

By: Senator(s) Tollison

To: Judiciary, Division B

SENATE BILL NO. 2206

1 AN ACT TO AMEND SECTION 97-44-1, MISSISSIPPI CODE OF 1972, TO  
 2 REVISE THE SHORT TITLE OF THE MISSISSIPPI STREET GANG ACT; TO  
 3 AMEND SECTION 97-44-3, MISSISSIPPI CODE OF 1972, TO DEFINE TERMS;  
 4 TO AMEND SECTION 97-44-5, MISSISSIPPI CODE OF 1972, TO PROVIDE  
 5 PENALTIES FOR CRIMINAL STREET GANG ACTIVITY; TO AMEND SECTION  
 6 97-44-7, MISSISSIPPI CODE OF 1972, TO CLARIFY EVIDENTIARY  
 7 STANDARDS; TO CREATE NEW SECTION 97-44-101, MISSISSIPPI CODE OF  
 8 1972, TO PROVIDE A CIVIL CAUSE OF ACTION BASED ON GANG ACTIVITY;  
 9 TO CREATE NEW SECTION 97-44-103, MISSISSIPPI CODE OF 1972, TO  
 10 SPECIFY VENUE; TO CREATE NEW SECTION 97-44-105, MISSISSIPPI CODE  
 11 OF 1972, TO PROVIDE FOR SERVICE OF PROCESS; TO CREATE NEW SECTION  
 12 97-44-107, MISSISSIPPI CODE OF 1972, TO AUTHORIZE INJUNCTIVE  
 13 RELIEF; TO CREATE NEW SECTIONS 97-44-109 AND 97-44-111,  
 14 MISSISSIPPI CODE OF 1972, TO PROVIDE FOR FUTURE OF REAL AND  
 15 PERSONAL PROPERTY; TO REPEAL SECTIONS 97-44-9, 97-44-11, 97-44-13,  
 16 97-44-15, 97-44-17 AND 97-44-19, MISSISSIPPI CODE OF 1972, WHICH  
 17 MADE VARIOUS PROVISIONS IN THE STREET GANG ACT; TO CREATE NEW  
 18 SECTION 97-35-53, MISSISSIPPI CODE OF 1972, TO PROHIBIT THREATS  
 19 AGAINST A LAW ENFORCEMENT OFFICER OR JUDGE; AND FOR RELATED  
 20 PURPOSES.

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

22 **SECTION 1.** Section 97-44-1, Mississippi Code of 1972, is  
 23 amended as follows:

24 97-44-1. This chapter shall be known as the  
 25 "Mississippi \* \* \* Street Gang Act."

26 **SECTION 2.** Section 97-44-3, Mississippi Code of 1972, is  
 27 amended as follows:



28 97-44-3. For the purposes of this chapter, the following  
29 words and phrases shall have the meanings ascribed \* \* \*:

30 (a) "Criminal gang activity" or "illegal gang activity"  
31 means the commission, attempted commission or conspiracy to  
32 commit, or the solicitation, coercion or intimidation of another  
33 person to commit, any criminal activity or acts of juvenile  
34 delinquency with the intent to enhance or preserve a street gang's  
35 power, reputation or economic resources.

36 ( \* \* \*b) " \* \* \*Street Gang," \* \* \* "gang," \* \* \*  
37 "organized gang," "illegal gang" or "criminal \* \* \* street gang"  
38 means \* \* \*:

39 (i) An association of three (3) or more persons:

40 1. Whose members collectively identify  
41 themselves by adopting a group identity which they use to create  
42 an atmosphere of fear or intimidation, frequently by employing one  
43 or more of the following:

44 A. A common name, slogan, identifying  
45 sign, symbol, tattoo or other physical marking;

46 B. Style or color of clothing or  
47 hairstyle;

48 C. Hand sign, hand gesture or finger  
49 position; or

50 D. Graffiti; and



51                   2. Whose purpose, in part, is to engage in  
52 criminal activity or acts of juvenile delinquency and which uses  
53 violence or intimidation to further its criminal objectives.

54                   (ii) The term does not include three (3) or more  
55 persons, associated in law or in fact, who are not engaged in  
56 criminal gang activity.

