

By: Representative Moak

To: Judiciary B

HOUSE BILL NO. 48

1 AN ACT TO AMEND SECTIONS 99-33-1, 99-33-13 AND 21-23-7,
2 MISSISSIPPI CODE OF 1972, TO ALLOW CIRCUIT COURT JUDGES TO REMAND
3 CASES TO JUSTICE COURT TO BE TRIED AS MISDEMEANORS; AND FOR
4 RELATED PURPOSES.

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

6 **SECTION 1.** Section 99-33-1, Mississippi Code of 1972, is
7 amended as follows:

8 99-33-1. (1) Upon the election of any county to employ a
9 clerk for the justice court of such county in accordance with the
10 provisions of subsection (3) of Section 9-11-27 prior to January
11 1, 1984, the venue of criminal actions in such county shall be as
12 provided in subsection (5) of this section. Actions filed prior
13 to such time shall be concluded pursuant to the provisions of
14 subsection (1) of this section.

15 (2) Subsections (1) and (2) of this section shall stand
16 repealed from and after January 1, 1984; provided, however, that
17 criminal actions brought prior to January 1, 1984, shall be
18 concluded pursuant to subsection (1) of this section.

19 (3) From and after January 1, 1984, justice court judges
20 shall have jurisdiction concurrent with the circuit court of the
21 county over all crimes occurring in the county whereof the
22 punishment prescribed does not extend beyond a fine and
23 imprisonment in the county jail.

24 (4) A circuit court judge may remand a felony case to the
25 justice court or a municipal court to be tried as a misdemeanor.

26 **SECTION 2.** Section 99-33-13, Mississippi Code of 1972, is
27 amended as follows:

28 99-33-13. If on the trial of any criminal case the justice
29 of the peace discover that it is a felony, and not a misdemeanor,
30 of which the accused has been guilty, he shall not punish the
31 offender nor render any judgment finally disposing of the case,
32 but shall require him to give bail for his appearance in the
33 circuit court, unless the felony be notailable, in which case
34 the justice shall commit him without bail. A circuit court judge
35 may remand a felony case to justice or municipal court to be tried
36 as a misdemeanor.

37 **SECTION 3.** Section 21-23-7, Mississippi Code of 1972, is
38 amended as follows:

39 21-23-7. (1) The municipal judge shall hold court in a
40 public building designated by the governing authorities of the
41 municipality and may hold court every day except Sundays and legal
42 holidays if the business of the municipality so requires;
43 provided, however, the municipal judge may hold court outside the
44 boundaries of the municipality but not more than within a
45 sixty-mile radius of the municipality to handle preliminary
46 matters and criminal matters such as initial appearances and
47 felony preliminary hearings. The municipal judge shall have the
48 jurisdiction to hear and determine, without a jury and without a
49 record of the testimony, all cases charging violations of the
50 municipal ordinances and state misdemeanor laws made offenses
51 against the municipality and to punish offenders therefor as may
52 be prescribed by law. All criminal proceedings shall be brought
53 by sworn complaint filed in the municipal court. Such complaint
54 shall state the essential elements of the offense charged and the
55 statute or ordinance relied upon. Such complaint shall not be
56 required to conclude with a general averment that the offense is
57 against the peace and dignity of the state or in violation of the
58 ordinances of the municipality. He may sit as a committing court
59 in all felonies committed within the municipality, and he shall
60 have the power to bind over the accused to the grand jury or to

61 appear before the proper court having jurisdiction to try the
62 same, and to set the amount of bail or refuse bail and commit the
63 accused to jail in cases not bailable. The municipal judge is a
64 conservator of the peace within his municipality. He may conduct
65 preliminary hearings in all violations of the criminal laws of
66 this state occurring within the municipality, and any person
67 arrested for a violation of law within the municipality may be
68 brought before him for initial appearance. A circuit court judge
69 may remand a felony case to justice or municipal court to be tried
70 as a misdemeanor.

71 (2) In the discretion of the court, where the objects of
72 justice would be more likely met, as an alternative to imposition
73 or payment of fine and/or incarceration, the municipal judge shall
74 have the power to sentence convicted offenders to work on a public
75 service project where the court has established such a program of
76 public service by written guidelines filed with the clerk for
77 public record. Such programs shall provide for reasonable
78 supervision of the offender and the work shall be commensurate
79 with the fine and/or incarceration that would have ordinarily been
80 imposed. Such program of public service may be utilized in the
81 implementation of the provisions of Section 99-19-20, and public
82 service work thereunder may be supervised by persons other than
83 the sheriff.

84 (3) The municipal judge may solemnize marriages, take oaths,
85 affidavits and acknowledgments, and issue orders, subpoenas,
86 summonses, citations, warrants for search and arrest upon a
87 finding of probable cause, and other such process under seal of
88 the court to any county or municipality, in a criminal case, to be
89 executed by the lawful authority of the county or the municipality
90 of the respondent, and enforce obedience thereto. The absence of
91 a seal shall not invalidate the process.

