

By: Senator(s) Farris

To: Juvenile Justice

SENATE BILL NO. 2732

1 AN ACT TO CODIFY SECTION 97-44-15, MISSISSIPPI CODE OF 1972,
 2 TO CREATE ACTIONS FOR INJUNCTION, ABATEMENT, DAMAGES OR OTHER
 3 REMEDIES FOR UNLAWFUL USE OF A PRIVATE BUILDING BY MEMBERS OF A
 4 CRIMINAL STREET GANG; TO CODIFY SECTION 97-44-17, MISSISSIPPI CODE
 5 OF 1972, TO PROVIDE FOR FORFEITURE OF FIREARMS, AMMUNITION AND
 6 DANGEROUS WEAPONS USED BY CRIMINAL STREET GANGS; TO CODIFY SECTION
 7 97-44-19, MISSISSIPPI CODE OF 1972, TO ENACT CRIMINAL PENALTIES
 8 FOR CRIMINAL STREET GANG ACTIVITY; AND FOR RELATED PURPOSES.

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

10 SECTION 1. The following provision shall be codified as
 11 Section 97-44-15, Mississippi Code of 1972:

12 97-44-15. (1) Every private building or place used by
 13 members of a criminal street gang for the commission of illegal
 14 activity is a nuisance and may be the subject of an injunction or
 15 cause of action for damages or for abatement of the nuisance as
 16 provided for in this chapter.

17 (2) Any person may file a petition for injunctive relief
 18 with the appropriate court seeking eviction from or closure of any
 19 premises used for commission of illegal activity by a criminal
 20 street gang. Upon proof by the plaintiff that the premises are
 21 being used by members of a criminal street gang for the commission
 22 of illegal activity, the court may order the owner of record or
 23 the lessee of the premises to remove or evict the persons from the
 24 premises and order the premises sealed, prohibit further use of
 25 the premises, or enter such order as may be necessary to prohibit
 26 the premises from being used for the commission of illegal
 27 activity by a gang and to abate the nuisance.

28 (3) Any action for injunction, damages, abatement, or other
 29 relief filed pursuant to this section shall proceed according to

30 the provisions of the Rules of Civil Procedure.

31 (4) The court shall not issue an injunction or assess a
32 civil penalty against any owner of record or the lessee of the
33 private building or place, unless that person knew or should have
34 known or had been notified of the use of the premises by a gang
35 for illegal activity. Any injunctive relief other than that
36 specifically authorized in subsection (6) of this section shall be
37 limited to that which is necessary to protect the health and
38 safety of the residents or the public or that which is necessary
39 to prevent further illegal activity.

40 (5) A petition for injunction shall not be filed until
41 thirty (30) days after notice of the unlawful use or criminal
42 conduct has been provided to the owner of record or the lessee, by
43 mail, return receipt requested, postage prepaid, to the owner's
44 last known address, or by personal service. If the premises are
45 abandoned or closed, or if the whereabouts of the owner of record
46 or lessee is unknown, all notices, process, pleadings, and orders
47 required to be delivered or served under this section may be
48 attached to a door of the premises, and this shall have the same
49 effect as personal service on the owner of record or lessee. No
50 injunctive relief authorized by subsection (6) of this section
51 shall be issued in the form of a temporary restraining order.

52 (6) If the court has previously issued injunctive relief
53 ordering the owner of record or the lessee of the premises to
54 close the premises or otherwise to keep the premises from being
55 used for the commission by a gang of illegal activity, the court,
56 upon proof of failure to comply with the terms of the injunction
57 and that the premises continue to be used by a gang for the
58 commission of illegal activity, may do one or more of the
59 following:

60 (a) Order the premises demolished and cleared at the
61 cost of the owner.

62 (b) Order the premises sold at public auction and the

63 proceeds from the sale, minus the costs of the sale and the
64 expenses of bringing the action, delivered to the owner.

65 (c) Order the defendant to pay damages to persons or
66 local governing authorities who have been damaged or injured or
67 have incurred expense as a result of the defendant's failure to
68 take reasonable steps or precautions to comply with the terms of
69 any injunction issued pursuant to the provisions of this chapter.

70 (d) Assess a civil penalty not to exceed Five Thousand
71 Dollars (\$5,000.00) against the defendant based upon the severity
72 of the nuisance and its duration. In establishing the amount of
73 any civil penalty, the court shall consider all of the following
74 factors:

75 (i) The actions taken by the defendant to mitigate
76 or correct the problem at the private building or place or the
77 reasons why no such action was taken.

78 (ii) Any failure of the plaintiff to provide
79 notice as required by subsection (5) of this section.

80 (iii) Any other factor deemed by the court to be
81 relevant.

82 (7) No nonprofit, fraternal or charitable organization which
83 is conducting its affairs with ordinary care or skill nor any
84 governmental entity shall be enjoined pursuant to the provisions
85 of this chapter.

86 (8) Nothing in this chapter shall preclude any aggrieved
87 person from seeking any other remedy provided by law.

88 SECTION 2. The following provision shall be codified as
89 Section 97-44-17, Mississippi Code of 1972:

90 97-44-17. (1) Any firearm, ammunition to be used in a
91 firearm, or dangerous weapon in the possession of a member of a
92 criminal street gang may be seized by any law enforcement agency
93 or peace officer when the law enforcement agency or peace officer
94 has probable cause to believe that the firearm, ammunition to be
95 used in a firearm, or dangerous weapon is or has been used by a

96 gang in the commission of illegal activity.

