

By: Representatives Flaggs, Buck

To: Juvenile Justice

HOUSE BILL NO. 727

1 AN ACT TO AMEND SECTION 43-21-157, MISSISSIPPI CODE OF 1972,
2 TO PROHIBIT THE CIRCUIT COURT FROM AUTOMATICALLY IMPOSING A
3 MANDATORY SENTENCE FOR ANY CHILD UNDER 17 YEARS OF AGE WHO IS
4 UNDER THE COURT'S JURISDICTION, AND TO PROHIBIT SUCH COURT FROM
5 SENTENCING ANY CHILD TO LIFE WITHOUT PAROLE; TO AMEND SECTION
6 47-7-3, MISSISSIPPI CODE OF 1972, IN CONFORMITY THERETO; TO AMEND
7 SECTION 43-21-303, MISSISSIPPI CODE OF 1972, TO CLARIFY THAT
8 DURING THE INTERROGATION OF ANY CHILD WHO IS UNDER 17 YEARS OF
9 AGE, LAW ENFORCEMENT OFFICIALS MUST MAKE CONTINUING REASONABLE
10 EFFORTS TO CONTACT THE CHILD'S PARENTS DURING SUCH QUESTIONING;
11 AND FOR RELATED PURPOSES.

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

13 **SECTION 1.** Section 43-21-157, Mississippi Code of 1972, is
14 amended as follows:

15 43-21-157. (1) If a child who has reached his thirteenth
16 birthday is charged by petition to be a delinquent child, the
17 youth court, either on motion of the youth court prosecutor or on
18 the youth court's own motion, after a hearing as hereinafter
19 provided, may, in its discretion, transfer jurisdiction of the
20 alleged offense described in the petition or a lesser included
21 offense to the criminal court which would have trial jurisdiction
22 of such offense if committed by an adult. The child shall be
23 represented by counsel in transfer proceedings.

24 (2) A motion to transfer shall be filed on a day prior to
25 the date set for the adjudicatory hearing but not more than ten
26 (10) days after the filing of the petition. The youth court may
27 order a transfer study at any time after the motion to transfer is
28 filed. The transfer study and any other social record which the
29 youth court will consider at the transfer hearing shall be made
30 available to the child's counsel prior to the hearing. Summons
31 shall be served in the same manner as other summons under this

32 chapter with a copy of the motion to transfer and the petition
33 attached thereto.

34 (3) The transfer hearing shall be bifurcated. At the
35 transfer hearing, the youth court shall first determine whether
36 probable cause exists to believe that the child committed the
37 alleged offense. For the purpose of the transfer hearing only,
38 the child may, with the assistance of counsel, waive the
39 determination of probable cause.

40 (4) Upon such a finding of probable cause, the youth court
41 may transfer jurisdiction of the alleged offense and the youth if
42 the youth court finds by clear and convincing evidence that there
43 are no reasonable prospects of rehabilitation within the juvenile
44 justice system.

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

48 (a) Whether or not the alleged offense constituted a
49 substantial danger to the public;

50 (b) The seriousness of the alleged offense;

51 (c) Whether or not the transfer is required to protect
52 the community;

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

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

58 (f) The sophistication, maturity and educational
59 background of the child;

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

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

65 (i) Whether or not the child can be retained in the
66 juvenile justice system long enough for effective treatment or
67 rehabilitation;

68 (j) The dispositional resources available to the
69 juvenile justice system;

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

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

75 (m) Any other factors deemed relevant by the youth
76 court; and

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

81 (6) If the youth court transfers jurisdiction of the alleged
82 offense to a criminal court, the youth court shall enter a
83 transfer order containing:

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

86 (b) Facts showing that the child was represented by
87 counsel;

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

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

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

97 (f) A designation of the alleged offense transferred
98 and of the court to which the transfer is made and a direction to
99 the clerk to forward for filing in such court a certified copy of
100 the transfer order of the youth court.

101 (7) The testimony of the child respondent at a transfer
102 hearing conducted pursuant to this chapter shall not be admissible
103 against the child in any proceeding other than the transfer
104 hearing.

105 (8) When jurisdiction of an offense is transferred to the
106 circuit court, or when a youth has committed an act which is in
107 original circuit court jurisdiction pursuant to Section 43-21-151,
108 the jurisdiction of the youth court over the youth is forever
109 terminated, except that such jurisdiction is not forever
110 terminated if the circuit court transfers or remands the
111 transferred case to the youth court or if a child who has been
112 transferred to the circuit court or is in the original
113 jurisdiction of the circuit court is not convicted. However, when
114 jurisdiction of an offense is transferred to the circuit court
115 pursuant to this section or when an offense committed by a youth
116 is in original circuit court jurisdiction pursuant to Section
117 43-21-151, the circuit court shall thereafter assume and retain
118 jurisdiction of any felony offenses committed by such youth
119 without any additional transfer proceedings. Any misdemeanor
120 offenses committed by youth who are in circuit court jurisdiction
121 pursuant to this section or Section 43-21-151 shall be prosecuted
122 in the court which would have jurisdiction over that offense if
123 committed by an adult without any additional transfer proceedings.
124 The circuit court may review the transfer proceedings on motion of
125 the transferred child. Such review shall be on the record of the
126 hearing in the youth court. The circuit court shall remand the
127 offense to the youth court if there is no substantial evidence to
128 support the order of the youth court. The circuit court may also

129 review the conditions of custody or release pending criminal court
130 proceedings.

