

REPORT OF CONFERENCE COMMITTEE

MR. SPEAKER AND MR. PRESIDENT:

We, the undersigned conferees, have had under consideration the amendments to the following entitled BILL:

H. B. No. 1253: Post-conviction collateral relief; require certain petitioners to obtain Supreme Court permission before filing in trial court.

We, therefore, respectfully submit the following report and recommendation:

1. That the Senate recede from its Amendment No. 1.
2. That the House and Senate adopt the following amendment:

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

23 **SECTION 1.** Section 99-39-7, Mississippi Code of 1972, is
24 amended as follows:

25 99-39-7. (1) The motion under this article shall be filed
26 as an original civil action in the trial court, except in cases in
27 which:

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

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

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



36 (2) Where the conviction and sentence have been affirmed on
37 appeal or the appeal has been dismissed, where the denial of a
38 previous post-conviction motion filed by the petitioner has been
39 appealed to the Supreme Court of Mississippi and there affirmed or
40 the appeal dismissed, or where more than three (3) years after the
41 time for taking an appeal from the judgment or conviction have
42 elapsed, the motion under this article shall not be filed in the
43 trial court until the motion shall have first been presented to a
44 quorum of the Justices of the Supreme Court of Mississippi,
45 convened for * * * that purpose either in termtime or in vacation,
46 and an order granted allowing the filing of such motion in the
47 trial court. The procedure governing applications to the Supreme
48 Court for leave to file a motion under this article shall be as
49 provided in Section 99-39-27.

50 **SECTION 2.** Section 21-23-8, Mississippi Code of 1972, is
51 amended as follows:

52 21-23-8. (1) (a) The purpose of bail is to guarantee
53 appearance and a bail bond shall not be forfeited for any other
54 reason.

55 (b) (i) If a defendant in any criminal case,
56 proceeding or matter fails to appear for any proceeding as ordered
57 by the municipal court, then the court shall order the bail
58 forfeited and a judgment nisi and a bench warrant issued at the
59 time of nonappearance. The clerk of the municipal court shall
60 notify the surety of the forfeiture by writ of scire facias, with



61 a copy of the judgment nisi and bench warrant attached thereto,
62 within ten (10) working days of such order of judgment nisi either
63 by personal service or by certified mail. Failure * * * to
64 provide the required notice within ten (10) working days shall
65 constitute prima facie evidence that the order * * * shall be set
66 aside, and the clerk shall accept a set-aside order on behalf of
67 the surety to that effect. All felony warrants issued by a court
68 for nonappearance shall be put on the National Crime Information
69 Center (NCIC) index with no restrictions until the defendant is
70 returned to custody.

71 (ii) 1. The judgment nisi shall be returnable for
72 ninety (90) days from the date of issuance. If during that period
73 the defendant appears before the municipal court, or is arrested
74 and surrendered, then the judgment nisi shall be set aside. If
75 the surety produces the defendant or provides to the municipal
76 court reasonable mitigating circumstances upon such showing, then
77 the forfeiture shall not be made final. If the forfeiture is made
78 final, a copy of the final judgment shall be served on the surety
79 within ten (10) working days by either personal service or
80 certified mail.

81 2. Reasonable mitigating circumstances shall
82 be that the defendant is incarcerated in another jurisdiction;
83 that the defendant is hospitalized under a doctor's care; that the
84 defendant is in a recognized drug rehabilitation program; that the
85 defendant has been placed in a witness protection program, in



86 which case it shall be the duty of any agency placing the
87 defendant into a witness protection program to notify the
88 municipal court and the municipal court to notify the surety; or
89 any other reason justifiable to the municipal court.

