

By: Representatives Flaggs, Banks, Clark,
Hines

To: Juvenile Justice;
Corrections

HOUSE BILL NO. 1090

1 AN ACT TO CREATE THE JUVENILE TRANSFER REFORM ACT OF 2006; TO
2 AMEND SECTION 43-21-151, MISSISSIPPI CODE OF 1972, TO REMOVE
3 CERTAIN ACTS COMMITTED BY A CHILD FROM THE EXCLUSIVE JURISDICTION
4 OF THE CIRCUIT COURT; TO AMEND SECTION 43-21-157, MISSISSIPPI CODE
5 OF 1972, TO REVISE THE AGE FROM THIRTEEN TO FIFTEEN AS TO WHEN A
6 YOUTH COURT MAY TRANSFER A CHILD TO THE CRIMINAL COURT WHEN
7 CERTAIN OFFENSES ARE COMMITTED BY SUCH CHILD; TO AUTHORIZE THE
8 CIRCUIT COURT TO INVOKE DUAL JURISDICTION THUS ALLOWING SUCH COURT
9 TO IMPOSE A JUVENILE DISPOSITION WHILE SIMULTANEOUSLY IMPOSING A
10 CRIMINAL SENTENCE, AFTER A CHILD IS TRANSFERRED TO CIRCUIT COURT
11 AND IS CONVICTED; TO AMEND SECTION 47-7-3, MISSISSIPPI CODE OF
12 1972, TO EXEMPT THE PAROLE ELIGIBILITY EXCEPTIONS FROM CERTAIN
13 OFFENDERS WHO WERE UNDER 18 WHEN HE OR SHE COMMITTED AN OFFENSE;
14 TO AMEND SECTION 99-19-1, MISSISSIPPI CODE OF 1972, IN CONFORMITY
15 THERETO; AND FOR RELATED PURPOSES.

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

17 **SECTION 1.** Section 43-21-151, Mississippi Code of 1972, is
18 amended as follows:

19 43-21-151. (1) The youth court shall have exclusive
20 original jurisdiction in all proceedings concerning a delinquent
21 child, a child in need of supervision, a neglected child, an
22 abused child or a dependent child except * * * when a charge of
23 abuse of a child first arises in the course of a custody action
24 between the parents of the child already pending in the chancery
25 court and no notice of such abuse was provided prior to such
26 chancery proceedings, the chancery court may proceed with the
27 investigation, hearing and determination of such abuse charge as a
28 part of its hearing and determination of the custody issue as
29 between the parents, notwithstanding the other provisions of the
30 Youth Court Law. The proceedings in chancery court on the abuse
31 charge shall be confidential in the same manner as provided in
32 youth court proceedings.

33 When a child is expelled from the public schools, the youth
34 court shall be notified of the act of expulsion and the act or
35 acts constituting the basis for expulsion.

36 (2) Jurisdiction of the child in the cause shall attach at
37 the time of the offense and shall continue thereafter for that
38 offense until the child's twentieth birthday, unless sooner
39 terminated by order of the youth court. The youth court shall not
40 have jurisdiction over offenses committed by a child on or after
41 his eighteenth birthday, or over offenses committed by a child on
42 or after his seventeenth birthday where such offenses would be a
43 felony if committed by an adult.

44 (3) No child who has not reached his thirteenth birthday
45 shall be held criminally responsible or criminally prosecuted for
46 a misdemeanor or felony; however, the parent, guardian or
47 custodian of such child may be civilly liable for any criminal
48 acts of such child. No child under the jurisdiction of the youth
49 court shall be held criminally responsible or criminally
50 prosecuted by any court for any act designated as a delinquent
51 act, unless jurisdiction is transferred to another court under
52 Section 43-21-157.

53 (4) The youth court shall also have jurisdiction of offenses
54 committed by a child which have been transferred to the youth
55 court by an order of a circuit court of this state having original
56 jurisdiction of the offense, as provided by Section 43-21-159.

57 (5) The youth court shall regulate and approve the use of
58 teen court as provided in Section 43-21-753.

