

By: Representative Owen

To: Judiciary B

COMMITTEE SUBSTITUTE
FOR
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 TO AMEND SECTION 47-7-47, MISSISSIPPI CODE OF 1972, TO EXTEND FROM
5 ONE YEAR TO THREE YEARS THE LATEST PERIOD OF CONFINEMENT THAT AN
6 OFFENDER MUST SERVE BEFORE A COURT MAY PLACE AN OFFENDER ON EARNED
7 PROBATION; AND FOR RELATED PURPOSES.

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

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

11 99-39-1. This article shall be known and may be cited as the
12 "Mississippi Uniform Post-Conviction Collateral Relief Act."

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

15 99-39-3. (1) The purpose of this article is to revise,
16 streamline and clarify the rules and statutes pertaining to
17 post-conviction collateral relief law and procedures, to resolve
18 any conflicts therein and to provide the courts of this state with
19 an exclusive and uniform procedure for the collateral review of
20 convictions and sentences. Specifically, this article repeals the



21 statutory writ of error coram nobis, supersedes Rule 8.07 of the
22 Mississippi Uniform Criminal Rules of Circuit Court Practice and
23 abolishes the common law writs relating to post-conviction
24 collateral relief, including by way of illustration but not
25 limitation, error coram nobis, error coram vobis, and
26 post-conviction habeas corpus, as well as statutory
27 post-conviction habeas corpus. The relief formerly accorded by
28 such writs may be obtained by an appropriate motion under this
29 article. The enactment of this article does not affect any
30 pre-conviction remedies.

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

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

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



46 of biological evidence, or a motion for an out-of-time appeal if
47 the person claims:

48 (a) That the conviction or the sentence was imposed in
49 violation of the Constitution of the United States or the
50 Constitution or laws of Mississippi;

51 (b) That the trial court was without jurisdiction to
52 impose sentence;

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

55 (d) That the sentence exceeds the maximum authorized by
56 law;

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

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

69 (g) That his plea was made involuntarily;



70 (h) That his sentence has expired; his probation,
71 parole or conditional release unlawfully revoked; or he is
72 otherwise unlawfully held in custody;

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

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

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

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



95 (ii) That, even if the petitioner pled guilty or
96 nolo contendere, or confessed or admitted to a crime, there exists
97 biological evidence not tested, or, if previously tested, that can
98 be subjected to additional DNA testing that would provide a
99 reasonable likelihood of more probative results, and that testing
100 would demonstrate by reasonable probability that the petitioner
101 would not have been convicted or would have received a lesser
102 sentence if favorable results had been obtained through such
103 forensic DNA testing at the time of the original prosecution.

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

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

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

115 (5) For the purposes of this article:

116 (a) "Biological evidence" means the contents of a
117 sexual assault examination kit and any item that contains blood,
118 semen, hair, saliva, skin tissue, fingernail scrapings, bone,
119 bodily fluids or other identifiable biological material that was



120 collected as part of the criminal investigation or may reasonably
121 be used to incriminate or exculpate any person for the offense.
122 This definition applies whether that material is catalogued
123 separately, such as on a slide, swab or in a test tube, or is
124 present on other evidence, including, but not limited to,
125 clothing, ligatures, bedding or other household material, drinking
126 cups, cigarettes or other items;

127 (b) "DNA" means deoxyribonucleic acid.

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

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

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



145 99-39-9. (1) A motion under this article shall name the
146 State of Mississippi as respondent and shall contain all of the
147 following:

148 (a) The identity of the proceedings in which the
149 petitioner was convicted.

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

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

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



170 evidence, that the testing itself has the potential to establish
171 the integrity of the evidence. For purposes of this paragraph,
172 evidence that has been in the custody of law enforcement, other
173 government officials, or a public or private hospital shall be
174 presumed to satisfy the chain-of-custody requirement, absent
175 specific evidence of material tampering, replacement or
176 alteration, and that the application for testing is made to
177 demonstrate innocence or the appropriateness of a lesser sentence
178 and not solely to unreasonably delay the execution of sentence or
179 the administration of justice.

