

By: Representative Owen

To: Judiciary B

HOUSE BILL NO. 1459

1 AN ACT TO BRING FORWARD SECTIONS 99-39-1 THROUGH 99-39-29,
2 MISSISSIPPI CODE OF 1972, WHICH ARE THE MISSISSIPPI UNIFORM
3 POST-CONVICTION COLLATERAL RELIEF ACT, FOR PURPOSES OF AMENDMENT;
4 AND FOR RELATED PURPOSES.

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

6 **SECTION 1.** Section 99-39-1, Mississippi Code of 1972, is
7 brought forward as follows:

8 99-39-1. This article shall be known and may be cited as the
9 "Mississippi Uniform Post-Conviction Collateral Relief Act."

10 **SECTION 2.** Section 99-39-3, Mississippi Code of 1972, is
11 brought forward as follows:

12 99-39-3. (1) The purpose of this article is to revise,
13 streamline and clarify the rules and statutes pertaining to
14 post-conviction collateral relief law and procedures, to resolve
15 any conflicts therein and to provide the courts of this state with
16 an exclusive and uniform procedure for the collateral review of
17 convictions and sentences. Specifically, this article repeals the
18 statutory writ of error coram nobis, supersedes Rule 8.07 of the
19 Mississippi Uniform Criminal Rules of Circuit Court Practice and



20 abolishes the common law writs relating to post-conviction
21 collateral relief, including by way of illustration but not
22 limitation, error coram nobis, error coram vobis, and
23 post-conviction habeas corpus, as well as statutory
24 post-conviction habeas corpus. The relief formerly accorded by
25 such writs may be obtained by an appropriate motion under this
26 article. The enactment of this article does not affect any
27 pre-conviction remedies.

28 (2) Direct appeal shall be the principal means of reviewing
29 all criminal convictions and sentences, and the purpose of this
30 article is to provide prisoners with a procedure, limited in
31 nature, to review those objections, defenses, claims, questions,
32 issues or errors which in practical reality could not be or should
33 not have been raised at trial or on direct appeal.

34 **SECTION 3.** Section 99-39-5, Mississippi Code of 1972, is
35 brought forward as follows:

36 99-39-5. (1) Any person sentenced by a court of record of
37 the State of Mississippi, including a person currently
38 incarcerated, civilly committed, on parole or probation or subject
39 to sex offender registration for the period of the registration or
40 for the first five (5) years of the registration, whichever is the
41 shorter period, may file a motion to vacate, set aside or correct
42 the judgment or sentence, a motion to request forensic DNA testing
43 of biological evidence, or a motion for an out-of-time appeal if
44 the person claims:



45 (a) That the conviction or the sentence was imposed in
46 violation of the Constitution of the United States or the
47 Constitution or laws of Mississippi;

48 (b) That the trial court was without jurisdiction to
49 impose sentence;

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

52 (d) That the sentence exceeds the maximum authorized by
53 law;

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

57 (f) That there exists biological evidence secured in
58 relation to the investigation or prosecution attendant to the
59 petitioner's conviction not tested, or, if previously tested, that
60 can be subjected to additional DNA testing, that would provide a
61 reasonable likelihood of more probative results, and that testing
62 would demonstrate by reasonable probability that the petitioner
63 would not have been convicted or would have received a lesser
64 sentence if favorable results had been obtained through such
65 forensic DNA testing at the time of the original prosecution.

66 (g) That his plea was made involuntarily;

67 (h) That his sentence has expired; his probation,
68 parole or conditional release unlawfully revoked; or he is
69 otherwise unlawfully held in custody;



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

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

75 (2) A motion for relief under this article shall be made
76 within three (3) years after the time in which the petitioner's
77 direct appeal is ruled upon by the Supreme Court of Mississippi
78 or, in case no appeal is taken, within three (3) years after the
79 time for taking an appeal from the judgment of conviction or
80 sentence has expired, or in case of a guilty plea, within three
81 (3) years after entry of the judgment of conviction. Excepted
82 from this three-year statute of limitations are those cases in
83 which the petitioner can demonstrate either:

