

By: Representatives Hale, Criswell, Eubanks, Foster, Henley, Hopkins, Kinkade, Mettetal To: Judiciary B

HOUSE BILL NO. 647

1 AN ACT TO AMEND SECTIONS 21-23-7 AND 21-23-8, MISSISSIPPI
2 CODE OF 1972, TO PROVIDE THAT ANY PERSON WHO FAILS TO PAY ANY FINE
3 OR ASSESSMENT IMPOSED BY THE MUNICIPAL COURT OR FAILS TO APPEAR
4 BEFORE THE MUNICIPAL COURT FOR HIS OR HER COURT DATE REGARDING ANY
5 PROCEEDING ORDERED BY THE MUNICIPAL COURT SHALL BE GUILTY OF A
6 MISDEMEANOR; AND FOR RELATED PURPOSES.

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

8 SECTION 1. Section 21-23-7, Mississippi Code of 1972, is
9 amended as follows:

10 21-23-7. (1) The municipal judge shall hold court in a
11 public building designated by the governing authorities of the
12 municipality and may hold court every day except Sundays and legal
13 holidays if the business of the municipality so requires;
14 provided, however, the municipal judge may hold court outside the
15 boundaries of the municipality but not more than within a
16 sixty-mile radius of the municipality to handle preliminary
17 matters and criminal matters such as initial appearances and
18 felony preliminary hearings. The municipal judge shall have the
19 jurisdiction to hear and determine, without a jury and without a
20 record of the testimony, all cases charging violations of the



21 municipal ordinances and state misdemeanor laws made offenses
22 against the municipality and to punish offenders therefor as may
23 be prescribed by law. Except as otherwise provided by law,
24 criminal proceedings shall be brought by sworn complaint filed in
25 the municipal court. Such complaint shall state the essential
26 elements of the offense charged and the statute or ordinance
27 relied upon. Such complaint shall not be required to conclude
28 with a general averment that the offense is against the peace and
29 dignity of the state or in violation of the ordinances of the
30 municipality. He may sit as a committing court in all felonies
31 committed within the municipality, and he shall have the power to
32 bind over the accused to the grand jury or to appear before the
33 proper court having jurisdiction to try the same, and to set the
34 amount of bail or refuse bail and commit the accused to jail in
35 cases not bailable. The municipal judge is a conservator of the
36 peace within his municipality. He may conduct preliminary
37 hearings in all violations of the criminal laws of this state
38 occurring within the municipality, and any person arrested for a
39 violation of law within the municipality may be brought before him
40 for initial appearance. The municipal court shall have
41 jurisdiction of any case remanded to it by a circuit court grand
42 jury. The municipal court shall have civil jurisdiction over
43 actions filed pursuant to and as provided in Title 93, Chapter 21,
44 Mississippi Code of 1972, the Protection from Domestic Abuse Act.



45 (2) In the discretion of the court, where the objects of
46 justice would be more likely met, as an alternative to imposition
47 or payment of fine and/or incarceration, the municipal judge shall
48 have the power to sentence convicted offenders to work on a public
49 service project where the court has established such a program of
50 public service by written guidelines filed with the clerk for
51 public record. Such programs shall provide for reasonable
52 supervision of the offender and the work shall be commensurate
53 with the fine and/or incarceration that would have ordinarily been
54 imposed. Such program of public service may be utilized in the
55 implementation of the provisions of Section 99-19-20, and public
56 service work thereunder may be supervised by persons other than
57 the sheriff.

58 (3) The municipal judge may solemnize marriages, take oaths,
59 affidavits and acknowledgments, and issue orders, subpoenas,
60 summonses, citations, warrants for search and arrest upon a
61 finding of probable cause, and other such process under seal of
62 the court to any county or municipality, in a criminal case, to be
63 executed by the lawful authority of the county or the municipality
64 of the respondent, and enforce obedience thereto. The absence of
65 a seal shall not invalidate the process.

66 (4) When a person shall be charged with an offense in
67 municipal court punishable by confinement, the municipal judge,
68 being satisfied that such person is an indigent person and is
69 unable to employ counsel, may, in the discretion of the court,



70 appoint counsel from the membership of The Mississippi Bar
71 residing in his county who shall represent him. Compensation for
72 appointed counsel in criminal cases shall be approved and allowed
73 by the municipal judge and shall be paid by the municipality. The
74 maximum compensation shall not exceed Two Hundred Dollars
75 (\$200.00) for any one (1) case. The governing authorities of a
76 municipality may, in their discretion, appoint a public
77 defender(s) who must be a licensed attorney and who shall receive
78 a salary to be fixed by the governing authorities.