57                   (iii) The association may also possess some of the  
58 following characteristics:

59                   1. The members may employ rules for joining  
60 and operating within the association;

61                   2. The members may meet on a recurring basis;

62                   3. The association may provide physical  
63 protection of its members from others;

64                   4. The association may seek to exercise  
65 control over a particular geographic location or region, or it may  
66 simply defend its perceived interests against rivals; or

67                   5. The association may have an identifiable  
68 structure.

69                   \* \* \*

70                   ( \* \* \*c) "Public authority" means the state and  
71 political subdivisions as defined in Section 11-46-1 \* \* \*.

72                   ( \* \* \*d) " \* \* \*Street gang member" or "gang member"  
73 means any person who actually and in fact belongs to a street  
74 gang, and any person who knowingly acts in the capacity of an  
75 agent for or accessory to, or is legally accountable for, or



76 voluntarily associates himself with a gang-related criminal  
77 activity, whether in a preparatory, executory or cover-up phase of  
78 any activity, or who knowingly performs, aids or abets \* \* \*  
79 street gang activity.

80 ( \* \* \*e) " \* \* \*Street gang related" or "gang-related"  
81 means any criminal activity, enterprise, pursuit or undertaking  
82 directed by, ordered by, authorized by, consented to, agreed to,  
83 requested by, acquiesced in, or ratified by any gang leader,  
84 officer or governing or policymaking person or authority, or by  
85 any agent, representative or deputy of any \* \* \* gang officer,  
86 person or authority:

87 (i) With intent to increase the gang's size,  
88 membership, prestige, dominance or control in any geographical  
89 area; or

90 (ii) With intent to exact revenge or retribution  
91 for the gang or any member of the gang; or

92 (iii) With intent to provide the gang with any  
93 advantage in, or any control or dominance over, any criminal  
94 market sector, including but not limited to the unlawful  
95 manufacture, delivery, possession or sale of controlled  
96 substances; arson; traffic in stolen property or stolen credit  
97 cards; traffic in prostitution, obscenity or pornography; or that  
98 involves robbery, armed robbery, burglary or larceny; or



99 (iv) With intent to obstruct justice, or  
100 intimidate or eliminate any witness against the gang or any member  
101 of the gang; or

102 (v) With intent to otherwise, directly or  
103 indirectly, cause any benefit, aggrandizement, gain, profit or  
104 other advantage whatsoever to or for the gang, its reputation,  
105 influence or membership.

106 (f) "Underlying offense" means any criminal activity or  
107 acts of juvenile delinquency committed by a street gang member  
108 with the intent to enhance or preserve the street gang's power,  
109 reputation or economic resources.

110 **SECTION 3.** Section 97-44-5, Mississippi Code of 1972, is  
111 amended as follows:

112 97-44-5. \* \* \* (1) It is unlawful for any person to:

113 (a) Conduct or participate in criminal gang activity.

114 (b) Commit any crime or delinquent act with the intent  
115 to obtain or earn membership or maintain or increase the person's  
116 status or position in a criminal street gang.

117 (c) Acquire or maintain, directly or indirectly,  
118 through criminal gang activity or proceeds derived from criminal  
119 gang activity, any interest in or control of any real or personal  
120 property of any nature, including money.

121 (d) Cause, encourage, solicit, recruit, or coerce  
122 another to become a member or associate of a street gang, to



123 participate in a street gang, or to conduct or participate in  
124 criminal gang activity.

125 (e) Communicate, directly or indirectly, with another  
126 person any threat of injury or damage to the person or property of  
127 the other person or of any associate or relative of the other  
128 person with the intent to:

129 (i) Deter the person from assisting a member or  
130 associate of a criminal street gang to withdraw from such criminal  
131 street gang;

132 (ii) Punish or retaliate against the person for  
133 having withdrawn from a street gang;

134 (iii) Punish or retaliate against the person for  
135 refusing to or encouraging another to refuse to become or obtain  
136 the status of a member or associate of a criminal street gang; or

137 (iv) Punish or retaliate against the person for  
138 providing statements or testimony against a street gang or any  
139 street gang member or associate.

140 (g) Knowingly and willfully sell or buy goods or  
141 perform services for a criminal street gang in furtherance of  
142 illegal activity.

