

By: Senator(s) Horhn

To: Judiciary, Division B

SENATE BILL NO. 3043

1 AN ACT TO CREATE THE JUVENILE TRANSFER REFORM ACT OF 2007; TO
2 AMEND SECTION 43-21-151, MISSISSIPPI CODE OF 1972, TO REVISE THE
3 ORIGINAL JURISDICTION OF THE CIRCUIT COURT OVER CERTAIN OFFENSES
4 COMMITTED BY CHILDREN; TO AMEND SECTION 43-21-157, MISSISSIPPI
5 CODE OF 1972, TO REVISE THE AGE AT WHICH JURISDICTION OVER A
6 TRANSFER OF JURISDICTION OVER A CHILD CHARGED WITH DELINQUENCY; TO
7 AMEND SECTION 43-21-303, MISSISSIPPI CODE OF 1972, TO CONDITIONS
8 OF CUSTODY AND INTERROGATION OF CHILDREN; TO AMEND SECTION 47-7-3,
9 MISSISSIPPI CODE OF 1972, TO PAROLE FOR CHILDREN UNDER THE AGE OF
10 18; AND FOR RELATED PURPOSES.

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

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

14 43-21-151. (1) (a) The youth court shall have exclusive
15 original jurisdiction in all proceedings concerning a delinquent
16 child, a child in need of supervision, a neglected child, an
17 abused child or a dependent child except * * * when a charge of
18 abuse of a child first arises in the course of a custody action
19 between the parents of the child already pending in the chancery
20 court and no notice of such abuse was provided prior to such
21 chancery proceedings; in that case, the chancery court may proceed
22 with the investigation, hearing and determination of such abuse
23 charge as a part of its hearing and determination of the custody
24 issue as between the parents, notwithstanding the other provisions
25 of the Youth Court Law. The proceedings in chancery court on the
26 abuse charge shall be confidential in the same manner as provided
27 in youth court proceedings.

28 (b) When a child is expelled from the public schools,
29 the youth court shall be notified of the act of expulsion and the
30 act or acts constituting the basis for expulsion.

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

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

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

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

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

56 43-21-157. (1) If a child who has reached his fifteenth
57 birthday is charged by petition to be a delinquent child, the
58 youth court, either on motion of the youth court prosecutor or on
59 the youth court's own motion, after a hearing as hereinafter
60 provided, may, in its discretion, transfer jurisdiction of the
61 alleged offense described in the petition or a lesser included
62 offense to the criminal court which would have trial jurisdiction

63 of such offense if committed by an adult. The child shall be
64 represented by counsel in transfer proceedings.

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

75 (3) The transfer hearing shall be bifurcated. At the
76 transfer hearing, the youth court shall first determine whether
77 probable cause exists to believe that the child committed the
78 alleged offense. For the purpose of the transfer hearing only,
79 the child may, with the assistance of counsel, waive the
80 determination of probable cause.

81 (4) Upon such a finding of probable cause, the youth court
82 may transfer jurisdiction of the alleged offense and the youth if
83 the youth court finds by clear and convincing evidence that there
84 are no reasonable prospects of rehabilitation within the juvenile
85 justice system.

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

89 (a) Whether or not the alleged offense constituted a
90 substantial danger to the public;

91 (b) The seriousness of the alleged offense;

92 (c) Whether or not the transfer is required to protect
93 the community;

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

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

99 (f) The sophistication, maturity and educational
100 background of the child;

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

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

106 (i) Whether or not the child can be retained in the
107 juvenile justice system long enough for effective treatment or
108 rehabilitation;

109 (j) The dispositional resources available to the
110 juvenile justice system;

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

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

116 (m) Any other factors deemed relevant by the youth
117 court; and

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

122 (6) If the youth court transfers jurisdiction of the alleged
123 offense to a criminal court, the youth court shall enter a
124 transfer order containing:

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

127 (b) Facts showing that the child was represented by
128 counsel;

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

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

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

138 (f) A designation of the alleged offense transferred
139 and of the court to which the transfer is made and a direction to
140 the clerk to forward for filing in such court a certified copy of
141 the transfer order of the youth court.

142 (7) The testimony of the child respondent at a transfer
143 hearing conducted pursuant to this chapter shall not be admissible
144 against the child in any proceeding other than the transfer
145 hearing.

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

162 review shall be on the record of the hearing in the youth court.
163 The circuit court shall remand the offense to the youth court if
164 there is no substantial evidence to support the order of the youth
165 court. The circuit court may also review the conditions of
166 custody or release pending criminal court proceedings.

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

181 (10) The circuit court may not automatically impose a
182 mandatory sentence for any child under its jurisdiction, nor may
183 the court sentence any child to life without parole. Before
184 sentencing any child, the court must conduct a sentencing hearing
185 to consider the factors set forth in Section 43-21-603(3)(a)
186 through (e).

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

189 43-21-303. (1) No child * * * shall be taken in custody by
190 any person without a custody order except that:

191 (a) A law enforcement officer may take a child in
192 custody if:

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

195 (ii) Such law enforcement officer has probable
196 cause to believe that custody is necessary as defined in Section
197 43-21-301(3)(b); and

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

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

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

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

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

209 (c) Any other person may take a child in custody if
210 grounds exist for the arrest of an adult in identical
211 circumstances. Such other person shall immediately surrender
212 custody of the child to the proper law enforcement officer who
213 shall thereupon continue custody only as provided in subsection
214 (1)(a) of this section.

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

217 (3) Unless the child is immediately released, the person
218 taking the child into custody shall immediately notify the judge
219 or his designee. A person taking a child into custody shall also
220 make continuing reasonable efforts to notify the child's parent,
221 guardian or custodian and invite the parent, guardian or custodian
222 to be present during any questioning.