131 (9) When any youth has been the subject of a transfer to
132 circuit court for an offense committed in any county of the state
133 or has committed any act which is in the original jurisdiction of
134 the circuit court pursuant to Section 43-21-151, that transfer or
135 original jurisdiction shall be recognized by all other courts of
136 the state and no subsequent offense committed by such youth in any
137 county of the state shall be in the jurisdiction of the youth
138 court unless transferred to the youth court pursuant to Section
139 43-21-159(3). Transfers from youth courts of other states shall
140 be recognized by the courts of this state and no youth who has a
141 pending charge or a conviction in the adult court system of any
142 other state shall be in the jurisdiction of the youth courts of
143 this state, but such youths shall be in the jurisdiction of the
144 circuit court for any felony committed in this state or in the
145 jurisdiction of the court of competent jurisdiction for any
146 misdemeanor committed in this state.

147 (10) The circuit court may not automatically impose a
148 mandatory sentence for any child who is under 17 years of age and
149 who is under its jurisdiction, nor may the court sentence any
150 child to life without parole. Before sentencing any child, the
151 court must conduct a sentencing hearing to consider the factors
152 set forth in Section 43-21-603 (3)(a-e).

153 **SECTION 2.** Section 47-7-3, Mississippi Code of 1972, is
154 amended as follows:

155 47-7-3. (1) Every prisoner who has been convicted of any
156 offense against the State of Mississippi, and is confined in the
157 execution of a judgment of such conviction in the Mississippi
158 Department of Corrections for a definite term or terms of one (1)
159 year or over, or for the term of his or her natural life, whose
160 record of conduct shows that such prisoner has observed the rules
161 of the department, and who has served not less than one-fourth

162 (1/4) of the total of such term or terms for which such prisoner
163 was sentenced, or, if sentenced to serve a term or terms of thirty
164 (30) years or more, or, if sentenced for the term of the natural
165 life of such prisoner, has served not less than ten (10) years of
166 such life sentence, may be released on parole as hereinafter
167 provided, except that:

168 (a) No prisoner convicted as a confirmed and habitual
169 criminal under the provisions of Sections 99-19-81 through
170 99-19-87 shall be eligible for parole;

171 (b) Any person who shall have been convicted of a sex
172 crime shall not be released on parole except for a person under
173 the age of nineteen (19) who has been convicted under Section
174 97-3-67;

175 (c) No one shall be eligible for parole until he shall
176 have served one (1) year of his sentence, unless such person has
177 accrued any meritorious earned time allowances, in which case he
178 shall be eligible for parole if he has served (i) nine (9) months
179 of his sentence or sentences, when his sentence or sentences is
180 two (2) years or less; (ii) ten (10) months of his sentence or
181 sentences when his sentence or sentences is more than two (2)
182 years but no more than five (5) years; and (iii) one (1) year of
183 his sentence or sentences when his sentence or sentences is more
184 than five (5) years;

185 (d) (i) No person shall be eligible for parole who
186 shall, on or after January 1, 1977, be convicted of robbery or
187 attempted robbery through the display of a firearm until he shall
188 have served ten (10) years if sentenced to a term or terms of more
189 than ten (10) years or if sentenced for the term of the natural
190 life of such person. If such person is sentenced to a term or
191 terms of ten (10) years or less, then such person shall not be
192 eligible for parole. The provisions of this paragraph (d) shall
193 also apply to any person who shall commit robbery or attempted
194 robbery on or after July 1, 1982, through the display of a deadly

195 weapon. This subparagraph (d)(i) shall not apply to persons
196 convicted after September 30, 1994;

197 (ii) No person shall be eligible for parole who
198 shall, on or after October 1, 1994, be convicted of robbery,
199 attempted robbery or carjacking as provided in Section 97-3-115 et
200 seq., through the display of a firearm or drive-by shooting as
201 provided in Section 97-3-109. The provisions of this subparagraph
202 (d)(ii) shall also apply to any person who shall commit robbery,
203 attempted robbery, carjacking or a drive-by shooting on or after
204 October 1, 1994, through the display of a deadly weapon;

205 (e) No person shall be eligible for parole who, on or
206 after July 1, 1994, is charged, tried, convicted and sentenced to
207 life imprisonment without eligibility for parole under the
208 provisions of Section 99-19-101;