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

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



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

198 (3) The motion shall be verified by the oath of the
199 petitioner.

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

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

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

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

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



219 (3) If the motion is not dismissed under subsection (2) of
220 this section, the judge shall order the state to file an answer or
221 other pleading within the period of time fixed by the court or to
222 take such other action as the judge deems appropriate and, in
223 cases in which the petitioner's claim rests on the results of DNA
224 testing of biological evidence, order the testing of the
225 biological evidence.

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

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

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

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

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



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

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

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

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

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



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

272 (a) The type of DNA analysis to be used;

273 (b) The testing procedures to be followed;

274 (c) The preservation of some portion of the sample for
275 testing replication;

276 (d) Additional DNA testing, if the results of the
277 initial testing are inconclusive or otherwise merit additional
278 scientific analysis;

279 (e) The collection and DNA testing of elimination
280 samples from third parties; or

281 (f) Any combination of these.

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



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

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

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

298 99-39-13. The answer shall respond to all of the allegations
299 of the motion and shall assert such affirmative defenses as the
300 state may deem appropriate.

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

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

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

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

313 99-39-17. (1) If the motion is not dismissed summarily, the
314 judge may direct that the record be expanded by the parties by the



315 inclusion of additional materials relevant to the determination of
316 the merits of the motion.

317 (2) The expanded record may include, without limitation,
318 letters predating the filing of the motion in the court,
319 documents, exhibits and answers under oath, if so directed, to
320 written interrogatories propounded by the judge. Affidavits may
321 be submitted and considered as a part of the record.

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

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

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

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

338 (2) The court may grant a motion by either party for summary
339 judgment when it appears from the record that there is no genuine



340 issue of material fact and the movant is entitled to judgment as a
341 matter of law.

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

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

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

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

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



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

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

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

374 99-39-23. (1) If an evidentiary hearing is required, the
375 judge may appoint counsel for a petitioner who qualifies for the
376 appointment of counsel under Section 99-15-15.

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

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

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

386 (5) If the court finds in favor of the petitioner, it shall
387 enter an appropriate order with respect to the conviction or
388 sentence under attack, and any supplementary orders as to
389 rearraignment, retrial, custody, bail, discharge, correction of



390 sentence or other matters that may be necessary and proper. The
391 court shall make specific findings of fact, and state expressly
392 its conclusions of law, relating to each issue presented.

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



415 Likewise excepted are those cases in which the petitioner has
416 filed a prior petition and has requested DNA testing under this
417 article, provided the petitioner asserts new or different grounds
418 for relief related to DNA testing not previously presented or the
419 availability of more advanced DNA technology.

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

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

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

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

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



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

441 (3) When the appeal is brought by the state, the prisoner
442 may be released on bail pending appeal under the terms and
443 conditions provided for in Rule 7.02, Mississippi Uniform Criminal
444 Rules of Circuit Court Practice.

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

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

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

452 99-39-27. (1) The application for leave to proceed in the
453 trial court filed with the Supreme Court under Section 99-39-7
454 shall name the State of Mississippi as the respondent.

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

459 (3) The prisoner shall serve an executed copy of the
460 application upon the Attorney General simultaneously with the
461 filing of the application with the court.



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

465 (5) Unless it appears from the face of the application,
466 motion, exhibits and the prior record that the claims presented by
467 those documents are not procedurally barred under Section 99-39-21
468 and that they further present a substantial showing of the denial
469 of a state or federal right, the court shall by appropriate order
470 deny the application. The court may, in its discretion, require
471 the Attorney General upon sufficient notice to respond to the
472 application.