84 (a) (i) That there has been an intervening decision of
85 the Supreme Court of either the State of Mississippi or the United
86 States which would have actually adversely affected the outcome of
87 his conviction or sentence or that he has evidence, not reasonably
88 discoverable at the time of trial, which is of such nature that it
89 would be practically conclusive that had such been introduced at
90 trial it would have caused a different result in the conviction or
91 sentence; or

92 (ii) That, even if the petitioner pled guilty or
93 nolo contendere, or confessed or admitted to a crime, there exists
94 biological evidence not tested, or, if previously tested, that can



95 be subjected to additional DNA testing that would provide a
96 reasonable likelihood of more probative results, and that testing
97 would demonstrate by reasonable probability that the petitioner
98 would not have been convicted or would have received a lesser
99 sentence if favorable results had been obtained through such
100 forensic DNA testing at the time of the original prosecution.

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

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

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

112 (5) For the purposes of this article:

113 (a) "Biological evidence" means the contents of a
114 sexual assault examination kit and any item that contains blood,
115 semen, hair, saliva, skin tissue, fingernail scrapings, bone,
116 bodily fluids or other identifiable biological material that was
117 collected as part of the criminal investigation or may reasonably
118 be used to incriminate or exculpate any person for the offense.
119 This definition applies whether that material is catalogued



120 separately, such as on a slide, swab or in a test tube, or is
121 present on other evidence, including, but not limited to,
122 clothing, ligatures, bedding or other household material, drinking
123 cups, cigarettes or other items;

124 (b) "DNA" means deoxyribonucleic acid.

125 **SECTION 4.** Section 99-39-7, Mississippi Code of 1972, is
126 brought forward as follows:

127 99-39-7. The motion under this article shall be filed as an
128 original civil action in the trial court, except in cases in which
129 the petitioner's conviction and sentence have been appealed to the
130 Supreme Court of Mississippi and there affirmed or the appeal
131 dismissed. Where the conviction and sentence have been affirmed
132 on appeal or the appeal has been dismissed, the motion under this
133 article shall not be filed in the trial court until the motion
134 shall have first been presented to a quorum of the Justices of the
135 Supreme Court of Mississippi, convened for said purpose either in
136 termtime or in vacation, and an order granted allowing the filing
137 of such motion in the trial court. The procedure governing
138 applications to the Supreme Court for leave to file a motion under
139 this article shall be as provided in Section 99-39-27.

140 **SECTION 5.** Section 99-39-9, Mississippi Code of 1972, is
141 brought forward as follows:

142 99-39-9. (1) A motion under this article shall name the
143 State of Mississippi as respondent and shall contain all of the
144 following:



145 (a) The identity of the proceedings in which the
146 petitioner was convicted.

147 (b) The date of the entry of the judgment of conviction
148 and sentence of which complaint is made.

149 (c) A concise statement of the claims or grounds upon
150 which the motion is based.

151 (d) A separate statement of the specific facts which
152 are within the personal knowledge of the petitioner and which
153 shall be sworn to by the petitioner, including, when application
154 is made pursuant to Section 99-39-5, a statement that there exists
155 a reasonable probability that the petitioner would not have been
156 convicted or would have received a lesser sentence if favorable
157 results had been obtained through DNA testing at the time of the
158 original prosecution; that the evidence to be tested was secured
159 in relation to the offense underlying the challenged conviction
160 and (i) was not previously subjected to DNA testing, or (ii)
161 although previously subjected to DNA testing, can be subjected to
162 additional DNA testing that provides a reasonable likelihood of
163 more probative results; and that the chain of custody of the
164 evidence to be tested established that the evidence has not been
165 tampered with, replaced or altered in any material respect or, if
166 the chain of custody does not establish the integrity of the
167 evidence, that the testing itself has the potential to establish
168 the integrity of the evidence. For purposes of this paragraph,
169 evidence that has been in the custody of law enforcement, other



170 government officials, or a public or private hospital shall be
171 presumed to satisfy the chain-of-custody requirement, absent
172 specific evidence of material tampering, replacement or
173 alteration, and that the application for testing is made to
174 demonstrate innocence or the appropriateness of a lesser sentence
175 and not solely to unreasonably delay the execution of sentence or
176 the administration of justice.