90 (2) (a) If a final judgment is entered against a surety
91 licensed by the Department of Insurance and has not been set aside
92 after ninety (90) days, or later if such time is extended by the
93 municipal court issuing the judgment nisi, then the municipal
94 court shall order the department to revoke the authority of the
95 surety to write bail bonds. The Commissioner of Insurance shall,
96 upon notice of the municipal court, notify the surety within five
97 (5) working days of receipt of the order of revocation. If
98 after * * * twenty (20) working days of the notification the
99 revocation order has not been set aside by the municipal court,
100 then the commissioner shall revoke the authority of the surety and
101 all agents of the surety and shall notify the sheriff of every
102 county of such revocation.

103 (b) Before the revocation authorized in paragraph (a)
104 of this subsection, the surety may submit proof to the department
105 that the defendant has been surrendered to the appropriate
106 authorities or that the bond has been paid directly to the court
107 or other proper authorities, such proof to include, but not be
108 limited to:

109 (i) A receipt of payment to the bond;

110 (ii) A surrender certificate; or



111 (iii) A notice of surrender from the proper
112 authorities, including foreign jurisdictions.

113 (3) If within eighteen (18) months of the date of the final
114 forfeiture the defendant appears for municipal court, is arrested
115 or surrendered to the municipal court, or if the defendant is
116 found to be incarcerated in another jurisdiction and a hold order
117 placed on the defendant, then the amount of bail, less reasonable
118 extradition cost, excluding attorney fees, shall be refunded by
119 the municipal court upon application by the surety.

120 (4) (a) The municipal judge shall set the amount of bail
121 for persons charged with offenses in municipal court and may
122 approve the bond or recognizance therefor.

123 (b) The court shall not set the financial conditions of
124 bail solely for the purpose of detaining the defendant. When bail
125 is set, it is presumed that the amount of bail is both necessary
126 to reasonably assure the safety of a victim, witness or the
127 general public and to guarantee the appearance of a defendant as
128 required by the court. The amount of bail is also presumed to be
129 attainable by the defendant. The presumption that bail is
130 attainable by the defendant may be rebutted by the defendant who
131 may file a motion to reduce or set aside the bail requirement with
132 the court due to lack of financial means, which shall also
133 consider the availability of a third-party support system to
134 obtain the defendant's release. The court shall rule on any such
135 motion within forty-eight (48) hours of the filing.



136 (c) If the defendant or his counsel asserts that the
137 defendant is indigent and cannot afford the amount of bail, the
138 municipal judge shall make a determination of whether the
139 defendant can be released on recognizance, based on the standards
140 enumerated in the Mississippi Rules of Criminal Procedure and any
141 other factors considered relevant by the municipal judge. No
142 misdemeanor defendant shall be incarcerated solely because the
143 defendant cannot afford to post bail; nor shall a misdemeanor
144 defendant be released solely because the defendant cannot afford
145 bail. It is the duty of the municipal judge to ensure that
146 release of the defendant does not jeopardize the community.

147 (d) The accused may waive an appearance before the
148 judge and execute an appearance bond in an amount determined by
149 the court from the bond guidelines set out in the Mississippi
150 Rules of Criminal Procedure and agree to appear at a specified
151 time and place.

152 (e) If the municipal judge is unavailable and has not
153 provided a bail schedule or otherwise provided for the setting of
154 bail, it is lawful for any officer or officers designated by order
155 of the municipal judge to take bond, cash, property or
156 recognizance, with or without sureties, in the amount of the
157 minimum bail specified in the bond guidelines set out in the
158 Mississippi Rules of Criminal Procedure, payable to the
159 municipality and conditioned for the appearance of the person on
160 the return day and time of the writ before the court to which the



161 warrant is returnable, or in cases of arrest without a warrant, on
162 the day and time set by the court or officer for arraignment, and
163 there remain from day to day and term to term until discharged.

164 (f) In circumstances involving an offense against any
165 of the following: (i) a current or former spouse of the accused
166 or child of that person; (ii) a person living as a spouse or who
167 formerly lived as a spouse with the accused or a child of that
168 person; (iii) a parent, grandparent, child, grandchild or someone
169 similarly situated to the accused; (iv) a person who has a current
170 or former dating relationship with the accused; or (v) a person
171 with whom the accused has had a biological or legally adopted
172 child, the municipal judge shall check, or cause to be made a
173 check of the status of the person for whom recognizance or bond is
174 taken before ordering bail in the Mississippi Protection Order
175 Registry authorized under Section 93-21-25, and the existence of a
176 domestic abuse protection order against the accused shall be
177 considered when determining appropriate bail.

