

Senate Amendments to House Bill No. 1253

TO THE CLERK OF THE HOUSE:

THIS IS TO INFORM YOU THAT THE SENATE HAS ADOPTED THE AMENDMENTS SET OUT BELOW:

AMENDMENT NO. 1

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

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

75 (ii) That, even if the petitioner pled guilty or
76 nolo contendere, or confessed or admitted to a crime, there exists
77 biological evidence not tested, or, if previously tested, that can
78 be subjected to additional DNA testing that would provide a

79 reasonable likelihood of more probative results, and that testing
80 would demonstrate by reasonable probability that the petitioner
81 would not have been convicted or would have received a lesser
82 sentence if favorable results had been obtained through such
83 forensic DNA testing at the time of the original prosecution.

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.

93 (4) Proceedings under this article shall be subject to the
94 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.

**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; AND
9 FOR RELATED PURPOSES.

SS26\HB1253A.J

Amanda White
Secretary of the Senate