

By: Senator(s) Sparks

To: Judiciary, Division B

COMMITTEE SUBSTITUTE  
FOR  
SENATE BILL NO. 2614

1 AN ACT TO AMEND SECTION 99-39-5, MISSISSIPPI CODE OF 1972, TO  
2 IMPLEMENT A ONE-YEAR TIME LIMITATION ON THE INTERVENING DECISION  
3 AND NEWLY DISCOVERED EVIDENCE EXCEPTIONS; TO PROVIDE THAT THE  
4 INEFFECTIVENESS OR INCOMPETENCE OF COUNSEL DURING STATE COLLATERAL  
5 POST-CONVICTION PROCEEDINGS SHALL NOT BE A GROUND FOR RELIEF OR AN  
6 EXCEPTION FOR RELIEF IN A PROCEEDING ARISING UNDER THE MISSISSIPPI  
7 UNIFORM POST-CONVICTION COLLATERAL RELIEF ACT; TO AMEND SECTIONS  
8 99-39-27 AND 99-39-23, MISSISSIPPI CODE OF 1972, TO CONFORM; AND  
9 FOR RELATED PURPOSES.

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

11 **SECTION 1.** Section 99-39-5, Mississippi Code of 1972, is  
12 amended as follows:

13 99-39-5. (1) Any person sentenced by a court of record of  
14 the State of Mississippi, including a person currently  
15 incarcerated, civilly committed, on parole or probation or subject  
16 to sex offender registration for the period of the registration or  
17 for the first five (5) years of the registration, whichever is the  
18 shorter period, may file a motion to vacate, set aside or correct  
19 the judgment or sentence, a motion to request forensic DNA testing  
20 of biological evidence, or a motion for an out-of-time appeal if  
21 the person claims:



22 (a) That the conviction or the sentence was imposed in  
23 violation of the Constitution of the United States or the  
24 Constitution or laws of Mississippi;

25 (b) That the trial court was without jurisdiction to  
26 impose sentence;

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

29 (d) That the sentence exceeds the maximum authorized by  
30 law;

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

34 (f) That there exists biological evidence secured in  
35 relation to the investigation or prosecution attendant to the  
36 petitioner's conviction not tested, or, if previously tested, that  
37 can be subjected to additional DNA testing, that would provide a  
38 reasonable likelihood of more probative results, and that testing  
39 would demonstrate by reasonable probability that the petitioner  
40 would not have been convicted or would have received a lesser  
41 sentence if favorable results had been obtained through such  
42 forensic DNA testing at the time of the original  
43 prosecution \* \* \*;

44 (g) That his plea was made involuntarily;



45           (h) That his sentence has expired; his probation,  
46 parole or conditional release unlawfully revoked; or he is  
47 otherwise unlawfully held in custody;

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

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

53           (2) A motion for relief under this article shall be made  
54 within three (3) years after the time in which the petitioner's  
55 direct appeal is ruled upon by the Supreme Court of Mississippi  
56 or, in case no appeal is taken, within three (3) years after the  
57 time for taking an appeal from the judgment of conviction or  
58 sentence has expired, or in case of a guilty plea, within three  
59 (3) years after entry of the judgment of conviction. Excepted  
60 from this three-year statute of limitations are those cases in  
61 which the petitioner can demonstrate either:

62           (a) (i) That there has been an intervening decision of  
63 the Supreme Court of either the State of Mississippi or the United  
64 States which would have actually adversely affected the outcome of  
65 his conviction or sentence or that he has evidence, not reasonably  
66 discoverable at the time of trial, which is of such nature that it  
67 would be practically conclusive that had such been introduced at  
68 trial it would have caused a different result in the conviction or  
69 sentence. The exceptions in this subparagraph shall toll the



applicable statute of limitations period for either one (1) year  
from the date the mandate was issued in the intervening decision  
or one (1) year from the date on which the facts supporting the  
claim presented could have been discovered through the exercise of  
due diligence; or

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

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

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

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



95           (5) The ineffectiveness or incompetence of counsel during  
96 state collateral post-conviction proceedings shall not be a ground  
97 for relief in a proceeding arising under this article.

98           ( \* \* \*6) For the purposes of this article:

99           (a) "Biological evidence" means the contents of a  
100 sexual assault examination kit and any item that contains blood,  
101 semen, hair, saliva, skin tissue, fingernail scrapings, bone,  
102 bodily fluids or other identifiable biological material that was  
103 collected as part of the criminal investigation or may reasonably  
104 be used to incriminate or exculpate any person for the offense.  
105 This definition applies whether that material is catalogued  
106 separately, such as on a slide, swab or in a test tube, or is  
107 present on other evidence, including, but not limited to,  
108 clothing, ligatures, bedding or other household material, drinking  
109 cups, cigarettes or other items \* \* \*.

110           (b) "DNA" means deoxyribonucleic acid.

111           **SECTION 2.** Section 99-39-27, Mississippi Code of 1972, is  
112 amended as follows:

113           99-39-27. (1) The application for leave to proceed in the  
114 trial court filed with the Supreme Court under Section 99-39-7  
115 shall name the State of Mississippi as the respondent.