92 (4) When a person shall be charged with an offense in
93 municipal court punishable by confinement, the municipal judge,

94 being satisfied that such person is an indigent person and is
95 unable to employ counsel, may, in the discretion of the court,
96 appoint counsel from the membership of The Mississippi Bar
97 residing in his county who shall represent him. Compensation for
98 appointed counsel in criminal cases shall be approved and allowed
99 by the municipal judge and shall be paid by the municipality. The
100 maximum compensation shall not exceed Two Hundred Dollars
101 (\$200.00) for any one (1) case. The governing authorities of a
102 municipality may, in their discretion, appoint a public
103 defender(s) who must be a licensed attorney and who shall receive
104 a salary to be fixed by the governing authorities.

105 (5) The municipal judge of any municipality is hereby
106 authorized to suspend the sentence and to suspend the execution of
107 the sentence, or any part thereof, on such terms as may be imposed
108 by the municipal judge. However, the suspension of imposition or
109 execution of a sentence hereunder may not be revoked after a
110 period of two (2) years. The municipal judge shall have the power
111 to establish and operate a probation program, dispute resolution
112 program and other practices or procedures appropriate to the
113 judiciary and designed to aid in the administration of justice.
114 Any such program shall be established by the court with written
115 policies and procedures filed with the clerk of the court for
116 public record.

117 (6) Upon prior notice to the municipal prosecuting attorney
118 and upon a showing in open court of rehabilitation, good conduct
119 for a period of two (2) years since the last conviction in any
120 court and that the best interest of society would be served, the
121 court may, in its discretion, order the record of conviction of a
122 person of any or all misdemeanors in that court expunged, and upon
123 so doing the said person thereafter legally stands as though he
124 had never been convicted of the said misdemeanor(s) and may
125 lawfully so respond to any query of prior convictions. This order
126 of expunction does not apply to the confidential records of law

127 enforcement agencies and has no effect on the driving record of a
128 person maintained under Title 63, Mississippi Code of 1972, or any
129 other provision of said Title 63.

130 (7) Notwithstanding the provisions of subsection (6) of this
131 section, a person who was convicted in municipal court of a
132 misdemeanor before reaching his twenty-third birthday, excluding
133 conviction for a traffic violation, and who is a first offender,
134 may utilize the provisions of Section 99-19-71, to expunge such
135 misdemeanor conviction.

136 (8) In the discretion of the court, a plea of nolo
137 contendere may be entered to any charge in municipal court. Upon
138 the entry of a plea of nolo contendere the court shall convict the
139 defendant of the offense charged and shall proceed to sentence the
140 defendant according to law. The judgment of the court shall
141 reflect that the conviction was on a plea of nolo contendere. An
142 appeal may be made from a conviction on a plea of nolo contendere
143 as in other cases.

144 (9) Upon execution of a sworn complaint charging a
145 misdemeanor, the municipal court may, in its discretion and in
146 lieu of an arrest warrant, issue a citation requiring the
147 appearance of the defendant to answer the charge made against him.
148 On default of appearance, an arrest warrant may be issued for the
149 defendant. The clerk of the court or deputy clerk may issue such
150 citations.

151 (10) The municipal court shall have the power to make rules
152 for the administration of the court's business, which rules, if
153 any, shall be in writing filed with the clerk of the court.

154 (11) The municipal court shall have the power to impose
155 punishment of a fine of not more than One Thousand Dollars
156 (\$1,000.00) or six (6) months' imprisonment, or both, for contempt
157 of court. The municipal court may have the power to impose
158 reasonable costs of court, not in excess of the following:

159 Dismissal of any affidavit, complaint or charge

160 in municipal court..... \$ 50.00
 161 Suspension of a minor's driver's license in lieu of
 162 conviction..... \$ 50.00
 163 Service of scire facias or return "not found"..... \$ 20.00
 164 Causing search warrant to issue or causing prosecution
 165 without reasonable cause or refusing to cooperate
 166 after initiating action..... \$ 100.00
 167 Certified copy of the court record..... \$ 5.00
 168 Service of arrest warrant for failure to answer
 169 citation or traffic summons..... \$ 25.00
 170 Jail cost per day..... \$ 10.00
 171 Any other item of court cost..... \$ 50.00
 172 No filing fee or such cost shall be imposed for the bringing
 173 of an action in municipal court.

174 (12) A municipal court judge shall not dismiss a criminal
 175 case but may transfer the case to the justice court of the county
 176 if the municipal court judge is prohibited from presiding over the
 177 case by the Canons of Judicial Conduct and provided that venue and
 178 jurisdiction are proper in the justice court. Upon transfer of
 179 any such case, the municipal court judge shall give the municipal
 180 court clerk a written order to transmit the affidavit or complaint
 181 and all other records and evidence in the court's possession to
 182 the justice court by certified mail or to instruct the arresting
 183 officer to deliver such documents and records to the justice
 184 court. There shall be no court costs charged for the transfer of
 185 the case to the justice court.

186 (13) A municipal court judge shall expunge the record of any
 187 case in which an arrest was made, the person arrested was released
 188 and the case was dismissed or the charges were dropped or there
 189 was no disposition of such case.

190 **SECTION 4.** This act shall take effect and be in force from
 191 and after July 1, 2005.