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

475 (7) In granting the application the court, in its
476 discretion, may:

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

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

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



486 (9) The dismissal or denial of an application under this
487 section is a final judgment and shall be a bar to a second or
488 successive application under this article. Excepted from this
489 prohibition is an application filed under Section 99-19-57(2),
490 raising the issue of the offender's supervening mental illness
491 before the execution of a sentence of death. A dismissal or
492 denial of an application relating to mental illness under Section
493 99-19-57(2) shall be res judicata on the issue and shall likewise
494 bar any second or successive applications on the issue. Likewise
495 excepted from this prohibition are those cases in which the
496 prisoner can demonstrate either that there has been an intervening
497 decision of the Supreme Court of either the State of Mississippi
498 or the United States that would have actually adversely affected
499 the outcome of his conviction or sentence or that he has evidence,
500 not reasonably discoverable at the time of trial, that is of such
501 nature that it would be practically conclusive that, if it had
502 been introduced at trial, it would have caused a different result
503 in the conviction or sentence. Likewise exempted are those cases
504 in which the prisoner claims that his sentence has expired or his
505 probation, parole or conditional release has been unlawfully
506 revoked.

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



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

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

514 99-39-28. If application to proceed in the trial court is
515 granted, post-conviction proceedings on cases where the death
516 penalty has been imposed in the trial court and appeals from the
517 trial court shall be conducted in accordance with rules
518 established by the Supreme Court.

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

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



534 **SECTION 17.** Section 47-7-47, Mississippi Code of 1972, is
535 amended as follows:

536 47-7-47. (1) The judge of any circuit court may place an
537 offender on a program of earned probation after a period of
538 confinement as set out herein and the judge may seek the advice of
539 the commissioner and shall direct that the defendant be under the
540 supervision of the department.

541 (2) (a) Any circuit court or county court may, upon its own
542 motion, acting upon the advice and consent of the commissioner not
543 earlier than thirty (30) days nor later than * * * three (3) years
544 after the defendant has been delivered to the custody of the
545 department, to which he has been sentenced, suspend the further
546 execution of the sentence and place the defendant on earned
547 probation, except when a death sentence or life imprisonment is
548 the maximum penalty which may be imposed or if the defendant has
549 been confined two (2) or more times for the conviction of a felony
550 on a previous occasion in any court or courts of the United States
551 and of any state or territories thereof or has been convicted of a
552 felony involving the use of a deadly weapon.

553 (b) The authority granted in this subsection shall be
554 exercised by the judge who imposed sentence on the defendant, or
555 his successor.

556 (c) The time limit imposed by paragraph (a) of this
557 subsection is not applicable to those defendants sentenced to the
558 custody of the department prior to April 14, 1977. Persons who



559 are convicted of crimes that carry mandatory sentences shall not
560 be eligible for earned probation.

561 (3) When any circuit or county court places an offender on
562 earned probation, the court shall give notice to the Mississippi
563 Department of Corrections within fifteen (15) days of the court's
564 decision to place the offender on earned probation. Notice shall
565 be delivered to the central office of the Mississippi Department
566 of Corrections and to the regional office of the department which
567 will be providing supervision to the offender on earned probation.

568 (4) If the court places any person on probation or earned
569 probation, the court may order the person, as a condition of
570 probation, to a period of confinement and treatment at a private
571 or public agency or institution, either within or without the
572 state, which treats emotional, mental or drug-related problems.
573 Any person who, as a condition of probation, is confined for
574 treatment at an out-of-state facility shall be supervised pursuant
575 to Section 47-7-71, and any person confined at a private agency
576 shall not be confined at public expense. Time served in any such
577 agency or institution may be counted as time required to meet the
578 criteria of subsection (2) (a).

579 (5) If the court places any person on probation or earned
580 probation, the court may order the person to make appropriate
581 restitution to any victim of his crime or to society through the
582 performance of reasonable work for the benefit of the community.



583 (6) If the court places any person on probation or earned
584 probation, the court may order the person, as a condition of
585 probation, to submit, as provided in Section 47-5-601, to any type
586 of breath, saliva or urine chemical analysis test, the purpose of
587 which is to detect the possible presence of alcohol or a substance
588 prohibited or controlled by any law of the State of Mississippi or
589 the United States.

590 **SECTION 18.** This act shall take effect and be in force from
591 and after July 1, 2024, and shall stand repealed June 30, 2024.