177 (e) A specific statement of the facts which are not
178 within the petitioner's personal knowledge. The motion shall
179 state how or by whom said facts will be proven. Affidavits of the
180 witnesses who will testify and copies of documents or records that
181 will be offered shall be attached to the motion. The affidavits
182 of other persons and the copies of documents and records may be
183 excused upon a showing, which shall be specifically detailed in
184 the motion, of good cause why they cannot be obtained. This
185 showing shall state what the petitioner has done to attempt to
186 obtain the affidavits, records and documents, the production of
187 which he requests the court to excuse.

188 (f) The identity of any previous proceedings in federal
189 or state courts that the petitioner may have taken to secure
190 relief from his conviction and sentence.

191 (2) A motion shall be limited to the assertion of a claim
192 for relief against one (1) judgment only. If a petitioner desires
193 to attack the validity of other judgments under which he is in
194 custody, he shall do so by separate motions.



195 (3) The motion shall be verified by the oath of the
196 petitioner.

197 (4) If the motion received by the clerk does not
198 substantially comply with the requirements of this section, it
199 shall be returned to the petitioner if a judge of the court so
200 directs, together with a statement of the reason for its return.
201 The clerk shall retain a copy of the motion so returned.

202 (5) The petitioner shall deliver or serve a copy of the
203 motion, together with a notice of its filing, on the state. The
204 filing of the motion shall not require an answer or other motion
205 unless so ordered by the court under Section 99-39-11(3).

206 **SECTION 6.** Section 99-39-11, Mississippi Code of 1972, is
207 brought forward as follows:

208 99-39-11. (1) The original motion, together with all the
209 files, records, transcripts and correspondence relating to the
210 judgment under attack, shall be examined promptly by the judge to
211 whom it is assigned.

212 (2) If it plainly appears from the face of the motion, any
213 annexed exhibits and the prior proceedings in the case that the
214 movant is not entitled to any relief, the judge may make an order
215 for its dismissal and cause the petitioner to be notified.

216 (3) If the motion is not dismissed under subsection (2) of
217 this section, the judge shall order the state to file an answer or
218 other pleading within the period of time fixed by the court or to
219 take such other action as the judge deems appropriate and, in



220 cases in which the petitioner's claim rests on the results of DNA
221 testing of biological evidence, order the testing of the
222 biological evidence.

223 (4) To facilitate DNA testing of biological evidence, if
224 granted under subsection (3) and if the interests of justice
225 require, the judge may order:

226 (a) The state to locate and provide the petitioner with
227 any document, note, log or report relating to items of physical
228 evidence collected in connection with the case, or to otherwise
229 assist the petitioner in locating items of biological evidence
230 that the state contends have been lost or destroyed;

231 (b) The state to take reasonable measures to locate
232 biological evidence that may be in its custody and to prepare an
233 itemized inventory of such evidence;

234 (c) The state to assist the petitioner in locating
235 evidence that may be in the custody of a public or private
236 hospital, public or private laboratory or other facility;

237 (d) Both parties to reveal whether any DNA or other
238 biological evidence testing was previously conducted without
239 knowledge of the other party; and

240 (e) Both parties to produce laboratory reports prepared
241 in connection with DNA testing, as well as the underlying data and
242 the laboratory notes, if evidence had previously been subjected to
243 DNA testing.



244 (5) If the court orders DNA testing of biological evidence
245 under subsection (3) and evidence for such testing is located in
246 accordance with subsection (4), such testing shall be conducted by
247 a facility mutually agreed upon by the petitioner and the state
248 and approved by the court, or, if the parties cannot agree, the
249 court shall designate the testing facility and provide parties
250 with a reasonable opportunity to be heard on the choice of
251 laboratory issue. The court shall impose reasonable conditions on
252 the testing to protect the parties' interests in the integrity of
253 the evidence and the testing process.

254 (6) If a state or county forensics laboratory performs DNA
255 testing of biological evidence under this article, the state shall
256 bear the costs of such testing upon a finding of the petitioner's
257 indigence.

258 (7) If testing is performed at a private laboratory, the
259 court may require either the petitioner or the state to pay for
260 the testing, as the interests of justice require.

261 (8) If the state or county forensics laboratory does not
262 have the ability or resources to conduct the type of DNA testing
263 to be performed, the state shall bear the costs of testing at a
264 private laboratory that has such capabilities.