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

212 (g) No person shall be eligible for parole who is
213 convicted or whose suspended sentence is revoked after June 30,
214 1995, except that a first offender convicted of a nonviolent crime
215 after January 1, 2000, may be eligible for parole if the offender
216 meets the requirements in subsection (1) and this paragraph. In
217 addition to other requirements, if a first offender is convicted
218 of a drug or driving under the influence felony, the offender must
219 complete a drug and alcohol rehabilitation program prior to parole
220 or the offender may be required to complete a post-release drug
221 and alcohol program as a condition of parole. For purposes of
222 this paragraph, "nonviolent crime" means a felony other than
223 homicide, robbery, manslaughter, sex crimes, arson, burglary of an
224 occupied dwelling, aggravated assault, kidnapping, felonious abuse
225 of vulnerable adults, felonies with enhanced penalties, the sale
226 or manufacture of a controlled substance under the Uniform
227 Controlled Substances Law, felony child abuse, or any crime under

228 Section 97-5-33 or Section 97-5-39(2) or a violation of Section
229 63-11-30(5) resulting in death, or serious bodily injury resulting
230 in the loss of a limb or dismemberment, loss of eyesight, a coma,
231 permanent dysfunction of any vital organ, paralysis or resulting
232 in an individual's permanent bedridden state. For purposes of
233 this paragraph, "first offender" means a person who at the time of
234 sentencing has not been convicted of a felony on a previous
235 occasion in any court or courts of the United States or in any
236 state or territory thereof. In addition, a first time offender
237 incarcerated for committing the crime of possession of a
238 controlled substance under the Uniform Controlled Substances Law
239 after July 1, 1995, shall be eligible for parole as provided for
240 such offenders in this paragraph after July 1, 2000.

241 (h) The parole eligibility exceptions contained in (a)
242 through (g) of this subsection shall not apply to any offender who
243 is under the age of 17 at the time he or she committed the
244 offense. This provision is exempt from the terms of Section
245 99-19-1.

246 (2) Notwithstanding any other provision of law, an inmate
247 shall not be eligible to receive earned time, good time or any
248 other administrative reduction of time which shall reduce the time
249 necessary to be served for parole eligibility as provided in
250 subsection (1) of this section; however, this subsection shall not
251 apply to the advancement of parole eligibility dates pursuant to
252 the Prison Overcrowding Emergency Powers Act. Moreover,
253 meritorious earned time allowances may be used to reduce the time
254 necessary to be served for parole eligibility as provided in
255 paragraph (c) of subsection (1) of this section.

256 (3) (a) The State Parole Board shall by rules and
257 regulations establish a method of determining a tentative parole
258 hearing date for each eligible offender taken into the custody of
259 the Department of Corrections. The tentative parole hearing date
260 shall be determined within ninety (90) days after the department

261 has assumed custody of the offender. Such tentative parole
262 hearing date shall be calculated by a formula taking into account
263 the offender's age upon first commitment, number of prior
264 incarcerations, prior probation or parole failures, the severity
265 and the violence of the offense committed, employment history and
266 other criteria which in the opinion of the board tend to validly
267 and reliably predict the length of incarceration necessary before
268 the offender can be successfully paroled.

269 (b) [Repealed].

270 (4) Any inmate within twenty-four (24) months of his parole
271 eligibility date and who meets the criteria established by the
272 classification board shall receive priority for placement in any
273 educational development and job training programs. Any inmate
274 refusing to participate in an educational development or job
275 training program may be ineligible for parole.

276 **SECTION 3.** Section 43-21-303, Mississippi Code of 1972, is
277 amended as follows:

278 43-21-303. (1) No child in a matter in which the youth
279 court has original exclusive jurisdiction shall be taken in
280 custody by any person without a custody order except that:

281 (a) A law enforcement officer may take a child in
282 custody if:

283 (i) Grounds exist for the arrest of an adult in
284 identical circumstances; and

285 (ii) Such law enforcement officer has probable
286 cause to believe that custody is necessary as defined in Section
287 43-21-301(3)(b); and

288 (iii) Such law enforcement officer can find no
289 reasonable alternative to custody; or

290 (b) A law enforcement officer or an agent of the
291 department of public welfare may take a child into custody if:

292 (i) There is probable cause to believe that the
293 child is in immediate danger of personal harm; and

294 (ii) Such law enforcement officer or agent has
295 probable cause to believe that immediate custody is necessary as
296 defined in Section 43-21-301(3)(b); and

297 (iii) Such law enforcement officer or agent can
298 find no reasonable alternative to custody.

299 (c) Any other person may take a child in custody if
300 grounds exist for the arrest of an adult in identical
301 circumstances. Such other person shall immediately surrender
302 custody of the child to the proper law enforcement officer who
303 shall thereupon continue custody only as provided in subsection
304 (1)(a) of this section.

305 (2) When it is necessary to take a child into custody, the
306 least restrictive custody should be selected.

307 (3) Unless the child is immediately released, the person
308 taking the child into custody shall immediately notify the judge
309 or his designee. During any interrogation of any child who is
310 under 17 years of age, law enforcement officials must make
311 continuing reasonable efforts to notify the child's parent,
312 guardian or custodian and invite the parent, guardian or custodian
313 to be present during any questioning.

314 (4) A child taken into custody shall not be held in custody
315 for a period longer than reasonably necessary, but not to exceed
316 twenty-four (24) hours, and shall be released to his parent,
317 guardian or custodian unless the judge or his designee authorizes
318 temporary custody.

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