143 (2) In addition to the prohibitions set forth in Title 97,  
144 Chapter 9, Article 3 (Obstruction of Justice), it is unlawful for  
145 any person to communicate, directly or indirectly, with another  
146 any threat of injury or damage to the person or property of the  
147 other person or of any associate or relative of the other person



148 with the intent to intimidate, deter, or prevent the person from  
149 communicating to any law enforcement or corrections officer,  
150 prosecuting attorney or judge, information relating to street  
151 gangs, street gang members or associates, or criminal gang  
152 activity.

153 (3) Any crime committed in violation of this section shall  
154 be considered an offense separate from any underlying offense.

155 (4) (a) A person who violates this section where the  
156 underlying offense is a felony, in addition to any other penalty  
157 imposed by law, shall be punished by imprisonment for not less  
158 than five (5) nor more than fifteen (15) years or by a fine of not  
159 less than Ten Thousand Dollars (\$10,000.00) nor more than Fifteen  
160 Thousand Dollars (\$15,000.00), or both.

161 (b) Any person who is convicted of a misdemeanor that  
162 is committed for the benefit of, at the direction of, or in  
163 association with, any criminal street gang, with the specific  
164 intent to promote, further or assist in any criminal conduct or  
165 enterprise by gang members, shall, in addition and consecutive to  
166 the penalty provided for that offense, be imprisoned for an  
167 additional period of not more than one (1) year.

168 (c) Any sentence of imprisonment imposed under this  
169 section shall be in addition and consecutive to any sentence  
170 imposed for the underlying offense.

171 (5) The court may elect to suspend all or a part of any  
172 additional mandatory punishment or enhanced punishment provided in



173 this chapter to impose alternative punishment in the form of  
174 properly supervised community service or placement in an  
175 appropriate adolescent offender program, if available, only in an  
176 unusual case where the interests of justice would best be served,  
177 and if the court specifies on the record and enters into the  
178 minutes the circumstances and reasons that the interests of  
179 justice would best be served by the suspension of enhanced  
180 punishment.

181 (6) In addition to any other penalty provided by this  
182 section, all sentences imposed under this section shall require as  
183 a special condition of the sentence that the person sentenced  
184 shall not knowingly have contact of any kind or character with any  
185 other member or associate of a street gang, shall not participate  
186 in any criminal gang activity, and, in cases involving a victim,  
187 shall not knowingly have contact of any kind or character with any  
188 victim or any member of a victim's family or household.

189 **SECTION 4.** Section 97-44-7, Mississippi Code of 1972, is  
190 amended as follows:

191 97-44-7. \* \* \* For purposes of this chapter, it shall not be  
192 necessary to show that a particular conspiracy, combination or  
193 conjoining of persons possesses, acknowledges or is known by any  
194 common name, insignia, flag, means of recognition, secret signal  
195 or code, creed, belief, structure, leadership or command  
196 structure, method of operation or criminal enterprise,  
197 concentration or specialty, membership, age or other





198 qualifications, initiation rites, geographical or territorial  
199 situs or boundary or location, or other unifying mark, manner,  
200 protocol or method of expressing or indicating membership when the  
201 conspiracy's existence, in law or in fact, can be demonstrated by  
202 a preponderance of the competent evidence. However, any evidence  
203 reasonably tending to show or demonstrate, in law or in fact, the  
204 existence of or membership in any conspiracy, confederation or  
205 other association described in this chapter, or probative of the  
206 existence of or membership in any criminal street gang, or  
207 evidence of a common name or common identifying signs, symbols,  
208 tattoos, graffiti, or attire or other distinguishing  
209 characteristics, including, but not limited to, common activities,  
210 customs or behaviors, shall be admissible in any action or  
211 proceeding brought under this chapter.

212       **SECTION 5.** The following shall be codified as Section  
213 97-44-101, Mississippi Code of 1972:

214       99-44-101. (1) (a) A civil cause of action is created in  
215 favor of any public authority expending money, allocating or  
216 reallocating police, firefighting, emergency or other personnel or  
217 resources, or otherwise incurring any loss, deprivation or injury,  
218 or sustaining any damage, impairment or harm whatsoever,  
219 proximately caused by criminal gang activity.