178 (g) All bonds shall be promptly returned to the court,
179 together with any cash deposited, and be filed and proceeded on by
180 the court in a case of forfeiture. The chief of the municipal
181 police or a police officer or officers designated by order of the
182 municipal judge may approve bonds or recognizances.

183 (h) All bonds and recognizances in municipal court
184 where the municipal court shall have the jurisdiction to hear and
185 determine the case may be made payable to the municipality and



186 shall have the effect to bind the principal and any sureties on
187 the bond or recognizance until they shall be discharged by due
188 course of law without renewal.

189 **SECTION 3.** Section 83-39-7, Mississippi Code of 1972, is
190 amended as follows:

191 83-39-7. (1) (a) Each applicant for a professional bail
192 agent license who acts as personal surety shall be required to
193 post a qualification bond in the amount of Thirty Thousand Dollars
194 (\$30,000.00).

195 (b) The Insurance Department shall submit a report to
196 the Senate and House of Representatives Committees on
197 Accountability, Efficiency and Transparency that details the
198 amount of all bonds or undertakings that each bail bondsman has
199 written in this state on which the bail bondsman is absolutely or
200 conditionally liable since the Bail Bond Database was established
201 by the department. The report shall be submitted on or before
202 December 1, 2017. The report shall also include the number of
203 bail bondsmen who have failed to comply with the database
204 reporting requirements, if any, the technical issues that may have
205 occurred since the database was established and any suggested
206 legislation to ensure each bail bondsman's continued compliance
207 with the database reporting requirements.

208 (2) The qualification bond shall be made by depositing with
209 the commissioner the aforesaid amount of bonds of the United
210 States, the State of Mississippi or any agency or subdivision



211 thereof, or a certificate of deposit issued by an institution
212 whose deposits are insured by the Federal Deposit Insurance
213 Corporation and made payable jointly to the owner and the
214 Department of Insurance, or shall be written by an insurer as
215 defined in this chapter, shall meet the specifications as may be
216 required and defined in this chapter, and shall meet such
217 specifications as may be required and approved by the department.
218 The bond shall be conditioned upon the full and prompt payment of
219 any bail bond issued by such professional bail agent into the
220 court ordering the bond forfeited. The bond shall be to the
221 people of the State of Mississippi in favor of any court of this
222 state, whether municipal, justice, county, circuit, Supreme or
223 other court.

224 (3) (a) If any bond issued by a professional bail agent is
225 declared forfeited and judgment entered thereon by a court of
226 proper jurisdiction as authorized in Section 99-5-25, and the
227 amount of the bond is not paid within ninety (90) days, that court
228 shall order the department to declare the qualification bond of
229 the professional bail agent to be forfeited and the license
230 revoked. If the bond was not forfeited correctly under Section
231 99-5-25, it shall be returned to the court as uncollectible. The
232 department shall then order the surety on the qualification bond
233 to deposit with the court an amount equal to the amount of the
234 bond issued by the professional bail agent and declared forfeited
235 by the court, or the amount of the qualification bond, whichever



