

**Pending
COMMITTEE AMENDMENT NO 1 PROPOSED TO**

Senate Bill No. 2614

BY: Committee

**Amend by striking all after the enacting clause and inserting
in lieu thereof the following:**

17 **SECTION 1.** Section 99-39-5, Mississippi Code of 1972, is
18 amended as follows:
19 99-39-5. (1) Any person sentenced by a court of record of
20 the State of Mississippi, including a person currently
21 incarcerated, civilly committed, on parole or probation or subject
22 to sex offender registration for the period of the registration or
23 for the first five (5) years of the registration, whichever is the
24 shorter period, may file a motion to vacate, set aside or correct
25 the judgment or sentence, a motion to request forensic DNA testing



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

28 (a) That the conviction or the sentence was imposed in
29 violation of the Constitution of the United States or the
30 Constitution or laws of Mississippi;

31 (b) That the trial court was without jurisdiction to
32 impose sentence;

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

35 (d) That the sentence exceeds the maximum authorized by
36 law;

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

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

50 (g) That his plea was made involuntarily;



51 (h) That his sentence has expired; his probation,
52 parole or conditional release unlawfully revoked; or he is
53 otherwise unlawfully held in custody;

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

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

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

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



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

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

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

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

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



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

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

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

116 (b) "DNA" means deoxyribonucleic acid.

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

119 99-39-27. (1) The application for leave to proceed in the
120 trial court filed with the Supreme Court under Section 99-39-7
121 shall name the State of Mississippi as the respondent.

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



126 (3) The prisoner shall serve an executed copy of the
127 application upon the Attorney General simultaneously with the
128 filing of the application with the court.

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

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

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

142 (7) In granting the application the court, in its
143 discretion, may:

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

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



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

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



176 decision. The newly discovered evidence exception under this
177 subsection shall toll the applicable statute of limitations period
178 for one (1) year from the date on which the facts supporting the
179 claim presented could have been discovered through the exercise of
180 due diligence.

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

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

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

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

191 99-39-23. (1) If an evidentiary hearing is required, the
192 judge may appoint counsel for a petitioner who qualifies for the
193 appointment of counsel under Section 99-15-15.

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

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



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

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

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



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

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

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

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



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

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

254 **SECTION 4.** Section 99-39-7, Mississippi Code of 1972, is
255 amended as follows:

256 99-39-7. (1) The motion under this article shall be filed
257 as an original civil action in the trial court, except in cases in
258 which:

259 (a) The petitioner's conviction and sentence have been
260 appealed to the Supreme Court of Mississippi and there affirmed or
261 the appeal dismissed;

262 (b) The denial of a previous post-conviction motion
263 filed by the petitioner has been appealed to the Supreme Court of
264 Mississippi and there affirmed or the appeal dismissed; or

265 (c) More than three (3) years after the time for taking
266 an appeal from the judgment or conviction have elapsed.

267 (2) Where the conviction and sentence have been affirmed on
268 appeal or the appeal has been dismissed, where the denial of a
269 previous post-conviction motion filed by the petitioner has been
270 appealed to the Supreme Court of Mississippi and there affirmed or
271 the appeal dismissed, or where more than three (3) years after the
272 time for taking an appeal from the judgment or conviction have
273 elapsed, the motion under this article shall not be filed in the



274 trial court until the motion shall have first been presented to a
275 quorum of the Justices of the Supreme Court of Mississippi,
276 convened for * * * that purpose either in termtime or in vacation,
277 and an order granted allowing the filing of such motion in the
278 trial court. The procedure governing applications to the Supreme
279 Court for leave to file a motion under this article shall be as
280 provided in Section 99-39-27.

281 **SECTION 5.** This act shall take effect and be in force from
282 and after July 1, 2024.

**Further, amend by striking the title in its entirety and
inserting in lieu thereof the following:**

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; TO
9 AMEND SECTION 99-39-7, MISSISSIPPI CODE OF 1972, TO REQUIRE A
10 PERSON SEEKING TO FILE A MOTION FOR POST-CONVICTION COLLATERAL
11 RELIEF TO OBTAIN PERMISSION FROM THE MISSISSIPPI SUPREME COURT
12 BEFORE FILING THE MOTION IN TRIAL COURT IF A DENIAL OF A PREVIOUS
13 POST-CONVICTION MOTION HAS BEEN AFFIRMED ON APPEAL OR MORE THAN
14 THREE YEARS HAVE ELAPSED AFTER THE TIME FOR TAKING AN APPEAL FROM
15 A JUDGMENT OR CONVICTION; AND FOR RELATED PURPOSES.