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



120 (3) The prisoner shall serve an executed copy of the  
121 application upon the Attorney General simultaneously with the  
122 filing of the application with the court.

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

126 (5) Unless it appears from the face of the application,  
127 motion, exhibits and the prior record that the claims presented by  
128 those documents are not procedurally barred under Section 99-39-21  
129 and that they further present a substantial showing of the denial  
130 of a state or federal right, the court shall by appropriate order  
131 deny the application. The court may, in its discretion, require  
132 the Attorney General upon sufficient notice to respond to the  
133 application.

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

136 (7) In granting the application the court, in its  
137 discretion, may:

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

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



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

147 (9) The dismissal or denial of an application under this  
148 section is a final judgment and shall be a bar to a second or  
149 successive application under this article. Excepted from this  
150 prohibition is an application filed under Section 99-19-57(2),  
151 raising the issue of the offender's supervening mental illness  
152 before the execution of a sentence of death. A dismissal or  
153 denial of an application relating to mental illness under Section  
154 99-19-57(2) shall be res judicata on the issue and shall likewise  
155 bar any second or successive applications on the issue. Likewise  
156 excepted from this prohibition are those cases in which the  
157 prisoner can demonstrate either that there has been an intervening  
158 decision of the Supreme Court of either the State of Mississippi  
159 or the United States that would have actually adversely affected  
160 the outcome of his conviction or sentence or that he has evidence,  
161 not reasonably discoverable at the time of trial, that is of such  
162 nature that it would be practically conclusive that, if it had  
163 been introduced at trial, it would have caused a different result  
164 in the conviction or sentence. Likewise exempted are those cases  
165 in which the prisoner claims that his sentence has expired or his  
166 probation, parole or conditional release has been unlawfully  
167 revoked. The intervening decision exception in this subsection  
168 shall toll the applicable statute of limitations period for one  
169 (1) year from the date the mandate was issued in the intervening



170 decision. The newly discovered evidence exception under this  
171 subsection shall toll the applicable statute of limitations period  
172 for one (1) year from the date on which the facts supporting the  
173 claim presented could have been discovered through the exercise of  
174 due diligence.

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

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

180 (12) The ineffectiveness or incompetence of counsel during  
181 State collateral post-conviction proceedings shall not be an  
182 exception for relief under this section.

183 **SECTION 3.** Section 99-39-23, Mississippi Code of 1972, is  
184 amended as follows:

185 99-39-23. (1) If an evidentiary hearing is required, the  
186 judge may appoint counsel for a petitioner who qualifies for the  
187 appointment of counsel under Section 99-15-15.

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

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





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

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

204           (6) The order as provided in subsection (5) of this section  
205 or any order dismissing the petitioner's motion or otherwise  
206 denying relief under this article is a final judgment and shall be  
207 conclusive until reversed. It shall be a bar to a second or  
208 successive motion under this article. Excepted from this  
209 prohibition is a motion filed under Section 99-19-57(2), raising  
210 the issue of the convict's supervening mental illness before the  
211 execution of a sentence of death. A dismissal or denial of a  
212 motion relating to mental illness under Section 99-19-57(2) shall  
213 be res judicata on the issue and shall likewise bar any second or  
214 successive motions on the issue. Likewise excepted from this  
215 prohibition are those cases in which the petitioner, within the  
216 time period under Section 99-39-5(2)(a)(i), can demonstrate either  
217 that there has been an intervening decision of the Supreme Court  
218 of either the State of Mississippi or the United States which



219 would have actually adversely affected the outcome of his  
220 conviction or sentence or that he has evidence, not reasonably  
221 discoverable at the time of trial, which is of such nature that it  
222 would be practically conclusive that, if it had been introduced at  
223 trial, it would have caused a different result in the conviction  
224 or sentence. Likewise excepted are those cases in which the  
225 petitioner, within the time period under Section 99-39-5(2)(a)(i),  
226 claims that his sentence has expired or his probation, parole or  
227 conditional release has been unlawfully revoked. Likewise  
228 excepted are those cases in which the petitioner has filed a prior  
229 petition and has requested DNA testing under this article,  
230 provided the petitioner asserts new or different grounds for  
231 relief related to DNA testing not previously presented or the  
232 availability of more advanced DNA technology.

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

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

238 (9) In cases resulting in a sentence of death and upon a  
239 determination of indigence, appointment of post-conviction counsel  
240 shall be made by the Office of Capital Post-Conviction Counsel  
241 upon order entered by the Supreme Court promptly upon announcement  
242 of the decision on direct appeal affirming the sentence of death.



243 The order shall direct the trial court to immediately determine  
244 indigence and whether the inmate will accept counsel.

245 (10) The ineffectiveness or incompetence of counsel during  
246 State collateral post-conviction proceedings shall not be an  
247 exception for relief under this section.

248 **SECTION 4.** This act shall take effect and be in force from  
249 and after July 1, 2024.