59 **SECTION 2.** Section 43-21-157, Mississippi Code of 1972, is
60 amended as follows:

61 43-21-157. (1) If a child who has reached his or her
62 fifteenth birthday is charged by petition to be a delinquent
63 child, the youth court, either on motion of the youth court
64 prosecutor or on the youth court's own motion, after a hearing as
65 hereinafter provided, may, in its discretion, transfer

66 jurisdiction of the alleged offense described in the petition or a
67 lesser included offense to the criminal court which would have
68 trial jurisdiction of such offense if committed by an adult. The
69 child shall be represented by counsel in transfer proceedings.

70 (2) A motion to transfer shall be filed on a day prior to
71 the date set for the adjudicatory hearing but not more than ten
72 (10) days after the filing of the petition. The youth court may
73 order a transfer study at any time after the motion to transfer is
74 filed. The transfer study and any other social record which the
75 youth court will consider at the transfer hearing shall be made
76 available to the child's counsel prior to the hearing. Summons
77 shall be served in the same manner as other summons under this
78 chapter with a copy of the motion to transfer and the petition
79 attached thereto.

80 (3) The transfer hearing shall be bifurcated. At the
81 transfer hearing, the youth court shall first determine whether
82 probable cause exists to believe that the child committed the
83 alleged offense. For the purpose of the transfer hearing only,
84 the child may, with the assistance of counsel, waive the
85 determination of probable cause.

86 (4) Upon such a finding of probable cause, the youth court
87 may transfer jurisdiction of the alleged offense and the youth if
88 the youth court finds by clear and convincing evidence that there
89 are no reasonable prospects of rehabilitation within the juvenile
90 justice system.

91 (5) The factors which shall be considered by the youth court
92 in determining the reasonable prospects of rehabilitation within
93 the juvenile justice system are:

94 (a) Whether or not the alleged offense constituted a
95 substantial danger to the public;

96 (b) The seriousness of the alleged offense;

97 (c) Whether or not the transfer is required to protect
98 the community;

99 (d) Whether or not the alleged offense was committed in
100 an aggressive, violent, premeditated or willful manner;

101 (e) Whether the alleged offense was against persons or
102 against property, greater weight being given to the offense
103 against persons, especially if personal injury resulted;

104 (f) The sophistication, maturity and educational
105 background of the child;

106 (g) The child's home situation, emotional condition and
107 life-style;

108 (h) The history of the child, including experience with
109 the juvenile justice system, other courts, probation, commitments
110 to juvenile institutions or other placements;

111 (i) Whether or not the child can be retained in the
112 juvenile justice system long enough for effective treatment or
113 rehabilitation;

114 (j) The dispositional resources available to the
115 juvenile justice system;

116 (k) Dispositional resources available to the adult
117 correctional system for the child if treated as an adult;

118 (l) Whether the alleged offense was committed on school
119 property, public or private, or at any school-sponsored event, and
120 constituted a substantial danger to other students;

121 (m) Any other factors deemed relevant by the youth
122 court; and

123 (n) Nothing in this subsection shall prohibit the
124 transfer of jurisdiction of an alleged offense and a child if that
125 child, at the time of the transfer hearing, previously has not
126 been placed in a juvenile institution.

127 (6) If the youth court transfers jurisdiction of the alleged
128 offense to a criminal court, the youth court shall enter a
129 transfer order containing:

130 (a) Facts showing that the youth court had jurisdiction
131 of the cause and of the parties;

132 (b) Facts showing that the child was represented by
133 counsel;

134 (c) Facts showing that the hearing was held in the
135 presence of the child and his counsel;

136 (d) A recital of the findings of probable cause and the
137 facts and reasons underlying the youth court's decision to
138 transfer jurisdiction of the alleged offense;

139 (e) The conditions of custody or release of the child
140 pending criminal court proceedings, including bail or recognizance
141 as the case may justify, as well as a designation of the custodian
142 for the time being; and

143 (f) A designation of the alleged offense transferred
144 and of the court to which the transfer is made and a direction to
145 the clerk to forward for filing in such court a certified copy of
146 the transfer order of the youth court.