265 (9) The court, in its discretion, may make such other orders
266 as may be appropriate in connection with a granting of testing
267 under subsection (3). These include, but are not limited to,
268 designating:



269 (a) The type of DNA analysis to be used;
270 (b) The testing procedures to be followed;
271 (c) The preservation of some portion of the sample for
272 testing replication;
273 (d) Additional DNA testing, if the results of the
274 initial testing are inconclusive or otherwise merit additional
275 scientific analysis;
276 (e) The collection and DNA testing of elimination
277 samples from third parties; or
278 (f) Any combination of these.

279 (10) The court may order additional testing, paid for in
280 accordance with subsections (6) through (8), upon a showing by the
281 petitioner that the comparison of a DNA profile derived from the
282 biological evidence at the scene of the crime for which he was
283 convicted could, when compared to the DNA profiles in the SDIS or
284 CODIS database systems, provide evidence that raises a reasonable
285 probability that the trier of fact would have come to a different
286 outcome by virtue of that comparison demonstrating the possible
287 guilt of a third party or parties.

288 (11) This section shall not be applicable where an
289 application for leave to proceed is granted by the Supreme Court
290 under Section 99-39-27.

291 (12) Proceedings under this section shall be subject to the
292 provisions of Section 99-19-42.



293 **SECTION 7.** Section 99-39-13, Mississippi Code of 1972, is
294 brought forward as follows:

295 99-39-13. The answer shall respond to all of the allegations
296 of the motion and shall assert such affirmative defenses as the
297 state may deem appropriate.

298 **SECTION 8.** Section 99-39-15, Mississippi Code of 1972, is
299 brought forward as follows:

300 99-39-15. (1) A party may invoke the processes of discovery
301 available under the Mississippi Rules of Civil Procedure or
302 elsewhere in the usages and principles of law if, and to the
303 extent that, the judge in the exercise of his discretion and for
304 good cause shown grants leave to do so, but not otherwise.

305 (2) Requests for discovery shall be accomplished by a
306 statement of the interrogatories or requests for admission and a
307 list of the documents, if any, sought to be produced.

308 **SECTION 9.** Section 99-39-17, Mississippi Code of 1972, is
309 brought forward as follows:

310 99-39-17. (1) If the motion is not dismissed summarily, the
311 judge may direct that the record be expanded by the parties by the
312 inclusion of additional materials relevant to the determination of
313 the merits of the motion.

314 (2) The expanded record may include, without limitation,
315 letters predating the filing of the motion in the court,
316 documents, exhibits and answers under oath, if so directed, to



317 written interrogatories propounded by the judge. Affidavits may
318 be submitted and considered as a part of the record.

319 (3) In any case in which an expanded record is directed,
320 copies of the letters, documents, exhibits and affidavits proposed
321 to be included shall be submitted to the party against whom they
322 are to be offered, and he shall be afforded an opportunity to
323 admit or deny their correctness.

324 (4) The court may require the authentication of any material
325 under subsection (1) or (2) of this section.

326 **SECTION 10.** Section 99-39-19, Mississippi Code of 1972, is
327 brought forward as follows:

328 99-39-19. (1) If the motion is not dismissed at a previous
329 stage of the proceeding, the judge, after the answer is filed and
330 discovery, if any, is completed, shall, upon a review of the
331 record, determine whether an evidentiary hearing is required. If
332 it appears that an evidentiary hearing is not required, the judge
333 shall make such disposition of the motion as justice shall
334 require.

335 (2) The court may grant a motion by either party for summary
336 judgment when it appears from the record that there is no genuine
337 issue of material fact and the movant is entitled to judgment as a
338 matter of law.

339 **SECTION 11.** Section 99-39-21, Mississippi Code of 1972, is
340 brought forward as follows:



341 99-39-21. (1) Failure by a prisoner to raise objections,
342 defenses, claims, questions, issues or errors either in fact or
343 law which were capable of determination at trial and/or on direct
344 appeal, regardless of whether such are based on the laws and the
345 Constitution of the state of Mississippi or of the United States,
346 shall constitute a waiver thereof and shall be procedurally
347 barred, but the court may upon a showing of cause and actual
348 prejudice grant relief from the waiver.

