

By: Senator(s) Tollison, Wiggins

To: Judiciary, Division B

SENATE BILL NO. 2027

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 GANG ACTIVITY; TO AMEND SECTION 97-44-7,
6 MISSISSIPPI CODE OF 1972, TO CLARIFY EVIDENTIARY STANDARDS; TO
7 CREATE NEW SECTION 97-44-101, MISSISSIPPI CODE OF 1972, TO PROVIDE
8 A CIVIL CAUSE OF ACTION BASED ON GANG ACTIVITY; TO CREATE NEW
9 SECTION 97-44-103, MISSISSIPPI CODE OF 1972, TO SPECIFY VENUE; TO
10 CREATE NEW SECTION 97-44-105, MISSISSIPPI CODE OF 1972, TO PROVIDE
11 FOR SERVICE OF PROCESS; TO CREATE NEW SECTION 97-44-107,
12 MISSISSIPPI CODE OF 1972, TO AUTHORIZE INJUNCTIVE RELIEF; TO
13 CREATE NEW SECTIONS 97-44-109 AND 97-44-111, MISSISSIPPI CODE OF
14 1972, TO PROVIDE FOR FORFEITURE OF REAL AND PERSONAL PROPERTY; TO
15 REPEAL SECTIONS 97-44-9, 97-44-11, 97-44-13, 97-44-15, 97-44-17
16 AND 97-44-19, MISSISSIPPI CODE OF 1972, WHICH CONSTITUTED VARIOUS
17 PROVISIONS IN THE STREET GANG ACT THAT ARE ELIMINATED OR SUBSUMED
18 UNDER THIS ACT; TO CREATE NEW SECTION 97-35-53, MISSISSIPPI CODE
19 OF 1972, TO PROHIBIT THREATS AGAINST A LAW ENFORCEMENT OFFICER OR
20 JUDGE; TO PROVIDE THAT OFFENDERS WHO ARE CONVICTED OF CONDUCTING
21 OR PARTICIPATING IN CRIMINAL GANG ACTIVITY SHALL NOT BE ELIGIBLE
22 FOR PAROLE OR ANY EARLY RELEASE PROGRAM OF THE MISSISSIPPI
23 DEPARTMENT OF CORRECTIONS; TO AMEND SECTIONS 97-3-2, 47-5-138.1,
24 47-5-139 AND 47-5-142, MISSISSIPPI CODE OF 1972, TO CONFORM; AND
25 FOR RELATED PURPOSES.

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

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



29 97-44-1. This chapter shall be known as the
30 "Mississippi * * *~~Streetgang~~ Gang Act."

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

33 97-44-3. For the purposes of this chapter, the following
34 words and phrases shall have the meanings ascribed * * *~~herein,~~
35 ~~unless the context clearly requires otherwise:~~

36 (a) * * *~~"Streetgang" or "Gang" * * *or "organized~~
37 ~~gang" or "criminal streetgang" means * * *any combination,~~
38 ~~confederation, alliance, network, conspiracy, understanding, or~~
39 ~~other similar conjoining, in law or in fact, of three (3) or more~~
40 ~~persons with an established hierarchy that, through its membership~~
41 ~~or through the agency of any member, engages in felonious criminal~~
42 ~~activity.:~~

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

44 1. Whose members collectively identify
45 themselves by adopting a group identity by employing one or more
46 of the following:

47 a. A common name, slogan, identifying
48 sign, symbol, tattoo or other physical marking;

49 b. Style or color of clothing or
50 hairstyle;

51 c. Hand sign, hand gesture or finger
52 position; or

53 d. Graffiti; and



54 2. Whose members are involved in criminal
55 gang activity.

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

59 ~~* * *— For purposes of this chapter, it shall not be necessary~~
60 ~~to show that a particular conspiracy, combination or conjoining of~~
61 ~~persons possesses, acknowledges or is known by any common name,~~
62 ~~insignia, flag, means of recognition, secret signal or code,~~
63 ~~creed, belief, structure, leadership or command structure, method~~
64 ~~of operation or criminal enterprise, concentration or specialty,~~
65 ~~membership, age or other qualifications, initiation rites,~~
66 ~~geographical or territorial situs or boundary or location, or~~
67 ~~other unifying mark, manner, protocol or method of expressing or~~
68 ~~indicating membership when the conspiracy's existence, in law or~~
69 ~~in fact, can be demonstrated by a preponderance of the competent~~
70 ~~evidence. However, any evidence reasonably tending to show or~~
71 ~~demonstrate, in law or in fact, the existence of or membership in~~
72 ~~any conspiracy, confederation or other association described~~
73 ~~herein, or probative of the existence of or membership in any such~~
74 ~~association, shall be admissible in any action or proceeding~~
75 ~~brought under this chapter.~~