220               (b) The cause of action created by this article shall  
221 lie against:



222 (i) Any street gang in whose name, for whose  
223 benefit, on whose behalf or under whose direction the act was  
224 committed; and

225 (ii) Any gang officer or director who causes,  
226 orders, suggests, authorizes, consents to, agrees to, requests,  
227 acquiesces in or ratifies any such act; and

228 (iii) Any gang member who, in the furtherance of  
229 or in connection with, any gang-related activity, commits any such  
230 act; and

231 (iv) Any gang officer, director, leader or member.

232 (c) The cause of action authorized by this article  
233 shall be brought by the Attorney General, a district attorney or  
234 attorneys, or a county attorney or attorneys. This cause of  
235 action shall be in addition to any other civil or criminal  
236 proceeding authorized by the laws of this state or by federal law,  
237 and shall not be construed as requiring the prosecutor to elect a  
238 civil, rather than criminal, remedy, or as replacing any other  
239 cause of action. Liability of the gang, its officers, directors,  
240 leaders and members shall be joint and several subject only to the  
241 apportionment and allocation of punitive damages authorized under  
242 Section 99-44-107.

243 (2) (a) An action may be commenced under this article by  
244 the filing of a complaint as in civil cases.

245 (b) A complaint filed under this article, and all other  
246 ancillary or collateral matters arising therefrom, including



247 matter relating to discovery, motions, trial and the perfection or  
248 execution of judgments shall be subject to the Rules of Civil  
249 Procedure, except as may be otherwise provided in this article, or  
250 except as the court may otherwise order upon motion of the  
251 prosecutor in matters relating to immunity or the physical safety  
252 of witnesses.

253 (c) The complaint shall name the Attorney General or  
254 his designee, if a complainant, each complaining district attorney  
255 or his designee, each complaining county attorney, and the public  
256 authority represented by him or by them.

257 (d) The complaint shall also name as defendants the  
258 gang, all known gang officers, and any gang members specifically  
259 identified or alleged in the complaint as having participated in a  
260 gang-related criminal activity. The complaint may also name, as a  
261 class of defendants, all unknown gang members.

262 (e) When, at any point prior to trial, other specific  
263 gang officers or members become known, the complaint may be  
264 amended to include any such person as a named defendant.

265 (f) Any individual who suffers any injury under the  
266 provisions of this article shall have the right to file a civil  
267 action in the individual's name.

268 **SECTION 6.** The following shall be codified as Section  
269 99-44-103, Mississippi Code of 1972:

270 99-44-103. (1) In an action brought under this article,  
271 venue shall lie in any county where an act charged in the



272 complaint as part of a gang-related criminal activity was  
273 committed.

274 (2) It shall not be necessary for all offenses necessary to  
275 establishing a criminal activity to have occurred in any one (1)  
276 county where the district attorneys or county attorneys of several  
277 counties, each complaining of an offense, elected to join in a  
278 complaint; it shall be sufficient that the complaint, taken as a  
279 whole, alleges a gang-related criminal activity, and each count of  
280 any joint complaint shall be considered as cumulative to other  
281 counts for purposes of alleging or demonstrating criminal gang  
282 activity.

283 (3) Where an activity is alleged to have been committed or  
284 to have occurred in more than one (1) county, the district  
285 attorney or county attorney of each county may join their several  
286 causes of action in a single complaint, which may be filed in any  
287 county agreed to by or among them, but no such joinder shall be  
288 had without the consent of the district attorney or county  
289 attorney having jurisdiction over each offense alleged as part of  
290 the activity.

291 **SECTION 7.** The following shall be codified as Section  
292 97-44-105, Mississippi Code of 1972:

293 97-44-105. (1) All street gangs and street gang members  
294 engaged in a gang-related criminal activity within this state  
295 impliedly consent to service of process upon them as set forth in



296 this section, or as may be otherwise authorized by the Rules of  
297 Civil Procedure.