79 (5) The municipal judge of any municipality is hereby
80 authorized to suspend the sentence and to suspend the execution of
81 the sentence, or any part thereof, on such terms as may be imposed
82 by the municipal judge. However, the suspension of imposition or
83 execution of a sentence hereunder may not be revoked after a
84 period of two (2) years. The municipal judge shall have the power
85 to establish and operate a probation program, dispute resolution
86 program and other practices or procedures appropriate to the
87 judiciary and designed to aid in the administration of justice.
88 Any such program shall be established by the court with written
89 policies and procedures filed with the clerk of the court for
90 public record. Subsequent to original sentencing, the municipal
91 judge, in misdemeanor cases, is hereby authorized to suspend
92 sentence and to suspend the execution of a sentence, or any part
93 thereof, on such terms as may be imposed by the municipal judge,
94 if (a) the judge or his or her predecessor was authorized to order



95 such suspension when the sentence was originally imposed; and (b)
96 such conviction (i) has not been appealed; or (ii) has been
97 appealed and the appeal has been voluntarily dismissed.

98 (6) Upon prior notice to the municipal prosecuting attorney
99 and upon a showing in open court of rehabilitation, good conduct
100 for a period of two (2) years since the last conviction in any
101 court and that the best interest of society would be served, the
102 court may, in its discretion, order the record of conviction of a
103 person of any or all misdemeanors in that court expunged, and upon
104 so doing the said person thereafter legally stands as though he
105 had never been convicted of the said misdemeanor(s) and may
106 lawfully so respond to any query of prior convictions. This order
107 of expunction does not apply to the confidential records of law
108 enforcement agencies and has no effect on the driving record of a
109 person maintained under Title 63, Mississippi Code of 1972, or any
110 other provision of said Title 63.

111 (7) Notwithstanding the provisions of subsection (6) of this
112 section, a person who was convicted in municipal court of a
113 misdemeanor before reaching his twenty-third birthday, excluding
114 conviction for a traffic violation, and who is a first offender,
115 may utilize the provisions of Section 99-19-71, to expunge such
116 misdemeanor conviction.

117 (8) In the discretion of the court, a plea of nolo
118 contendere may be entered to any charge in municipal court. Upon
119 the entry of a plea of nolo contendere the court shall convict the



120 defendant of the offense charged and shall proceed to sentence the
121 defendant according to law. The judgment of the court shall
122 reflect that the conviction was on a plea of nolo contendere. An
123 appeal may be made from a conviction on a plea of nolo contendere
124 as in other cases.

125 (9) Upon execution of a sworn complaint charging a
126 misdemeanor, the municipal court may, in its discretion and in
127 lieu of an arrest warrant, issue a citation requiring the
128 appearance of the defendant to answer the charge made against him.
129 On default of appearance, an arrest warrant may be issued for the
130 defendant. The clerk of the court or deputy clerk may issue such
131 citations.

132 (10) The municipal court shall have the power to make rules
133 for the administration of the court's business, which rules, if
134 any, shall be in writing filed with the clerk of the court and
135 shall include the enactment of rules related to the court's
136 authority to issue domestic abuse protection orders pursuant to
137 Section 93-21-1 et seq.

138 (11) The municipal court shall have the power to impose
139 punishment of a fine of not more than One Thousand Dollars
140 (\$1,000.00) or six (6) months' imprisonment, or both, for contempt
141 of court. The municipal court may have the power to impose
142 reasonable costs of court, not in excess of the following:

143 Dismissal of any affidavit, complaint or charge
144 in municipal court.....\$ 50.00



145 Suspension of a minor's driver's license in lieu of
 146 conviction.....\$ 50.00
 147 Service of scire facias or return "not found".....\$ 20.00
 148 Causing search warrant to issue or causing
 149 prosecution without reasonable cause or refusing to
 150 cooperate after initiating action.....\$ 100.00
 151 Certified copy of the court record.....\$ 5.00
 152 Service of arrest warrant for failure to answer
 153 citation or traffic summons.....\$ 25.00
 154 Jail cost per day - actual jail cost paid by the municipality
 155 but not to exceed..... \$ 35.00
 156 Service of court documents related to the filing
 157 of a petition or issuance of a protection from domestic
 158 abuse order under Title 93, Chapter 21, Mississippi
 159 Code of 1972\$ 25.00
 160 Any other item of court cost.....\$ 50.00
 161 No filing fee or such cost shall be imposed for the bringing
 162 of an action in municipal court.

163 (12) A municipal court judge shall not dismiss a criminal
 164 case but may transfer the case to the justice court of the county
 165 if the municipal court judge is prohibited from presiding over the
 166 case by the Canons of Judicial Conduct and provided that venue and
 167 jurisdiction are proper in the justice court. Upon transfer of
 168 any such case, the municipal court judge shall give the municipal
 169 court clerk a written order to transmit the affidavit or complaint



170 and all other records and evidence in the court's possession to
171 the justice court by certified mail or to instruct the arresting
172 officer to deliver such documents and records to the justice
173 court. There shall be no court costs charged for the transfer of
174 the case to the justice court.