236 is the smaller amount. The department shall, after a hearing held
237 upon not less than * * * twenty (20) days' written notice, suspend
238 the license of the professional bail agent until such time as
239 another qualification bond in the required amount is posted with
240 the department. The revocation of the license of the professional
241 bail agent shall also serve to revoke the license of each
242 soliciting bail agent and bail enforcement agent employed or used
243 by such professional bail agent. In the event of a final judgment
244 of forfeiture of any bail bond written under the provisions of
245 this chapter, the amount of money so forfeited by the final
246 judgment of the proper court, less all accrued court costs and
247 excluding any interest charges or attorney's fees, shall be
248 refunded to the bail agent or his insurance company upon proper
249 showing to the court as to which is entitled to same, provided the
250 defendant in such cases is returned to the sheriff of the county
251 to which the original bail bond was returnable within eighteen
252 (18) months of the date of such final judgment, or proof made of
253 incarceration of the defendant in another jurisdiction, and that a
254 "Hold Order" has been placed upon the defendant for return of the
255 defendant to the sheriff upon release from the other jurisdiction,
256 the return to the sheriff to be the responsibility of the
257 professional bail agent, then the bond forfeiture shall be stayed
258 and remission made upon petition to the court, in the amount found
259 in the court's discretion to be just and proper. A bail agent
260 licensed under this chapter shall have a right to apply for and



261 obtain from the proper court an extension of time delaying a final
262 judgment of forfeiture if such bail agent can satisfactorily
263 establish to the court wherein such forfeiture is pending that the
264 defendant named in the bail bond is lawfully in custody outside of
265 the State of Mississippi.

266 (b) Before the revocation authorized in paragraph (a)
267 of this subsection, the surety may submit proof to the department
268 that the defendant has been surrendered to the appropriate
269 authorities or that the bond has been paid directly to the court
270 or other proper authorities, such proof to include, but not be
271 limited to:

272 (i) A receipt of payment to the bond;
273 (ii) A surrender certificate; or
274 (iii) A notice of surrender from the proper
275 authorities, including foreign jurisdictions.

276 (4) The qualification bond may be released by the department
277 to the professional bail personal surety agent upon an order to
278 release the qualification bond issued by a court of competent
279 jurisdiction, or upon written request to the department by the
280 professional bail personal surety agent no earlier than five (5)
281 years after the expiration date of his last license.

282 **SECTION 4.** Section 99-5-25, Mississippi Code of 1972, is
283 amended as follows:



284 99-5-25. (1) (a) The purpose of bail is to guarantee
285 appearance and a bail bond shall not be forfeited for any other
286 reason.

287 (b) If a defendant in any criminal case, proceeding or
288 matter fails to appear for any proceeding as ordered by the court,
289 then the court shall order the bail forfeited and a judgment nisi
290 and a bench warrant issued at the time of nonappearance. The
291 clerk of the court shall notify the surety of the forfeiture by
292 writ of scire facias, with a copy of the judgment nisi and bench
293 warrant attached thereto, within ten (10) working days of such
294 order of judgment nisi either by personal service or by certified
295 mail. Failure * * * to provide the required notice within ten
296 (10) working days shall constitute prima facie evidence that the
297 order * * * shall be set aside, and the clerk shall accept a
298 set-aside order on behalf of the surety to that effect. * * * All
299 felony warrants issued by a court for nonappearance shall be put
300 on the National Crime Information Center (NCIC) index with no
301 restrictions until the defendant is returned to custody.

302 (c) The judgment nisi shall be returnable for ninety
303 (90) days from the date of issuance. If during such period the
304 defendant appears before the court, or is arrested and
305 surrendered, then the judgment nisi shall be set aside and a copy
306 of the judgment that is set aside shall be served on the surety by
307 personal service or certified mail. If the surety produces the
308 defendant or provides to the court reasonable mitigating



309 circumstances upon such showing, then the forfeiture shall not be
310 made final. If the forfeiture is made final, a copy of the final
311 judgment shall be served on the surety within ten (10) working
312 days by either personal service or certified mail. Reasonable
313 mitigating circumstances shall be that the defendant is
314 incarcerated in another jurisdiction, that the defendant is
315 hospitalized under a doctor's care, that the defendant is in a
316 recognized drug rehabilitation program, that the defendant has
317 been placed in a witness protection program and it shall be the
318 duty of any such agency placing such defendant into a witness
319 protection program to notify the court and the court to notify the
320 surety, or any other reason justifiable to the court.