298 (2) Service of process upon a street gang may be had by  
299 leaving a copy of the complaint and summons directed to any  
300 officer of such gang, commanding the gang to appear and answer the  
301 complaint or otherwise plead at a time and place certain:

302 (a) With any gang officer; or

303 (b) With any individual member of the gang  
304 simultaneously named therein; or

305 (c) In the manner provided for service by publication  
306 in a civil action; or

307 (d) With any parent, legal guardian or legal custodian  
308 of any persons charged with a gang-related offense when any person  
309 sued civilly under this article is under seventeen (17) years of  
310 age and is also charged criminally or as a delinquent minor; or

311 (e) With the director of any agency or department of  
312 this state who is the legal guardian, guardianship administrator  
313 or custodian of any person sued under this article; or

314 (f) With the probation or parole officer of any person  
315 sued under this article; or

316 (g) With such other person or agent as the court may,  
317 upon petition of the district attorney or his designee or the  
318 county attorney, authorize as appropriate and reasonable under all  
319 of the circumstances.



320 (3) If after being summoned a street gang does not appear,  
321 the court shall enter an answer for the street gang neither  
322 affirming nor denying the allegations of the complaint but  
323 demanding strict proof thereof, and proceed to trial and judgment  
324 without further process.

325 (4) When any person is named as a defendant street gang  
326 member in any complaint, or subsequently becomes known and is  
327 added or joined as a named defendant, service of process may be  
328 had as authorized or provided for in the Rules of Civil Procedure  
329 for service of process in a civil case.

330 **SECTION 8.** The following shall be codified as Section  
331 99-44-107, Mississippi Code of 1972:

332 99-44-107. (1) In any action brought under this article,  
333 and upon the verified application of the district attorney or the  
334 county attorney, the circuit court may at any time enter such  
335 restraining orders, injunctions or other prohibitions, or order  
336 such other relief as it deems proper, including, but not limited  
337 to, ordering any person to divest himself of any involvement or  
338 interest, direct or indirect, in any illegal street gang activity  
339 and imposing other reasonable restrictions on the future illegal  
340 activities of any defendant.

341 (2) A final judgment in favor of a public authority under  
342 this article shall entitle it to recover compensatory damages for  
343 all damages, losses, impairments or other harm proximately caused,  
344 together with the costs of the suit and reasonable attorney's



345 fees. Punitive damages may be assessed against any street gang,  
346 against any street gang officer or member found guilty of actual  
347 participation in, or to be legally accountable for, a criminal  
348 activity under this article. One hundred percent (100%) of  
349 punitive damages awarded will be expended by the public authority  
350 to implement preventative programs for juveniles or to fund  
351 existing programs.

352 **SECTION 9.** The following shall be codified as Section  
353 99-44-109, Mississippi Code of 1972:

354 99-44-109. (1) Every private building or place used by  
355 members of a criminal street gang for the commission of illegal  
356 activity is a nuisance and may be the subject of an injunction or  
357 cause of action for damages or for abatement of the nuisance as  
358 provided for in this article.

359 (2) Any person may file a petition for injunctive relief  
360 with the appropriate court seeking eviction from or closure of any  
361 premises used for commission of illegal activity by a criminal  
362 street gang. Upon clear and convincing proof by the plaintiff  
363 that the premises are being used by members of a criminal street  
364 gang for the commission of illegal activity, the court may order  
365 the owner of record or the lessee of the premises to remove or  
366 evict the persons from the premises and order the premises sealed,  
367 prohibit further use of the premises, or enter such order as may  
368 be necessary to prohibit the premises from being used for the



369 commission of illegal activity by a gang and to abate the  
370 nuisance.

371 (3) Any action for injunction, damages, abatement, or other  
372 relief filed pursuant to this section shall proceed according to  
373 the provisions of the Rules of Civil Procedure.

374 (4) The court shall not issue an injunction or assess a  
375 civil penalty against any owner of record or the lessee of the  
376 private building or place, unless there is a showing by clear and  
377 convincing proof that the person knew or should have known or had  
378 been notified of the use of the premises by a gang for illegal  
379 activity. Any injunctive relief other than that specifically  
380 authorized in subsection (6) of this section shall be limited to  
381 that which is necessary to protect the health and safety of the  
382 residents or the public or that which is necessary to prevent  
383 further illegal activity.

