 municipality and conditioned for the appearance of the person on  
103 the return day and time of the writ before the court to which the  
104 warrant is returnable, or in cases of arrest without a warrant, on  
105 the day and time set by the court or officer for arraignment, and  
106 there remain from day to day and term to term until discharged.

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



119 domestic abuse protection order against the accused shall be  
120 considered when determining appropriate bail.

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

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

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

134 99-5-11. (1) All justice court judges and all other  
135 conservators of the peace are authorized, whenever a person is  
136 brought before them charged with any offense not capital for which  
137 bail is allowed by law, to take the recognizance or bond of the  
138 person, with sufficient sureties, in such penalty as the justice  
139 court judge or conservator of the peace may require, for his  
140 appearance before the justice court judge or conservator of the  
141 peace for an examination of his case at some future day.

142 (2) (a) Financial conditions of bail shall not be set for  
143 the sole purpose of detaining the defendant. When bail is set, it



144 is presumed that the amount of bail is both necessary to  
145 reasonably assure the safety of a victim, witness or general  
146 public and to guarantee the appearance of a defendant as required  
147 by the court. The amount of bail is also presumed to be  
148 attainable by the defendant. The presumption that bail is  
149 attainable by the defendant may be rebutted by the defendant who  
150 may file a motion to reduce or set aside the bail requirement with  
151 the court due to lack of financial means, which shall also  
152 consider the availability of a third-party support system to  
153 obtain the defendant's release. The court shall rule on any such  
154 motion within forty-eight (48) hours of the filing.

155 (b) In cases in which the defendant or his counsel  
156 asserts that the defendant is indigent and cannot afford the  
157 amount of bail, the justice court judge or conservator of the  
158 peace shall make a determination of whether the defendant can be  
159 released on recognizance, based on the standards enumerated in the  
160 Mississippi Rules of Criminal Procedure and any other factors  
161 considered relevant by the municipal judge. No misdemeanor  
162 defendant shall be incarcerated solely because the defendant  
163 cannot afford to post bail; nor shall a misdemeanor defendant be  
164 released solely because the defendant cannot afford bail. It is  
165 the duty of the justice court judge or conservator of the peace to  
166 ensure that release of the defendant does not jeopardize the  
167 community.



168           (c) The accused may waive an appearance before the  
169 judge and execute an appearance bond in an amount determined by  
170 the court from the bond guidelines set out in the Mississippi  
171 Rules of Criminal Procedure and agree to appear at a specified  
172 time and place.

173           (d) If the justice court judge or conservator of the  
174 peace is unavailable and has not otherwise provided for the  
175 setting of bail, it is lawful for any officer or officers  
176 designated by order of the justice court judge or conservator of  
177 the peace to take bond, cash, property or recognizance, with or  
178 without sureties, in the amount of the minimum bail specified in  
179 the bond guidelines set out in the Mississippi Rules of Criminal  
180 Procedure, payable to the county and conditioned for the  
181 appearance of the person on the return day and time of the writ  
182 before the court to which the warrant is returnable, or in cases  
183 of arrest without a warrant, on the day and time set by the court  
184 or officer for arraignment, and there remain from day to day and  
185 term to term until discharged.

186           (3) And if the person thus recognized or thus giving bond  
187 fails to appear at the appointed time, it shall be the duty of the  
188 justice court judge or conservator of the peace to return the  
189 recognizance or bond, with his certificate of default, to the  
190 court having jurisdiction of the case, and a recovery may be had  
191 therein by scire facias, as in other cases of forfeiture. The





192 justice court judge or other conservator of the peace shall also  
193 issue an alias warrant for the defaulter.

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

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

- 212 (a) The misdemeanor:
- 213 (i) Is on probation or parole;
- 214 (ii) Has other unresolved charges pending; or
- 215 (iii) Has a history of nonappearance; or
- 216 (b) The court finds that:



217 (i) The release of the misdemeanant would  
218 constitute a special danger to any other person or to the  
219 community; or

220 (ii) Release of the misdemeanant on his or her own  
221 recognizance is highly unlikely to assure the appearance of the  
222 misdemeanant as required.

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