321 (d) Execution upon the final judgment shall be
322 automatically stayed for ninety (90) days from the date of entry
323 of the final judgment. If, at any time before execution of the
324 final judgment, the defendant appears in court either voluntarily
325 or in custody after surrender or arrest, the court shall on its
326 own motion direct that the forfeiture be set aside and the bond
327 exonerated as of the date the defendant first appeared in court.

328 (2) (a) If a final judgment is entered against a surety
329 licensed by the Department of Insurance and has not been set aside
330 after ninety (90) days, or later if such time is extended by the
331 court issuing the judgment nisi, then the court shall order the
332 department to revoke the authority of the surety to write bail
333 bonds. The commissioner shall, upon notice of the court, notify



334 the surety within five (5) working days of receipt of revocation.
335 If after * * * twenty (20) working days of such notification the
336 revocation order has not been set aside by the court, then the
337 commissioner shall revoke the authority of the surety and all
338 agents of the surety and shall notify the sheriff of every county
339 of such revocation.

340 (b) Before the revocation authorized in paragraph (a)
341 of this subsection, the surety may submit proof to the department
342 that the defendant has been surrendered to the appropriate
343 authorities or that the bond has been paid directly to the court
344 or other proper authorities, such proof to include, but not be
345 limited to:

346 (i) A receipt of payment to the bond;
347 (ii) A surrender certificate; or
348 (iii) A notice of surrender from the proper
349 authorities, including foreign jurisdictions.

350 (3) If within eighteen (18) months of the date of the final
351 forfeiture the defendant appears for court, is arrested or
352 surrendered to the court, or if the defendant is found to be
353 incarcerated in another jurisdiction and a hold order placed on
354 the defendant, then the amount of bail, less reasonable
355 extradition cost, excluding attorney fees, shall be refunded by
356 the court upon application by the surety.

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



359 99-39-5. (1) Any person sentenced by a court of record of
360 the State of Mississippi, including a person currently
361 incarcerated, civilly committed, on parole or probation or subject
362 to sex offender registration for the period of the registration or
363 for the first five (5) years of the registration, whichever is the
364 shorter period, may file a motion to vacate, set aside or correct
365 the judgment or sentence, a motion to request forensic DNA testing
366 of biological evidence, or a motion for an out-of-time appeal if
367 the person claims:

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

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

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

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

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

380 (f) That there exists biological evidence secured in
381 relation to the investigation or prosecution attendant to the
382 petitioner's conviction not tested, or, if previously tested, that
383 can be subjected to additional DNA testing, that would provide a



384 reasonable likelihood of more probative results, and that testing
385 would demonstrate by reasonable probability that the petitioner
386 would not have been convicted or would have received a lesser
387 sentence if favorable results had been obtained through such
388 forensic DNA testing at the time of the original
389 prosecution * * *;

390 (g) That his plea was made involuntarily;

391 (h) That his sentence has expired; his probation,
392 parole or conditional release unlawfully revoked; or he is
393 otherwise unlawfully held in custody;

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

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

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



408 (a) (i) That there has been an intervening decision of
409 the Supreme Court of either the State of Mississippi or the United
410 States which would have actually adversely affected the outcome of
411 his conviction or sentence; or

412 (ii) That he has evidence, not reasonably
413 discoverable at the time of trial, which is of such nature that it
414 would be practically conclusive that had such been introduced at
415 trial it would have caused a different result in the conviction or
416 sentence; or

417 (* * *c) That, even if the petitioner pled guilty or
418 nolo contendere, or confessed or admitted to a crime, there exists
419 biological evidence not tested, or, if previously tested, that can
420 be subjected to additional DNA testing that would provide a
421 reasonable likelihood of more probative results, and that testing
422 would demonstrate by reasonable probability that the petitioner
423 would not have been convicted or would have received a lesser
424 sentence if favorable results had been obtained through such
425 forensic DNA testing at the time of the original prosecution.