147 (7) The testimony of the child respondent at a transfer
148 hearing conducted pursuant to this chapter shall not be admissible
149 against the child in any proceeding other than the transfer
150 hearing.

151 (8) When jurisdiction of an offense is transferred to the
152 circuit court, * * * the jurisdiction of the youth court over the
153 youth is forever terminated, except that such jurisdiction is not
154 forever terminated if the circuit court transfers or remands the
155 transferred case to the youth court or if a child who has been
156 transferred to the circuit court or is in the original
157 jurisdiction of the circuit court is not convicted. However, when
158 jurisdiction of an offense is transferred to the circuit court
159 pursuant to this section * * * the circuit court shall thereafter
160 assume and retain jurisdiction of any felony offenses committed by
161 such youth without any additional transfer proceedings. Any
162 misdemeanor offenses committed by youth who are in circuit court
163 jurisdiction pursuant to this section or Section 43-21-151 shall
164 be prosecuted in the court which would have jurisdiction over that

165 offense if committed by an adult without any additional transfer
166 proceedings. The circuit court may review the transfer
167 proceedings on motion of the transferred child. Such review shall
168 be on the record of the hearing in the youth court. The circuit
169 court shall remand the offense to the youth court if there is no
170 substantial evidence to support the order of the youth court. The
171 circuit court may also review the conditions of custody or release
172 pending criminal court proceedings.

173 (9) When any youth has been the subject of a transfer to
174 circuit court for an offense committed in any county of the
175 state * * * that transfer * * * shall be recognized by all other
176 courts of the state and no subsequent offense committed by such
177 youth in any county of the state shall be in the jurisdiction of
178 the youth court unless transferred to the youth court pursuant to
179 Section 43-21-159(3). Transfers from youth courts of other states
180 shall be recognized by the courts of this state and no youth who
181 has a pending charge or a conviction in the adult court system of
182 any other state shall be in the jurisdiction of the youth courts
183 of this state, but such youths shall be in the jurisdiction of the
184 circuit court for any felony committed in this state or in the
185 jurisdiction of the court of competent jurisdiction for any
186 misdemeanor committed in this state.

187 (10) (a) When a child is transferred to circuit court and
188 his or her prosecution results in a conviction or guilty plea, the
189 circuit court may invoke dual jurisdiction of both the criminal
190 code and the youth court statute as set forth in this subsection.
191 The circuit court is authorized to impose a juvenile disposition
192 and simultaneously impose a criminal sentence, the execution of
193 which shall be suspended pursuant to the provisions of this
194 subsection. Successful completion of the juvenile disposition
195 ordered shall be a condition for the suspended criminal sentence.
196 The court may order an offender into the custody of the Department
197 of Human Services if, after considering the factors set forth in

198 Section 43-21-603(3) paragraphs (a) through (e), the court
199 determines that a dispositional alternative provided in Section
200 43-21-605 is appropriate to serve both the needs of the child and
201 protect public safety.

202 (b) If probable cause exists to believe that the
203 offender has violated a condition of the suspended sentences or
204 committed a new offense, the court shall conduct a hearing on the
205 violation charged, unless the offender waives such hearing. If a
206 violation is established, the court may continue or revoke the
207 juvenile disposition, impose the adult criminal sanctions or enter
208 such other order as it may see fit.

209 (c) When an offender has received a suspended sentence
210 pursuant to this section and the division determines the child is
211 beyond the scope of its treatment programs, the Department of
212 Human Services may petition the court to transfer the custody of
213 the offender. The court shall hold a hearing and shall:

214 (i) Revoke the suspension and order that the
215 offender be taken into the custody of the Department of
216 Corrections; or

217 (ii) Order that the offender be placed on
218 probation.

219 (d) When an offender reaches the age of eighteen (18),
220 the court shall hold a hearing to determine if the offender has
221 been sufficiently rehabilitated. Among other relevant factors,
222 the court shall consider academic progress, medical and mental
223 health history, facility disciplinary records and recommendations
224 of the youth court counselor and the Department of Human Services.
225 Based on evidence presented at the hearing, the court shall:

226 (i) Revoke the suspension and direct that the
227 offender be taken into immediate custody of the Department of
228 Corrections;

229 (ii) Direct that the offender be placed on
230 probation; or

231 (iii) Release the offender from the terms of the
232 juvenile disposition and the suspended criminal sentence.