223 (4) During any interrogation of a child, law enforcement
224 officials must make continuing reasonable efforts to notify the
225 child's parent, guardian or custodian and invite the parent,
226 guardian or custodian to be present during any questioning.

227 (5) A child taken into custody shall not be held in custody
228 for a period longer than reasonably necessary, but not to exceed
229 twenty-four (24) hours, and shall be released to his parent,
230 guardian or custodian unless the judge or his designee authorizes
231 temporary custody.

232 **SECTION 4.** Section 47-7-3, Mississippi Code of 1972, is
233 amended as follows:

234 47-7-3. (1) Every prisoner who has been convicted of any
235 offense against the State of Mississippi, and is confined in the
236 execution of a judgment of such conviction in the Mississippi
237 Department of Corrections for a definite term or terms of one (1)
238 year or over, or for the term of his or her natural life, whose
239 record of conduct shows that such prisoner has observed the rules
240 of the department, and who has served not less than one-fourth
241 (1/4) of the total of such term or terms for which such prisoner
242 was sentenced, or, if sentenced to serve a term or terms of thirty
243 (30) years or more, or, if sentenced for the term of the natural
244 life of such prisoner, has served not less than ten (10) years of
245 such life sentence, may be released on parole as hereinafter
246 provided, except that:

247 (a) No prisoner convicted as a confirmed and habitual
248 criminal under the provisions of Sections 99-19-81 through
249 99-19-87 shall be eligible for parole;

250 (b) Any person who shall have been convicted of a sex
251 crime shall not be released on parole except for a person under
252 the age of nineteen (19) who has been convicted under Section
253 97-3-67;

254 (c) No one shall be eligible for parole until he shall
255 have served one (1) year of his sentence, unless such person has
256 accrued any meritorious earned time allowances, in which case he
257 shall be eligible for parole if he has served (i) nine (9) months
258 of his sentence or sentences, when his sentence or sentences is
259 two (2) years or less; (ii) ten (10) months of his sentence or

260 sentences when his sentence or sentences is more than two (2)
261 years but no more than five (5) years; and (iii) one (1) year of
262 his sentence or sentences when his sentence or sentences is more
263 than five (5) years;

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

276 (ii) No person shall be eligible for parole who
277 shall, on or after October 1, 1994, be convicted of robbery,
278 attempted robbery or carjacking as provided in Section 97-3-115 et
279 seq., through the display of a firearm or drive-by shooting as
280 provided in Section 97-3-109. The provisions of this subparagraph
281 (d)(ii) shall also apply to any person who shall commit robbery,
282 attempted robbery, carjacking or a drive-by shooting on or after
283 October 1, 1994, through the display of a deadly weapon;

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

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

291 (g) No person shall be eligible for parole who is
292 convicted or whose suspended sentence is revoked after June 30,

293 1995, except that a first offender convicted of a nonviolent crime
294 after January 1, 2000, may be eligible for parole if the offender
295 meets the requirements in subsection (1) and this paragraph. In
296 addition to other requirements, if a first offender is convicted
297 of a drug or driving under the influence felony, the offender must
298 complete a drug and alcohol rehabilitation program prior to parole
299 or the offender may be required to complete a post-release drug
300 and alcohol program as a condition of parole. For purposes of
301 this paragraph, "nonviolent crime" means a felony other than
302 homicide, robbery, manslaughter, sex crimes, arson, burglary of an
303 occupied dwelling, aggravated assault, kidnapping, felonious abuse
304 of vulnerable adults, felonies with enhanced penalties, the sale
305 or manufacture of a controlled substance under the Uniform
306 Controlled Substances Law, felony child abuse, or any crime under
307 Section 97-5-33 or Section 97-5-39(2) or a violation of Section
308 63-11-30(5) resulting in death, or serious bodily injury resulting
309 in the loss of a limb or dismemberment, loss of eyesight, a coma,
310 permanent dysfunction of any vital organ, paralysis or resulting
311 in an individual's permanent bedridden state. For purposes of
312 this paragraph, "first offender" means a person who at the time of
313 sentencing has not been convicted of a felony on a previous
314 occasion in any court or courts of the United States or in any
315 state or territory thereof. In addition, a first time offender
316 incarcerated for committing the crime of possession of a
317 controlled substance under the Uniform Controlled Substances Law
318 after July 1, 1995, shall be eligible for parole as provided for
319 such offenders in this paragraph after July 1, 2000;

320 (h) The parole eligibility exceptions contained in
321 paragraphs (a) through (g) of this subsection shall not apply to
322 any offender who was under the age of eighteen (18) at the time of
323 the offense, and this paragraph is not subject to the provisions
324 of Section 99-19-1.

325 (2) Notwithstanding any other provision of law, an inmate
326 shall not be eligible to receive earned time, good time or any
327 other administrative reduction of time which shall reduce the time
328 necessary to be served for parole eligibility as provided in
329 subsection (1) of this section; however, this subsection shall not
330 apply to the advancement of parole eligibility dates pursuant to
331 the Prison Overcrowding Emergency Powers Act. Moreover,
332 meritorious earned time allowances may be used to reduce the time
333 necessary to be served for parole eligibility as provided in
334 paragraph (c) of subsection (1) of this section.

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

348 * * *

349 (4) Any inmate within twenty-four (24) months of his parole
350 eligibility date and who meets the criteria established by the
351 classification board shall receive priority for placement in any
352 educational development and job training programs. Any inmate
353 refusing to participate in an educational development or job
354 training program may be ineligible for parole.

355 **SECTION 5.** This act shall take effect and be in force from
356 and after July 1, 2007.