76 (b) "Public authority" means the state and political
77 subdivisions as defined in Section 11-46-1 * * *, ~~Mississippi Code~~
78 ~~of 1972.~~



79 (c) * * *~~"Streetgang member" or~~ "Gang member" means any
80 person who actually and in fact belongs to a gang, and any person
81 who knowingly acts in the capacity of an agent for or accessory
82 to, or is legally accountable for, or voluntarily associates
83 himself with a * * *~~gang-related~~ criminal gang activity, whether
84 in a preparatory, executory or cover-up phase of any criminal gang
85 activity, or who knowingly performs, aids or abets * * *~~any such~~
86 criminal gang activity.

87 (d) * * *~~"Streetgang related" or "gang-related"~~
88 "Criminal gang activity" means * * *~~any criminal activity,~~
89 ~~enterprise, pursuit or undertaking directed by, ordered by,~~
90 ~~authorized by, consented to, agreed to, requested by, acquiesced~~
91 ~~in, or ratified by any gang leader, officer or governing or~~
92 ~~policymaking person or authority, or by any agent, representative~~
93 ~~or deputy of any such officer, person or authority:~~

94 (i) The commission, attempted commission or
95 conspiracy to commit, or the solicitation, coercion, encouragement
96 or intimidation of another person to commit an act or acts in this
97 or another state that would constitute a criminal offense or
98 delinquent act in that jurisdiction:

99 (* * *±1.) With intent to increase * * *~~the~~
100 a gang's size, membership, prestige, dominance or control in any
101 geographical area; or



102 (* * *~~ii~~2.) With intent to exact revenge or
103 retribution for * * *~~the~~ a gang or any gang member * * *~~of the~~
104 ~~gang~~; or

105 (* * *~~iii~~3.) With intent to provide * * *
106 ~~the~~ a gang with any advantage in, or any control or dominance
107 over, any criminal market sector, including, but not limited to,
108 the unlawful manufacture, delivery, possession or sale of
109 controlled substances; arson; traffic in stolen property or stolen
110 credit cards; traffic in prostitution, obscenity or pornography;
111 or that involves * * *~~robbery, armed robbery,~~ burglary * * *~~or,~~
112 larceny or any crime of violence as defined in Section 97-3-2; or

113 (* * *~~iv~~4.) With intent to obstruct justice,
114 or harass, intimidate or eliminate any witness reasonably expected
115 to testify in a legal proceeding against the gang or any gang
116 member * * *~~of the gang~~; or

117 (* * *~~v~~5.) With intent to otherwise,
118 directly or indirectly, cause any benefit, aggrandizement, gain,
119 profit or other advantage whatsoever to or for the gang, its
120 reputation, influence or membership * * *~~;~~ or

121 6. With intent to obtain or earn membership
122 or maintain or increase the person's status or position in a
123 criminal gang.

124 (ii) Acquiring or maintaining, directly or
125 indirectly, through criminal gang activity, proceeds derived



126 therefrom or any interest in or control of any real or personal
127 property of any nature, including money.

128 (iii) Communicating, directly or indirectly, with
129 another any threat of injury or damage to the person or property
130 of the other person or of any associate or relative of the other
131 person with the intent to punish or retaliate against the other
132 person for providing statements or testimony against a gang or
133 gang member or associate.

134 (iv) Communicating, directly or indirectly, with
135 another any threat of injury or damage to the person or property
136 of the other person or of any associate or relative of the other
137 person with the intent to intimidate, deter, or prevent the other
138 person from communicating to any law enforcement or corrections
139 officer, prosecuting attorney or judge information relating to a
140 gang, gang member or associate, or criminal gang activity.

141 (v) Causing, encouraging, soliciting, recruiting,
142 or coercing another to become a member or associate of a gang.

