

By: Senator(s) Sparks

To: Judiciary, Division B

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 IN A
6 PROCEEDING ARISING UNDER THE SECTIONS OF THIS ACT; TO AMEND
7 SECTIONS 99-39-27 AND 99-39-23, MISSISSIPPI CODE OF 1972, TO
8 CONFORM; AND FOR RELATED PURPOSES.

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

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

12 99-39-5. (1) Any person sentenced by a court of record of
13 the State of Mississippi, including a person currently
14 incarcerated, civilly committed, on parole or probation or subject
15 to sex offender registration for the period of the registration or
16 for the first five (5) years of the registration, whichever is the
17 shorter period, may file a motion to vacate, set aside or correct
18 the judgment or sentence, a motion to request forensic DNA testing
19 of biological evidence, or a motion for an out-of-time appeal if
20 the person claims:



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

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

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

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

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

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

43 (g) That his plea was made involuntarily;



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

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

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

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

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



69 limitations period for one year from the date the mandate was
70 issued in the intervening decision; or

71 (ii) That, even if the petitioner pled guilty or
72 nolo contendere, or confessed or admitted to a crime, there exists
73 biological evidence not tested, or, if previously tested, that can
74 be subjected to additional DNA testing that would provide a
75 reasonable likelihood of more probative results, and that testing
76 would demonstrate by reasonable probability that the petitioner
77 would not have been convicted or would have received a lesser
78 sentence if favorable results had been obtained through such
79 forensic DNA testing at the time of the original prosecution.
80 This exception shall toll the applicable statute of limitations
81 period for one year from the date on which the facts supporting
82 the claim presented could have been discovered through the
83 exercise of due diligence.

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

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



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

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

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

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

(b) "DNA" means deoxyribonucleic acid.

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

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



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

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

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

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

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

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

139 (a) Where sufficient facts exist from the face of the
140 application, motion, exhibits, the prior record and the state's
141 response, together with any exhibits submitted with those



documents, or upon stipulation of the parties, grant or deny any or all relief requested in the attached motion.

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

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

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



167 probation, parole or conditional release has been unlawfully
168 revoked.

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

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

174 (12) The ineffectiveness or incompetence of counsel during
175 State collateral post-conviction proceedings shall not be a ground
176 for relief in a proceeding arising under the sections of this
177 article.

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

180 99-39-23. (1) If an evidentiary hearing is required, the
181 judge may appoint counsel for a petitioner who qualifies for the
182 appointment of counsel under Section 99-15-15.

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

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

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



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

199 (6) The order as provided in subsection (5) of this section
200 or any order dismissing the petitioner's motion or otherwise
201 denying relief under this article is a final judgment and shall be
202 conclusive until reversed. It shall be a bar to a second or
203 successive motion under this article. Excepted from this
204 prohibition is a motion filed under Section 99-19-57(2), raising
205 the issue of the convict's supervening mental illness before the
206 execution of a sentence of death. A dismissal or denial of a
207 motion relating to mental illness under Section 99-19-57(2) shall
208 be res judicata on the issue and shall likewise bar any second or
209 successive motions on the issue. Likewise excepted from this
210 prohibition are those cases in which the petitioner, within the
211 time period under Section 99-39-5(2)(a)(i), can demonstrate either
212 that there has been an intervening decision of the Supreme Court
213 of either the State of Mississippi or the United States which
214 would have actually adversely affected the outcome of his
215 conviction or sentence or that he has evidence, not reasonably
216 discoverable at the time of trial, which is of such nature that it



would be practically conclusive that, if it had been introduced at trial, it would have caused a different result in the conviction or sentence. Likewise excepted are those cases in which the petitioner, within the time period under Section 99-39-5(2)(a)(ii), claims that his sentence has expired or his probation, parole or conditional release has been unlawfully revoked. Likewise excepted are those cases in which the petitioner has filed a prior petition and has requested DNA testing under this article, provided the petitioner asserts new or different grounds for relief related to DNA testing not previously presented or the availability of more advanced DNA technology.

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

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

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

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