233 (11) The circuit court shall not automatically impose a
234 mandatory sentence for any child under its jurisdiction. Before
235 sentencing any child, the court shall conduct a sentencing hearing
236 to consider the factors set forth in Section 43-21-603(3)
237 paragraphs (a) through (e). The court retains discretion to
238 impose a mandatory sentence after a hearing and consideration of
239 the factors set forth in Section 43-21-603(3) paragraphs (a)
240 through (e).

241 **SECTION 3.** Section 47-7-3, Mississippi Code of 1972, is
242 amended as follows:

243 47-7-3. (1) Every prisoner who has been convicted of any
244 offense against the State of Mississippi, and is confined in the
245 execution of a judgment of such conviction in the Mississippi
246 Department of Corrections for a definite term or terms of one (1)
247 year or over, or for the term of his or her natural life, whose
248 record of conduct shows that such prisoner has observed the rules
249 of the department, and who has served not less than one-fourth
250 (1/4) of the total of such term or terms for which such prisoner
251 was sentenced, or, if sentenced to serve a term or terms of thirty
252 (30) years or more, or, if sentenced for the term of the natural
253 life of such prisoner, has served not less than ten (10) years of
254 such life sentence, may be released on parole as hereinafter
255 provided, except that:

256 (a) No prisoner convicted as a confirmed and habitual
257 criminal under the provisions of Sections 99-19-81 through
258 99-19-87 shall be eligible for parole;

259 (b) Any person who shall have been convicted of a sex
260 crime shall not be released on parole except for a person under
261 the age of nineteen (19) who has been convicted under Section
262 97-3-67;

263 (c) No one shall be eligible for parole until he shall
264 have served one (1) year of his sentence, unless such person has
265 accrued any meritorious earned time allowances, in which case he
266 shall be eligible for parole if he has served (i) nine (9) months
267 of his sentence or sentences, when his sentence or sentences is
268 two (2) years or less; (ii) ten (10) months of his sentence or
269 sentences when his sentence or sentences is more than two (2)
270 years but no more than five (5) years; and (iii) one (1) year of
271 his sentence or sentences when his sentence or sentences is more
272 than five (5) years;

273 (d) (i) No person shall be eligible for parole who
274 shall, on or after January 1, 1977, be convicted of robbery or
275 attempted robbery through the display of a firearm until he shall
276 have served ten (10) years if sentenced to a term or terms of more
277 than ten (10) years or if sentenced for the term of the natural
278 life of such person. If such person is sentenced to a term or
279 terms of ten (10) years or less, then such person shall not be
280 eligible for parole. The provisions of this paragraph (d) shall
281 also apply to any person who shall commit robbery or attempted
282 robbery on or after July 1, 1982, through the display of a deadly
283 weapon. This subparagraph (d)(i) shall not apply to persons
284 convicted after September 30, 1994;

285 (ii) No person shall be eligible for parole who
286 shall, on or after October 1, 1994, be convicted of robbery,
287 attempted robbery or carjacking as provided in Section 97-3-115 et
288 seq., through the display of a firearm or drive-by shooting as
289 provided in Section 97-3-109. The provisions of this subparagraph
290 (d)(ii) shall also apply to any person who shall commit robbery,
291 attempted robbery, carjacking or a drive-by shooting on or after
292 October 1, 1994, through the display of a deadly weapon;

293 (e) No person shall be eligible for parole who, on or
294 after July 1, 1994, is charged, tried, convicted and sentenced to

295 life imprisonment without eligibility for parole under the
296 provisions of Section 99-19-101;

297 (f) No person shall be eligible for parole who is
298 charged, tried, convicted and sentenced to life imprisonment under
299 the provisions of Section 99-19-101;

