

By: Representative Bell (65th)

To: Judiciary B

HOUSE BILL NO. 1445

1 AN ACT TO AMEND SECTION 99-39-5, MISSISSIPPI CODE OF 1972, TO
2 CLARIFY THE EXCEPTION TO STATUTORY BARS WHERE THERE IS A VIOLATION
3 OF A FUNDAMENTAL CONSTITUTIONAL RIGHT; AND FOR RELATED PURPOSES.

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

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

7 99-39-5. (1) Any person sentenced by a court of record of
8 the State of Mississippi, including a person currently
9 incarcerated, civilly committed, on parole or probation or subject
10 to sex offender registration for the period of the registration or
11 for the first five (5) years of the registration, whichever is the
12 shorter period, may file a motion to vacate, set aside or correct
13 the judgment or sentence, a motion to request forensic DNA testing
14 of biological evidence, or a motion for an out-of-time appeal if
15 the person claims:

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



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

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

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

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

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

38 (g) That his plea was made involuntarily;

39 (h) That his sentence has expired; his probation,
40 parole or conditional release unlawfully revoked; or he is
41 otherwise unlawfully held in custody;

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



(j) That the conviction or sentence is otherwise subject to collateral attack upon any grounds of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy, including claims affecting a fundamental constitutional right, which is an exception to the bars of this section.

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

(a) (i) That there has been an intervening decision of the Supreme Court of either the State of Mississippi or the United States which 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, which is of such nature that it would be practically conclusive that had such been introduced at trial it would have caused a different result in the conviction or sentence; or

(ii) That, even if the petitioner pled guilty or nolo contendere, or confessed or admitted to a crime, there exists



68 biological evidence not tested, or, if previously tested, that can
69 be subjected to additional DNA testing that would provide a
70 reasonable likelihood of more probative results, and that testing
71 would demonstrate by reasonable probability that the petitioner
72 would not have been convicted or would have received a lesser
73 sentence if favorable results had been obtained through such
74 forensic DNA testing at the time of the original prosecution.

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

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

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

86 (5) For the purposes of this article:

87 (a) "Biological evidence" means the contents of a
88 sexual assault examination kit and any item that contains blood,
89 semen, hair, saliva, skin tissue, fingernail scrapings, bone,
90 bodily fluids or other identifiable biological material that was
91 collected as part of the criminal investigation or may reasonably
92 be used to incriminate or exculpate any person for the offense.



93 This definition applies whether that material is catalogued
94 separately, such as on a slide, swab or in a test tube, or is
95 present on other evidence, including, but not limited to,
96 clothing, ligatures, bedding or other household material, drinking
97 cups, cigarettes or other items * * *.

98 (b) "DNA" means deoxyribonucleic acid.

99 **SECTION 2.** This act shall take effect and be in force from
100 and after July 1, 2025.