426 (* * *d) * * * That the petitioner claims that his
427 sentence has expired or his probation, parole or conditional
428 release has been unlawfully revoked. * * *

429 (e) Likewise excepted are filings for post-conviction
430 relief in capital cases which shall be made within one (1) year
431 after conviction;



432 (f) Any motion filed under subparagraphs (a) through
433 (d) shall be made within three (3) years of issuance of the
434 mandate in the intervening case or three (3) years from the date
435 on which the basis for the exception could have been discovered
436 through the exercise of due diligence.

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

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

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

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

446 (a) "Biological evidence" means the contents of a
447 sexual assault examination kit and any item that contains blood,
448 semen, hair, saliva, skin tissue, fingernail scrapings, bone,
449 bodily fluids or other identifiable biological material that was
450 collected as part of the criminal investigation or may reasonably
451 be used to incriminate or exculpate any person for the offense.
452 This definition applies whether that material is catalogued
453 separately, such as on a slide, swab or in a test tube, or is
454 present on other evidence, including, but not limited to,
455 clothing, ligatures, bedding or other household material, drinking
456 cups, cigarettes or other items * * *.



457 (b) "DNA" means deoxyribonucleic acid.

458 **SECTION 6.** Section 99-39-27, Mississippi Code of 1972, is
459 amended as follows:

460 99-39-27. (1) The application for leave to proceed in the
461 trial court filed with the Supreme Court under Section 99-39-7
462 shall name the State of Mississippi as the respondent.

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

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

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

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



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

483 (7) In granting the application the court, in its
484 discretion, may:

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

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

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

494 (9) The dismissal or denial of an application under this
495 section is a final judgment and shall be a bar to a second or
496 successive application under this article. Excepted from this
497 prohibition is an application filed under Section 99-19-57(2),
498 raising the issue of the offender's supervening mental illness
499 before the execution of a sentence of death. A dismissal or
500 denial of an application relating to mental illness under Section
501 99-19-57(2) shall be res judicata on the issue and shall likewise
502 bar any second or successive applications on the issue. Likewise
503 excepted from this prohibition are those cases in which the
504 prisoner can demonstrate either that there has been an intervening
505 decision of the Supreme Court of either the State of Mississippi



506 or the United States that would have actually adversely affected
507 the outcome of his conviction or sentence or that he has evidence,
508 not reasonably discoverable at the time of trial, that is of such
509 nature that it would be practically conclusive that, if it had
510 been introduced at trial, it would have caused a different result
511 in the conviction or sentence. Likewise exempted are those cases
512 in which the prisoner claims that his sentence has expired or his
513 probation, parole or conditional release has been unlawfully
514 revoked. Any motion filed pursuant to these exceptions shall be
515 made within three (3) years of issuance of the mandate in the
516 intervening case or three (3) years from the date on which the
517 basis for the exception could have been discovered through
518 exercise of due diligence.

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

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

524 **SECTION 7.** Section 99-39-23, Mississippi Code of 1972, is
525 amended as follows:

526 99-39-23. (1) If an evidentiary hearing is required, the
527 judge may appoint counsel for a petitioner who qualifies for the
528 appointment of counsel under Section 99-15-15.



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

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

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

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

545 (6) The order as provided in subsection (5) of this section
546 or any order dismissing the petitioner's motion or otherwise
547 denying relief under this article is a final judgment and shall be
548 conclusive until reversed. It shall be a bar to a second or
549 successive motion under this article. Excepted from this
550 prohibition is a motion filed under Section 99-19-57(2), raising
551 the issue of the convict's supervening mental illness before the
552 execution of a sentence of death. A dismissal or denial of a
553 motion relating to mental illness under Section 99-19-57(2) shall



