

By: Representative Shanks

To: Judiciary B

## HOUSE BILL NO. 1033

1 AN ACT TO AMEND SECTIONS 99-39-23 AND 99-39-27, MISSISSIPPI  
2 CODE OF 1972, TO CLARIFY THAT REQUESTS FOR DNA TESTING ARE  
3 EXCEPTED FROM THE BAR ON SECOND OR SUCCESSIVE MOTIONS FOR  
4 POST-CONVICTION RELIEF; TO BRING FORWARD SECTION 99-39-5,  
5 MISSISSIPPI CODE OF 1972, FOR PURPOSES OF POSSIBLE AMENDMENT; AND  
6 FOR RELATED PURPOSES.

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

8 **SECTION 1.** Section 99-39-23, Mississippi Code of 1972, is  
9 amended as follows:

10 99-39-23. (1) If an evidentiary hearing is required, the  
11 judge may appoint counsel for a petitioner who qualifies for the  
12 appointment of counsel under Section 99-15-15.

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

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



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

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

29           (6) The order as provided in subsection (5) of this section  
30 or any order dismissing the petitioner's motion or otherwise  
31 denying relief under this article is a final judgment and shall be  
32 conclusive until reversed. It shall be a bar to a second or  
33 successive motion under this article. Excepted from \* \* \* the  
34 prohibition on second or successive motions is a motion filed  
35 under Section 99-19-57(2), raising the issue of the convict's  
36 supervening mental illness before the execution of a sentence of  
37 death. A dismissal or denial of a motion relating to mental  
38 illness under Section 99-19-57(2) shall be res judicata on the  
39 issue and shall likewise bar any second or successive motions on  
40 the issue.

41           Likewise excepted from \* \* \* the prohibition on second or  
42 successive motions are those cases in which the petitioner can  
43 demonstrate either: (i) that there has been an intervening



44 decision of the Supreme Court of either the State of Mississippi  
45 or the United States which would have actually adversely affected  
46 the outcome of his conviction or sentence \* \* \*; (ii) that he has  
47 evidence, not reasonably discoverable at the time of trial, which  
48 is of such nature that it would be practically conclusive that, if  
49 it had been introduced at trial, it would have caused a different  
50 result in the conviction or sentence; or (iii) that, even if the  
51 petitioner pled guilty or nolo contendere, or confessed or  
52 admitted to a crime, there exists biological evidence not tested,  
53 or, if previously tested, that can be subjected to additional DNA  
54 testing that would provide a reasonable likelihood of more  
55 probative results, and that testing would demonstrate by  
56 reasonable probability that the petitioner would not have been  
57 convicted or would have received a lesser sentence if favorable  
58 results had been obtained through such forensic DNA testing at the  
59 time of the original prosecution. \* \* \* Likewise excepted are  
60 those cases in which the petitioner has filed a prior petition and  
61 has requested DNA testing under this article, provided the  
62 petitioner asserts new or different grounds for relief related to  
63 DNA testing not previously presented or the availability of more  
64 advanced DNA technology.

65 Likewise excepted are those cases in which the petitioner  
66 claims that his sentence has expired or his probation, parole or  
67 conditional release has been unlawfully revoked.



(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 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.

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

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



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

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

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

105           (7) In granting the application the court, in its  
106 discretion, may:

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

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

114           (8) No application or relief shall be granted without the  
115 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 \* \* \* the prohibition on second or successive applications 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 \* \* \* the prohibition are those cases in which the prisoner can demonstrate either: (i) 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 \* \* \*; (ii) 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 \* \* \* or (iii) 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. Likewise excepted are those cases in which the petitioner has filed a prior application 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.

Likewise \* \* \* excepted are those cases in which the prisoner claims that his sentence has expired or his probation, parole or conditional release has been unlawfully revoked.

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

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

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

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



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

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

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

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

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

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

(f) That there exists biological evidence secured in relation to the investigation or prosecution attendant to the petitioner's conviction 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.

(g) That his plea was made involuntarily;





190 (h) That his sentence has expired; his probation,  
191 parole or conditional release unlawfully revoked; or he is  
192 otherwise unlawfully held in custody;

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

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

198 (2) A motion for relief under this article shall be made  
199 within three (3) years after the time in which the petitioner's  
200 direct appeal is ruled upon by the Supreme Court of Mississippi  
201 or, in case no appeal is taken, within three (3) years after the  
202 time for taking an appeal from the judgment of conviction or  
203 sentence has expired, or in case of a guilty plea, within three  
204 (3) years after entry of the judgment of conviction. Excepted  
205 from this three-year statute of limitations are those cases in  
206 which the petitioner can demonstrate either:

207 (a) (i) That there has been an intervening decision of  
208 the Supreme Court of either the State of Mississippi or the United  
209 States which would have actually adversely affected the outcome of  
210 his conviction or sentence or that he has evidence, not reasonably  
211 discoverable at the time of trial, which is of such nature that it  
212 would be practically conclusive that had such been introduced at  
213 trial it would have caused a different result in the conviction or  
214 sentence; or



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

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

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

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

235                   (5) For the purposes of this article:

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



240 collected as part of the criminal investigation or may reasonably  
241 be used to incriminate or exculpate any person for the offense.  
242 This definition applies whether that material is catalogued  
243 separately, such as on a slide, swab or in a test tube, or is  
244 present on other evidence, including, but not limited to,  
245 clothing, ligatures, bedding or other household material, drinking  
246 cups, cigarettes or other items;

247 (b) "DNA" means deoxyribonucleic acid.

248 **SECTION 4.** This act shall take effect and be in force from  
249 and after July 1, 2025.

