

By: Representative Moak

To: Judiciary A

HOUSE BILL NO. 443
(As Sent to Governor)

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 GRAND JURIES TO
3 REMAND CERTAIN CASES TO JUSTICE COURT TO BE TRIED AS MISDEMEANORS;
4 AND FOR 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. * * *

9 * * *

10 (1) Upon the election of any county to employ a clerk for
11 the justice court of such county in accordance with the provisions
12 of subsection (3) of Section 9-11-27 prior to January 1, 1984, the
13 venue of criminal actions in such county shall be as provided in
14 subsection (2) of this section. * * *

15 * * *

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

21 (3) A circuit court grand jury, after an evidentiary
22 determination, may remand any case that may be tried as a felony
23 or misdemeanor, and which it deems should be tried as a
24 misdemeanor, to justice or municipal court to be tried as a
25 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 court judge 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 grand
35 jury may remand a case to justice court to be tried as a
36 misdemeanor after finding that the felony charge presented should
37 be remanded with its bond to justice or municipal court to be
38 tried as a misdemeanor.

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

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

61 municipality. He may sit as a committing court in all felonies
62 committed within the municipality, and he shall have the power to
63 bind over the accused to the grand jury or to appear before the
64 proper court having jurisdiction to try the same, and to set the
65 amount of bail or refuse bail and commit the accused to jail in
66 cases not bailable. The municipal judge is a conservator of the
67 peace within his municipality. He may conduct preliminary
68 hearings in all violations of the criminal laws of this state
69 occurring within the municipality, and any person arrested for a
70 violation of law within the municipality may be brought before him
71 for initial appearance. The municipal court shall have
72 jurisdiction of any case remanded to it by a circuit court grand
73 jury.

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

87 (3) The municipal judge may solemnize marriages, take oaths,
88 affidavits and acknowledgments, and issue orders, subpoenas,
89 summonses, citations, warrants for search and arrest upon a
90 finding of probable cause, and other such process under seal of
91 the court to any county or municipality, in a criminal case, to be
92 executed by the lawful authority of the county or the municipality

93 of the respondent, and enforce obedience thereto. The absence of
94 a seal shall not invalidate the process.

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

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

120 (6) Upon prior notice to the municipal prosecuting attorney
121 and upon a showing in open court of rehabilitation, good conduct
122 for a period of two (2) years since the last conviction in any
123 court and that the best interest of society would be served, the
124 court may, in its discretion, order the record of conviction of a
125 person of any or all misdemeanors in that court expunged, and upon

126 so doing the said person thereafter legally stands as though he
127 had never been convicted of the said misdemeanor(s) and may
128 lawfully so respond to any query of prior convictions. This order
129 of expunction does not apply to the confidential records of law
130 enforcement agencies and has no effect on the driving record of a
131 person maintained under Title 63, Mississippi Code of 1972, or any
132 other provision of said Title 63.

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

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

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

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

157 (11) The municipal court shall have the power to impose
158 punishment of a fine of not more than One Thousand Dollars

159 (\$1,000.00) or six (6) months' imprisonment, or both, for contempt
160 of court. The municipal court may have the power to impose
161 reasonable costs of court, not in excess of the following:

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

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

189 (13) A municipal court judge shall expunge the record of any
190 case in which an arrest was made, the person arrested was released

191 and the case was dismissed or the charges were dropped or there
192 was no disposition of such case.

193 **SECTION 4.** This act shall take effect and be in force from
194 and after July 1, 2007.