554 be res judicata on the issue and shall likewise bar any second or
555 successive motions on the issue. Likewise excepted from this
556 prohibition are those cases in which the petitioner, within the
557 time period under Section 99-39-5(2), can demonstrate either that
558 there has been an intervening decision of the Supreme Court of
559 either the State of Mississippi or the United States which would
560 have actually adversely affected the outcome of his conviction or
561 sentence or that he has evidence, not reasonably discoverable at
562 the time of trial, which is of such nature that it would be
563 practically conclusive that, if it had been introduced at trial,
564 it would have caused a different result in the conviction or
565 sentence. Likewise excepted are those cases in which the
566 petitioner, within the time period under Section 99-39-5(2),
567 claims that his sentence has expired or his probation, parole or
568 conditional release has been unlawfully revoked. Likewise
569 excepted are those cases in which the petitioner has filed a prior
570 petition and has requested DNA testing under this article,
571 provided the petitioner asserts new or different grounds for
572 relief related to DNA testing not previously presented or the
573 availability of more advanced DNA technology.

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

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



579 (9) In cases resulting in a sentence of death and upon a
580 determination of indigence, appointment of post-conviction counsel
581 shall be made by the Office of Capital Post-Conviction Counsel
582 upon order entered by the Supreme Court promptly upon announcement
583 of the decision on direct appeal affirming the sentence of death.
584 The order shall direct the trial court to immediately determine
585 indigence and whether the inmate will accept counsel.

586 (10) The ineffectiveness or incompetence of counsel during
587 state collateral post-conviction proceedings shall not be an
588 exception for relief under this section.

589 **SECTION 8.** This act shall take effect and be in force from
590 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 99-39-7, MISSISSIPPI CODE OF 1972, TO
2 REQUIRE A PERSON SEEKING TO FILE A MOTION FOR POST-CONVICTION
3 COLLATERAL RELIEF TO OBTAIN PERMISSION FROM THE MISSISSIPPI
4 SUPREME COURT BEFORE FILING THE MOTION IN TRIAL COURT IF A DENIAL
5 OF A PREVIOUS POST-CONVICTION MOTION HAS BEEN AFFIRMED ON APPEAL
6 OR MORE THAN THREE YEARS HAVE ELAPSED AFTER THE TIME FOR TAKING AN
7 APPEAL FROM A JUDGMENT OR CONVICTION; TO AMEND SECTIONS 21-23-8,
8 83-39-7 AND 99-5-25, MISSISSIPPI CODE OF 1972, TO REQUIRE COURT
9 CLERKS TO ACCEPT SET-ASIDE ORDERS ON BEHALF OF A SURETY WHERE THE
10 SURETY WAS NOT PROVIDED WITH NOTICE OF THE DEFENDANT'S FAILURE TO
11 APPEAR IN A CRIMINAL COURT PROCEEDING; TO REQUIRE ALL FELONY
12 WARRANTS ISSUED BY A COURT FOR NONAPPEARANCE PLACED ON THE
13 NATIONAL CRIME INFORMATION CENTER INDEX WITH NO RESTRICTIONS UNTIL
14 THE DEFENDANT IS RETURNED TO CUSTODY; TO EXTEND THE NUMBER OF DAYS
15 BETWEEN THE NOTIFICATION OF REVOCATION OF LICENSE TO A SURETY BY
16 THE DEPARTMENT OF INSURANCE AND THE DAY THE REVOCATION WILL BECOME
17 EFFECTIVE; TO AUTHORIZE A SURETY TO SUBMIT PROOF TO THE DEPARTMENT
18 OF INSURANCE THAT THE DEFENDANT HAS BEEN SURRENDERED TO THE
19 APPROPRIATE AUTHORITIES OR THAT THE BOND HAS BEEN PAID DIRECTLY TO



20 THE COURT OR OTHER PROPER AUTHORITIES BEFORE REVOCATION OF THE
21 SURETY'S LICENSE; AND FOR RELATED PURPOSES.

CONFEREES FOR THE HOUSE

X (SIGNED)
Horan

X (SIGNED)
Varner

X (SIGNED)
Hurst

CONFEREES FOR THE SENATE

X (SIGNED)
Fillingane

X (SIGNED)
Sparks

(NOT SIGNED)
Simmons (12th)