349 (2) The litigation of a factual issue at trial and on direct
350 appeal of a specific state or federal legal theory or theories
351 shall constitute a waiver of all other state or federal legal
352 theories which could have been raised under said factual issue;
353 and any relief sought under this article upon said facts but upon
354 different state or federal legal theories shall be procedurally
355 barred absent a showing of cause and actual prejudice.

356 (3) The doctrine of res judicata shall apply to all issues,
357 both factual and legal, decided at trial and on direct appeal.

358 (4) The term "cause" as used in this section shall be
359 defined and limited to those cases where the legal foundation upon
360 which the claim for relief is based could not have been discovered
361 with reasonable diligence at the time of trial or direct appeal.

362 (5) The term "actual prejudice" as used in this section
363 shall be defined and limited to those errors which would have
364 actually adversely affected the ultimate outcome of the conviction
365 or sentence.



366 (6) The burden is upon the prisoner to allege in his motion
367 such facts as are necessary to demonstrate that his claims are not
368 procedurally barred under this section.

369 **SECTION 12.** Section 99-39-23, Mississippi Code of 1972, is
370 brought forward as follows:

371 99-39-23. (1) If an evidentiary hearing is required, the
372 judge may appoint counsel for a petitioner who qualifies for the
373 appointment of counsel under Section 99-15-15.

374 (2) The hearing shall be conducted as promptly as
375 practicable, having regard for the need of counsel for both
376 parties for adequate time for investigation and preparation.

377 (3) The parties shall be entitled to subpoena witnesses and
378 compel their attendance, including, but not being limited to,
379 subpoenas duces tecum.

380 (4) The court may receive proof by affidavits, depositions,
381 oral testimony or other evidence and may order the petitioner
382 brought before it for the hearing.

383 (5) If the court finds in favor of the petitioner, it shall
384 enter an appropriate order with respect to the conviction or
385 sentence under attack, and any supplementary orders as to
386 rearraignment, retrial, custody, bail, discharge, correction of
387 sentence or other matters that may be necessary and proper. The
388 court shall make specific findings of fact, and state expressly
389 its conclusions of law, relating to each issue presented.



390 (6) The order as provided in subsection (5) of this section
391 or any order dismissing the petitioner's motion or otherwise
392 denying relief under this article is a final judgment and shall be
393 conclusive until reversed. It shall be a bar to a second or
394 successive motion under this article. Excepted from this
395 prohibition is a motion filed under Section 99-19-57(2), raising
396 the issue of the convict's supervening mental illness before the
397 execution of a sentence of death. A dismissal or denial of a
398 motion relating to mental illness under Section 99-19-57(2) shall
399 be res judicata on the issue and shall likewise bar any second or
400 successive motions on the issue. Likewise excepted from this
401 prohibition are those cases in which the petitioner can
402 demonstrate either that there has been an intervening decision of
403 the Supreme Court of either the State of Mississippi or the United
404 States which would have actually adversely affected the outcome of
405 his conviction or sentence or that he has evidence, not reasonably
406 discoverable at the time of trial, which is of such nature that it
407 would be practically conclusive that, if it had been introduced at
408 trial, it would have caused a different result in the conviction
409 or sentence. Likewise excepted are those cases in which the
410 petitioner claims that his sentence has expired or his probation,
411 parole or conditional release has been unlawfully revoked.
412 Likewise excepted are those cases in which the petitioner has
413 filed a prior petition and has requested DNA testing under this
414 article, provided the petitioner asserts new or different grounds



415 for relief related to DNA testing not previously presented or the
416 availability of more advanced DNA technology.

417 (7) No relief shall be granted under this article unless the
418 petitioner proves by a preponderance of the evidence that he is
419 entitled to the relief.

420 (8) Proceedings under this section shall be subject to the
421 provisions of Section 99-19-42.

422 (9) In cases resulting in a sentence of death and upon a
423 determination of indigence, appointment of post-conviction counsel
424 shall be made by the Office of Capital Post-Conviction Counsel
425 upon order entered by the Supreme Court promptly upon announcement
426 of the decision on direct appeal affirming the sentence of death.
427 The order shall direct the trial court to immediately determine
428 indigence and whether the inmate will accept counsel.