300 (g) No person shall be eligible for parole who is
301 convicted or whose suspended sentence is revoked after June 30,
302 1995, except that a first offender convicted of a nonviolent crime
303 after January 1, 2000, may be eligible for parole if the offender
304 meets the requirements in subsection (1) and this paragraph. In
305 addition to other requirements, if a first offender is convicted
306 of a drug or driving under the influence felony, the offender must
307 complete a drug and alcohol rehabilitation program prior to parole
308 or the offender may be required to complete a post-release drug
309 and alcohol program as a condition of parole. For purposes of
310 this paragraph, "nonviolent crime" means a felony other than
311 homicide, robbery, manslaughter, sex crimes, arson, burglary of an
312 occupied dwelling, aggravated assault, kidnapping, felonious abuse
313 of vulnerable adults, felonies with enhanced penalties, the sale
314 or manufacture of a controlled substance under the Uniform
315 Controlled Substances Law, felony child abuse, or any crime under
316 Section 97-5-33 or Section 97-5-39(2) or a violation of Section
317 63-11-30(5) resulting in death, or serious bodily injury resulting
318 in the loss of a limb or dismemberment, loss of eyesight, a coma,
319 permanent dysfunction of any vital organ, paralysis or resulting
320 in an individual's permanent bedridden state. For purposes of
321 this paragraph, "first offender" means a person who at the time of
322 sentencing has not been convicted of a felony on a previous
323 occasion in any court or courts of the United States or in any
324 state or territory thereof. In addition, a first time offender
325 incarcerated for committing the crime of possession of a
326 controlled substance under the Uniform Controlled Substances Law

327 after July 1, 1995, shall be eligible for parole as provided for
328 such offenders in this paragraph after July 1, 2000.

329 (h) The parole eligibility exceptions contained in
330 paragraphs (a) through (g) of this subsection shall not apply to
331 any offender who was under the age of eighteen (18) at the time he
332 or she committed the offense. This provision is exempt from the
333 terms of Section 99-19-1.

334 (2) Notwithstanding any other provision of law, an inmate
335 shall not be eligible to receive earned time, good time or any
336 other administrative reduction of time which shall reduce the time
337 necessary to be served for parole eligibility as provided in
338 subsection (1) of this section; however, this subsection shall not
339 apply to the advancement of parole eligibility dates pursuant to
340 the Prison Overcrowding Emergency Powers Act. Moreover,
341 meritorious earned time allowances may be used to reduce the time
342 necessary to be served for parole eligibility as provided in
343 paragraph (c) of subsection (1) of this section.

344 (3) (a) The State Parole Board shall by rules and
345 regulations establish a method of determining a tentative parole
346 hearing date for each eligible offender taken into the custody of
347 the Department of Corrections. The tentative parole hearing date
348 shall be determined within ninety (90) days after the department
349 has assumed custody of the offender. Such tentative parole
350 hearing date shall be calculated by a formula taking into account
351 the offender's age upon first commitment, number of prior
352 incarcerations, prior probation or parole failures, the severity
353 and the violence of the offense committed, employment history and
354 other criteria which in the opinion of the board tend to validly
355 and reliably predict the length of incarceration necessary before
356 the offender can be successfully paroled.

357 (b) [Repealed].

358 (4) Any inmate within twenty-four (24) months of his parole
359 eligibility date and who meets the criteria established by the

360 classification board shall receive priority for placement in any
361 educational development and job training programs. Any inmate
362 refusing to participate in an educational development or job
363 training program may be ineligible for parole.

364 **SECTION 4.** Section 99-19-1, Mississippi Code of 1972, is
365 amended as follows:

366 99-19-1. Except as provided in Section 47-7-3, no statutory
367 change of any law affecting a crime or its punishment or the
368 collection of a penalty shall affect or defeat the prosecution of
369 any crime committed prior to its enactment, or the collection of
370 any penalty, whether such prosecution be instituted before or
371 after such enactment; and all laws defining a crime or prescribing
372 its punishment, or for the imposition of penalties, shall be
373 continued in operation for the purpose of providing punishment for
374 crimes committed under them, and for collection of such penalties,
375 notwithstanding amendatory or repealing statutes, unless otherwise
376 specially provided in such statutes.

377 **SECTION 5.** This act shall take effect and be in force from
378 and after its passage.