384 (5) A petition for injunction shall not be filed until  
385 thirty (30) days after notice of the unlawful use or criminal  
386 conduct has been provided to the owner of record or the lessee, by  
387 mail, return receipt requested, postage prepaid, to the owner's  
388 last-known address, or by personal service. If the premises are  
389 abandoned or closed, or if the whereabouts of the owner of record  
390 or lessee is unknown, all notices, process, pleadings, and orders  
391 required to be delivered or served under this section may be  
392 attached to a door of the premises and mailed, return receipt  
393 requested, to the last address which is reflected on the ad





394 valorem tax receipt on file in the office of the tax collector of  
395 the county where the property is located, and this shall have the  
396 same effect as personal service on the owner of record or lessee.  
397 No injunctive relief authorized by subsection (6) (f) of this  
398 section shall be issued in the form of a temporary restraining  
399 order.

400 (6) If the court has previously issued injunctive relief  
401 ordering the owner of record or the lessee of the premises to  
402 close the premises or otherwise to keep the premises from being  
403 used for the commission by a gang of illegal activity, the court,  
404 upon proof of failure to comply with the terms of the injunction  
405 and that the premises continue to be used by a gang for the  
406 commission of illegal activity, may do one or more of the  
407 following:

408 (a) Order the premises demolished and cleared at the  
409 cost of the owner.

410 (b) Order the premises sold at public auction and the  
411 proceeds from the sale, minus the costs of the sale and the  
412 expenses of bringing the action, delivered to the owner.

413 (c) Order the defendant to pay damages to persons or  
414 local governing authorities who have been damaged or injured or  
415 have incurred expense as a result of the defendant's failure to  
416 take reasonable steps or precautions to comply with the terms of  
417 any injunction issued pursuant to the provisions of this article.



418 (d) Assess a civil penalty not to exceed Five Thousand  
419 Dollars (\$5,000.00) against the defendant based upon the severity  
420 of the nuisance and its duration. In establishing the amount of  
421 any civil penalty, the court shall consider all of the following  
422 factors:

423 (i) The actions taken by the defendant to mitigate  
424 or correct the problem at the private building or place or the  
425 reasons why no such action was taken.

426 (ii) Any failure of the plaintiff to provide  
427 notice as required by subsection (5) of this section.

428 (iii) Any other factor deemed by the court to be  
429 relevant.

430 (7) No nonprofit, fraternal or charitable organization which  
431 is conducting its affairs with ordinary care or skill nor any  
432 governmental entity shall be enjoined pursuant to the provisions  
433 of this article.

434 (8) Nothing in this article shall preclude any aggrieved  
435 person from seeking any other remedy provided by law.

436 **SECTION 10.** The following shall be codified as Section  
437 97-44-111, Mississippi Code of 1972:

438 97-44-111. (1) Any firearm, ammunition to be used in a  
439 firearm, or dangerous weapon in the possession of a member of a  
440 criminal street gang may be seized by any law enforcement agency  
441 or peace officer when the law enforcement agency or peace officer  
442 has probable cause to believe that the firearm, ammunition to be



443 used in a firearm, or dangerous weapon is or has been used by a  
444 gang in the commission of illegal activity.

445 (2) The district attorney or an attorney for the seizing  
446 agency shall initiate, in a civil action, forfeiture proceedings  
447 by petition in the circuit courts as to any property seized  
448 pursuant to the provisions of this section within thirty (30) days  
449 of seizure. The district attorney shall provide notice of the  
450 filing of the petition to those members of the gang who become  
451 known to law enforcement officials as a result of the seizure and  
452 any related arrests, and to any person determined by law  
453 enforcement officials to be the owner of any of the property  
454 involved. After initial notice of the filing of the petition, the  
455 court shall assure that all persons so notified continue to  
456 receive notice of all subsequent proceedings related to the  
457 property.

458 (3) Any person who claims an interest in any seized property  
459 shall, in order to assert a claim that the property should not be  
460 forfeited, file a notice with the court, without necessity of  
461 paying costs, of the intent to establish either of the following:

462 (a) That the persons asserting the claim did not know  
463 of, could not have known of, or had no reason to believe in its  
464 use by a gang in the commission of illegal activity; or

465 (b) That the law enforcement officer lacked the  
466 requisite reasonable belief that the property was or had been used  
467 by a gang in the commission of illegal activity.



