

By: Representatives Brown, Mayo, Fleming

To: Judiciary En Banc

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 703

1 AN ACT TO AMEND SECTION 99-17-20, MISSISSIPPI CODE OF 1972,
2 TO REQUIRE DNA TESTING IN CAPITAL CASES BASED ON THE AVAILABILITY
3 OF EVIDENCE; TO ESTABLISH PROCEDURE FOR OBTAINING DNA SAMPLES; TO
4 AMEND SECTION 99-39-5, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR
5 POST-CONVICTION MOTIONS FOR DNA TESTING FOR ALL CAPITAL DEATH
6 PENALTY CASES; AND FOR RELATED PURPOSES.

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

8 **SECTION 1.** Section 99-17-20, Mississippi Code of 1972, is
9 amended as follows:

10 99-17-20. (1) No person shall be tried for capital murder,
11 or any other crime punishable by death as provided by law, unless
12 such offense was specifically cited in the indictment returned
13 against the accused by setting forth the section and subsection
14 number of the code defining the offense alleged to have been
15 committed by the accused. The judge, in cases where the offense
16 cited in the indictment is punishable by death, may grant an
17 instruction for the state or the defendant which instructs the
18 jury as to their discretion to convict the accused of the
19 commission of an offense not specifically set forth in the
20 indictment returned against the accused. Any conviction of the
21 accused for an offense punishable by death shall not be valid
22 unless the offense for which the accused is convicted shall have
23 been set forth in the indictment by section and subsection number
24 of the code which defined the offense allegedly committed by the
25 accused.

26 (2) All law enforcement agencies who possess biological
27 evidence of any person convicted of any capital offense shall
28 notify such person of the existence of such evidence and shall
29 make such evidence available to such person for DNA

30 (deoxyribonucleic acid) testing. Upon the petition of a defendant
31 convicted of a capital crime and after a determination of
32 indigency, the court shall appoint counsel for the defendant for
33 the purposes of testing as provided in this subsection.

34 **SECTION 2.** Section 99-39-5, Mississippi Code of 1972, is
35 amended as follows:

36 99-39-5. (1) Any prisoner in custody under sentence of a
37 court of record of the State of Mississippi who claims:

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

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

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

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

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

50 (f) That his plea was made involuntarily;

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

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

55 (i) 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; may file a motion to
59 vacate, set aside or correct the judgment or sentence, or for an
60 out-of-time appeal.

61 (2) A motion for relief under this article shall be made
62 within three (3) years after the time in which the prisoner's

63 direct appeal is ruled upon by the Supreme Court of Mississippi
64 or, in case no appeal is taken, within three (3) years after the
65 time for taking an appeal from the judgment of conviction or
66 sentence has expired, or in case of a guilty plea, within three
67 (3) years after entry of the judgment of conviction. Excepted
68 from this three-year statute of limitations are those cases in
69 which the prisoner can demonstrate either that there has been an
70 intervening decision of the Supreme Court of either the State of
71 Mississippi or the United States which would have actually
72 adversely affected the outcome of his conviction or sentence or
73 that he has evidence, not reasonably discoverable at the time of
74 trial, which is of such nature that it would be practically
75 conclusive that had such been introduced at trial it would have
76 caused a different result in the conviction or sentence. Likewise
77 excepted are those cases in which the prisoner claims that his
78 sentence has expired or his probation, parole or conditional
79 release has been unlawfully revoked. Likewise excepted are
80 filings for post-conviction relief in capital cases which shall be
81 made within one (1) year after conviction.

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

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

87 (5) All prisoners in custody for a capital death penalty
88 conviction shall have the right to file a post-conviction motion
89 for DNA testing.

90 **SECTION 3.** This act shall take effect and be in force from
91 and after its passage.