97 (2) The district attorney or an attorney for the seizing
98 agency shall initiate, in a civil action, forfeiture proceedings
99 by petition in the circuit courts as to any property seized
100 pursuant to the provisions of this section within thirty (30) days
101 of seizure. The district attorney shall provide notice of the
102 filing of the petition to those members of the gang who become
103 known to law enforcement officials as a result of the seizure and
104 any related arrests, and to any person determined by law
105 enforcement officials to be the owner of any of the property
106 involved. After initial notice of the filing of the petition, the
107 court shall assure that all persons so notified continue to
108 receive notice of all subsequent proceedings related to the
109 property.

110 (3) Any person who claims an interest in any seized property
111 shall, in order to assert a claim that the property should not be
112 forfeited, file a notice with the court, without necessity of
113 paying costs, of the intent to establish either of the following:

114 (a) That the persons asserting the claim did not know
115 and could not have known of its use by a gang in the commission of
116 illegal activity; or

117 (b) That the law enforcement officer lacked the
118 requisite reasonable belief that the property was or had been used
119 by a gang in the commission of illegal activity.

120 (4) An acquittal or dismissal in a criminal proceeding shall
121 not preclude civil proceedings under this section; however, for
122 good cause shown, on motion by the district attorney, the court
123 may stay civil forfeiture proceedings during the criminal trial
124 for related criminal indictment or information alleging a
125 violation of this section. Such a stay shall not be available
126 pending an appeal.

127 (5) Except as otherwise provided by this section, all
128 proceedings hereunder shall be governed by the provisions of the

129 Mississippi Rules of Civil Procedure.

130 (6) The issue shall be determined by the court alone, and
131 the hearing on the claim shall be held within sixty (60) days
132 after service of the petition unless continued for good cause.
133 The district attorney shall have the initial burden of showing the
134 existence of probable cause for forfeiture of the property. If
135 the state shows probable cause, the claimant has the burden of
136 showing by a preponderance of the evidence that the claimant's
137 interest in the property is not subject to forfeiture.

138 (7) Any person who asserts a successful claim in accordance
139 with subsection (3) of this section shall be awarded the seized
140 property by the court, together with costs of filing such action.

141 All property as to which no claim is filed, or as to which no
142 successful claim is made, may be destroyed, sold at a public sale,
143 retained for use by the seizing agency or transferred without
144 charge to any law enforcement agency of the state for use by it.
145 Property that is sold shall be sold by the circuit court at a
146 public auction for cash to the highest and best bidder after
147 advertising the sale for at least once each week for three (3)
148 consecutive weeks, the last notice to appear not more than ten
149 (10) days nor less than five (5) days prior to such sale in a
150 newspaper having a general circulation in the county. Such notice
151 shall contain a description of the property to be sold and a
152 statement of the time and place of sale. It shall not be
153 necessary to the validity of such sale either to have the property
154 present at the place of sale or to have the name of the owner
155 thereof stated in such notice. The proceeds of the sale, less any
156 expenses of concluding the sale, shall be deposited in the seizing
157 agency's general fund to be used only for approved law enforcement
158 activity affecting the agency's efforts to combat gang activities.

159 (8) Any action under the provisions of this section may be
160 consolidated with any other action or proceedings pursuant to this
161 section relating to the same property on motion of the district

162 attorney.

163 SECTION 3. The following provision shall be codified as
164 Section 97-43-19, Mississippi Code of 1972:

165 97-43-19. (1) Any person who intentionally directs,
166 participates, conducts, furthers, or assists in the commission of
167 illegal gang activity shall be punished by imprisonment for not
168 less than one (1) year nor more than one-half (1/2) of the maximum
169 term of imprisonment provided for an underlying offense and may be
170 fined an amount not to exceed Ten Thousand Dollars (\$10,000.00).
171 Any sentence of imprisonment imposed pursuant to this section
172 shall be in addition and consecutive to any sentence imposed for
173 the underlying offense.

174 (2) Any person who is convicted of a felony or an attempted
175 felony which is committed for the benefit of, at the direction of,
176 or in association with any criminal street gang, with the intent
177 to promote, further, or assist in the affairs of a criminal gang,
178 shall, upon conviction of that felony, in addition and consecutive
179 to the punishment prescribed for the felony or attempted felony of
180 which he or she has been convicted, be imprisoned for not less
181 than one (1) year nor more than one-half (1/2) of the maximum term
182 of imprisonment provided for that offense.

183 (3) Any person who is convicted of an offense other than a
184 felony which is committed for the benefit of, at the direction of,
185 or in association with, any criminal street gang, with the
186 specific intent to promote, further or assist in any criminal
187 conduct or enterprise by gang members, shall, in addition and
188 consecutive to the penalty provided for that offense, be
189 imprisoned for an additional period of not more than one (1) year.

190 (4) The court may elect to suspend all or a part of any
191 additional mandatory punishment or enhanced punishment provided
192 for in this chapter to impose alternative punishment in the form
193 of properly supervised community service or placement in an
194 appropriate adolescent offender program, if available, only in an

195 unusual case where the interest of justice would best be served,
196 and if the court specifies on the record and enters into the
197 minutes the circumstances and reasons that the interests of
198 justice would best be served by that suspension of enhanced
199 punishment.

200 SECTION 4. This act shall take effect and be in force from
201 and after July 1, 1999.