429 **SECTION 13.** Section 99-39-25, Mississippi Code of 1972, is
430 brought forward as follows:

431 99-39-25. (1) A final judgment entered under this article
432 may be reviewed by the Supreme Court of Mississippi on appeal
433 brought either by the prisoner or the state on such terms and
434 conditions as are provided for in criminal cases.

435 (2) A perfection of appeal by the state shall act as a
436 supersedeas and shall stay the judgment until there is a final
437 adjudication by the Supreme Court.

438 (3) When the appeal is brought by the state, the prisoner
439 may be released on bail pending appeal under the terms and



440 conditions provided for in Rule 7.02, Mississippi Uniform Criminal
441 Rules of Circuit Court Practice.

442 (4) When the appeal is brought by the prisoner, bail shall
443 not be allowed.

444 (5) The Attorney General shall represent the state in all
445 appeals under this article, whether the appeal is brought by the
446 prisoner or by the state.

447 **SECTION 14.** Section 99-39-27, Mississippi Code of 1972, is
448 brought forward as follows:

449 99-39-27. (1) The application for leave to proceed in the
450 trial court filed with the Supreme Court under Section 99-39-7
451 shall name the State of Mississippi as the respondent.

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

456 (3) The prisoner shall serve an executed copy of the
457 application upon the Attorney General simultaneously with the
458 filing of the application with the court.

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

462 (5) Unless it appears from the face of the application,
463 motion, exhibits and the prior record that the claims presented by
464 those documents are not procedurally barred under Section 99-39-21



465 and that they further present a substantial showing of the denial
466 of a state or federal right, the court shall by appropriate order
467 deny the application. The court may, in its discretion, require
468 the Attorney General upon sufficient notice to respond to the
469 application.

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

472 (7) In granting the application the court, in its
473 discretion, may:

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

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

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

483 (9) The dismissal or denial of an application under this
484 section is a final judgment and shall be a bar to a second or
485 successive application under this article. Excepted from this
486 prohibition is an application filed under Section 99-19-57(2),
487 raising the issue of the offender's supervening mental illness
488 before the execution of a sentence of death. A dismissal or
489 denial of an application relating to mental illness under Section



490 99-19-57(2) shall be res judicata on the issue and shall likewise
491 bar any second or successive applications on the issue. Likewise
492 excepted from this prohibition are those cases in which the
493 prisoner can demonstrate either that there has been an intervening
494 decision of the Supreme Court of either the State of Mississippi
495 or the United States that would have actually adversely affected
496 the outcome of his conviction or sentence or that he has evidence,
497 not reasonably discoverable at the time of trial, that is of such
498 nature that it would be practically conclusive that, if it had
499 been introduced at trial, it would have caused a different result
500 in the conviction or sentence. Likewise exempted are those cases
501 in which the prisoner claims that his sentence has expired or his
502 probation, parole or conditional release has been unlawfully
503 revoked.

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

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

509 **SECTION 15.** Section 99-39-28, Mississippi Code of 1972, is
510 brought forward as follows:

511 99-39-28. If application to proceed in the trial court is
512 granted, post-conviction proceedings on cases where the death
513 penalty has been imposed in the trial court and appeals from the



514 trial court shall be conducted in accordance with rules
515 established by the Supreme Court.

516 **SECTION 16.** Section 99-39-29, Mississippi Code of 1972, is
517 brought forward as follows:

518 99-39-29. If the prisoner or prisoners shall be under
519 sentence of death and the date fixed for the execution of the
520 sentence shall arrive at a time when proceedings for
521 post-conviction collateral relief are pending, either in the state
522 or the federal courts, the Supreme Court of Mississippi shall have
523 the authority to stay the execution upon a substantial showing of
524 merit pending the determination of said proceeding. If, however,
525 a stay has been entered either by a state or federal court and
526 post-conviction collateral relief is denied, the Supreme Court of
527 Mississippi shall forthwith fix a day, not more than thirty (30)
528 days distant from the date of said denial or the vacating of any
529 stay entered by any federal court, for the execution of the
530 sentence, and a warrant shall forthwith issue accordingly.

531 **SECTION 17.** This act shall take effect and be in force from
532 and after July 1, 2024.