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

179 (14) Any person who fails to pay any fine or assessment
180 imposed by the municipal court or fails to appear before the
181 municipal court for his or her court date regarding any proceeding
182 ordered by the municipal court shall be guilty of a misdemeanor.

183 **SECTION 2.** Section 21-23-8, Mississippi Code of 1972, is
184 amended as follows:

185 21-23-8. (1) (a) The purpose of bail is to guarantee
186 appearance and a bail bond shall not be forfeited for any other
187 reason.

188 (b) (i) If a defendant in any criminal case,
189 proceeding or matter fails to appear for any proceeding as ordered
190 by the municipal court, then the court shall order the bail
191 forfeited and a judgment nisi * * *, issue a bench warrant * * *
192 at the time of nonappearance and adjudge such person guilty of a
193 misdemeanor. The clerk of the municipal court shall notify the
194 surety of the forfeiture by writ of scire facias, with a copy of



195 the judgment nisi and bench warrant attached thereto, within ten
196 (10) working days of such order of judgment nisi either by
197 personal service or by certified mail. Failure of the clerk to
198 provide the required notice within ten (10) working days shall
199 constitute prima facie evidence that the order should be set
200 aside.

201 (ii) 1. The judgment nisi shall be returnable for
202 ninety (90) days from the date of issuance. If during that period
203 the defendant appears before the municipal court, or is arrested
204 and surrendered, then the judgment nisi shall be set aside. If
205 the surety produces the defendant or provides to the municipal
206 court reasonable mitigating circumstances upon such showing, then
207 the forfeiture shall not be made final. If the forfeiture is made
208 final, a copy of the final judgment shall be served on the surety
209 within ten (10) working days by either personal service or
210 certified mail.

211 2. Reasonable mitigating circumstances shall
212 be that the defendant is incarcerated in another jurisdiction;
213 that the defendant is hospitalized under a doctor's care; that the
214 defendant is in a recognized drug rehabilitation program; that the
215 defendant has been placed in a witness protection program, in
216 which case it shall be the duty of any agency placing the
217 defendant into a witness protection program to notify the
218 municipal court and the municipal court to notify the surety; or
219 any other reason justifiable to the municipal court.



220 (2) If a final judgment is entered against a surety licensed
221 by the Department of Insurance and has not been set aside after
222 ninety (90) days, or later if such time is extended by the
223 municipal court issuing the judgment nisi, then the municipal
224 court shall order the department to revoke the authority of the
225 surety to write bail bonds. The Commissioner of Insurance shall,
226 upon notice of the municipal court, notify the surety within five
227 (5) working days of receipt of the order of revocation. If after
228 ten (10) working days of the notification the revocation order has
229 not been set aside by the municipal court, then the commissioner
230 shall revoke the authority of the surety and all agents of the
231 surety and shall notify the sheriff of every county of such
232 revocation.

233 (3) If within eighteen (18) months of the date of the final
234 forfeiture the defendant appears for municipal court, is arrested
235 or surrendered to the municipal court, or if the defendant is
236 found to be incarcerated in another jurisdiction and a hold order
237 placed on the defendant, then the amount of bail, less reasonable
238 extradition cost, excluding attorney fees, shall be refunded by
239 the municipal court upon application by the surety.

240 (4) (a) The municipal judge shall set the amount of bail
241 for persons charged with offenses in municipal court and may
242 approve the bond or recognizance therefor.

243 (b) In instances where the municipal judge is
244 unavailable and has not provided a bail schedule or otherwise



245 provided for the setting of bail, it is lawful for any officer or
246 officers designated by order of the municipal judge to take bond,
247 cash, property or recognizance, with or without sureties, in a sum
248 to be determined by the officer, payable to the municipality and
249 conditioned for the appearance of the person on the return day and
250 time of the writ before the court to which the warrant is
251 returnable, or in cases of arrest without a warrant, on the day
252 and time set by the court or officer for arraignment, and there
253 remain from day to day and term to term until discharged.

254 (c) All bonds shall be promptly returned to the court,
255 together with any cash deposited, and be filed and proceeded on by
256 the court in a case of forfeiture. The chief of the municipal
257 police or a police officer or officers designated by order of the
258 municipal judge may approve bonds or recognizances.

259 (d) All bonds and recognizances in municipal court
260 where the municipal court shall have the jurisdiction to hear and
261 determine the case may be made payable to the municipality and
262 shall have the effect to bind the principal and any sureties on
263 the bond or recognizance until they shall be discharged by due
264 course of law without renewal.

265 **SECTION 3.** This act shall take effect and be in force from
266 and after July 1, 2016.