468           (4) An acquittal or dismissal in a criminal proceeding shall  
469 not preclude civil proceedings under this section; however, for  
470 good cause shown, on motion by the district attorney, the court  
471 may stay civil forfeiture proceedings during the criminal trial  
472 for related criminal indictment or information alleging a  
473 violation of this section. Such a stay shall not be available  
474 pending an appeal.

475           (5) Except as otherwise provided by this section, all  
476 proceedings hereunder shall be governed by the provisions of the  
477 Mississippi Rules of Civil Procedure.

478           (6) The issue shall be determined by the court alone, and  
479 the hearing on the claim shall be held within sixty (60) days  
480 after service of the petition unless continued for good cause.  
481 The district attorney shall have the burden of showing by clear  
482 and convincing proof that forfeiture of the property is  
483 appropriate.

484           (7) Any person who asserts a successful claim in accordance  
485 with subsection (3) of this section shall be awarded the seized  
486 property by the court, together with costs of filing such action.  
487 All property as to which no claim is filed, or as to which no  
488 successful claim is made, may be destroyed, sold at a public sale,  
489 retained for use by the seizing agency or transferred without  
490 charge to any law enforcement agency of the state for use by it.  
491 Property that is sold shall be sold by the circuit court at a  
492 public auction for cash to the highest and best bidder after



493 advertising the sale for at least once each week for three (3)  
494 consecutive weeks, the last notice to appear not more than ten  
495 (10) days nor less than five (5) days before the sale in a  
496 newspaper having a general circulation in the county. The notice  
497 shall contain a description of the property to be sold and a  
498 statement of the time and place of sale. It shall not be  
499 necessary to the validity of the sale either to have the property  
500 present at the place of sale or to have the name of the owner  
501 thereof stated in the notice. The proceeds of the sale, less any  
502 expenses of concluding the sale, shall be deposited in the seizing  
503 agency's general fund to be used only for approved law enforcement  
504 activity affecting the agency's efforts to combat gang activities.

505 (8) Any action under the provisions of this section may be  
506 consolidated with any other action or proceedings pursuant to this  
507 section relating to the same property on motion of the district  
508 attorney.

509 **SECTION 11.** Section 97-44-9, Mississippi Code of 1972, which  
510 provides venue for civil actions based on criminal gang activity,  
511 is repealed.

512 **SECTION 12.** Section 97-44-11, Mississippi Code of 1972,  
513 which provides service of process for civil actions based on  
514 criminal gang activity, is repealed.

515 **SECTION 13.** Section 97-44-13, Mississippi Code of 1972,  
516 which provides punitive damages for civil actions based on  
517 criminal gang activity, is repealed.



518           **SECTION 14.** Section 97-44-15, Mississippi Code of 1972,  
519 which provides for forfeiture of real property in civil actions  
520 based on criminal gang activity, is repealed.

521           **SECTION 15.** Section 97-44-17, Mississippi Code of 1972,  
522 which provides for forfeiture of personal property in civil  
523 actions based on criminal gang activity, is repealed.

524           **SECTION 16.** Section 97-44-19, Mississippi Code of 1972,  
525 which provides penalties for criminal gang activity, is repealed.

526           **SECTION 17.** Sections 1 through 4 of this act shall be  
527 codified as Article 1, and Sections 5 through 10 of this act shall  
528 be codified as Article 3, Chapter 44, Title 97, Mississippi Code  
529 of 1972.

530           **SECTION 18.** The following shall be codified as Section  
531 97-35-53, Mississippi Code of 1972:

532           97-35-53. It is unlawful for any person to threaten to  
533 assault, kidnap or murder a judge or law enforcement officer or a  
534 member of the immediate family by any means, including social  
535 media, with intent to impede, intimidate, or interfere with the  
536 judge or law enforcement officer while engaged in the performance  
537 of official duties, or with intent to retaliate against the judge  
538 or law enforcement officer on account of the performance of  
539 official duties. Violation of this section is punishable by  
540 imprisonment for not more than one (1) year, a fine not to exceed  
541 Five Thousand Dollars (\$5,000.00), or both.



542           **SECTION 19.** This act shall take effect and be in force from  
543 and after July 1, 2016.