143 (vi) Communicating, directly or indirectly, with
144 another any threat of injury or damage to the person or property
145 of the other person or of any associate or relative of the other
146 person with the intent to deter the other person from assisting a
147 member or associate of a gang to withdraw from such gang.

148 (vii) Communicating, directly or indirectly, with
149 another any threat of injury or damage to the person or property
150 of the other person or of any associate or relative of the other



151 person with the intent to punish or retaliate against the other
152 person for having withdrawn from a gang.

153 (viii) Communicating, directly or indirectly, with
154 another any threat of injury or damage to the person or property
155 of the other person or of any associate or relative of the other
156 person with the intent to punish or retaliate against the other
157 person for refusing, or encouraging another to refuse, to become a
158 member or associate, or obtain the status of a member or
159 associate, of a gang.

160 (e) "Underlying offense" means the act or acts that
161 would constitute a criminal offense forming the basis of criminal
162 gang activity.

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

165 97-44-5. (1) * * * ~~A civil cause of action is hereby~~
166 ~~created in favor of any public authority expending money,~~
167 ~~allocating or reallocating police, firefighting, emergency or~~
168 ~~other personnel or resources, or otherwise incurring any loss,~~
169 ~~deprivation or injury, or sustaining any damage, impairment or~~
170 ~~harm whatsoever, proximately caused by any criminal activity~~ It
171 is unlawful for any person to conduct or participate in criminal
172 gang activity.

173 (2) * * * ~~The cause of action created by this chapter shall~~
174 ~~lie against:~~



175 ~~————— (a) Any streetgang in whose name, for whose benefit, on~~
176 ~~whose behalf or under whose direction the act was committed; and~~
177 ~~————— (b) Any gang officer or director who causes, orders,~~
178 ~~suggests, authorizes, consents to, agrees to, requests, acquiesces~~
179 ~~in or ratifies any such act; and~~
180 ~~————— (c) Any gang member who, in the furtherance of or in~~
181 ~~connection with, any gang-related activity, commits any such act;~~
182 ~~and~~
183 ~~————— (d) Any gang officer, director, leader or member. A~~
184 ~~crime committed in violation of this chapter shall be considered~~
185 ~~an offense separate from any underlying offense.~~

186 (3) * * * ~~The cause of action authorized by this chapter~~
187 ~~shall be brought by the Attorney General, the district attorney or~~
188 ~~attorneys, or the county attorney, or by his or their respective~~
189 ~~designees. This cause of action shall be in addition to any other~~
190 ~~civil or criminal proceeding authorized by the laws of this state~~
191 ~~or by federal law, and shall not be construed as requiring the~~
192 ~~prosecutor to elect a civil, rather than criminal, remedy, or as~~
193 ~~replacing any other cause of action. Liability of the gang, its~~
194 ~~officers, directors, leaders and members shall be joint and~~
195 ~~several subject only to the apportionment and allocation of~~
196 ~~punitive damage authorized under Section 97-44-13. (a) Except as~~
197 ~~provided in paragraph (b) of this subsection (3):~~

198 ~~(i) Where the underlying offense is a felony, a~~
199 ~~person who conducts or participates in criminal gang activity~~



200 shall be punished by imprisonment for not less than five (5) years
201 nor more than fifteen (15) years or by a fine of not less than Ten
202 Thousand Dollars (\$10,000.00) nor more than Fifteen Thousand
203 Dollars (\$15,000.00), or both, in addition to and consecutive to
204 any sentence imposed for the underlying offense.

205 (ii) Where the underlying offense is a
206 misdemeanor, a person who conducts or participates in criminal
207 gang activity shall be punished by imprisonment for a period of
208 not more than five (5) years in addition to and consecutive to any
209 sentence imposed for the underlying offense.

210 (b) Where the person conducts or participates in the
211 criminal gang activity defined in Section 99-44-3(d)(ii) through
212 99-44-3(d)(viii), the person shall be punished by imprisonment for
213 not less than five (5) years nor more than fifteen (15) years or
214 by a fine of not less than Ten Thousand Dollars (\$10,000.00) nor
215 more than Fifteen Thousand Dollars (\$15,000.00), or both.

216 (4) Any sentence imposed pursuant to the provisions of this
217 chapter shall be without the benefit of parole or early release.

218 (5) The court may elect to suspend all or a part of any
219 additional mandatory punishment or enhanced punishment provided in
220 this chapter to impose alternative punishment in the form of
221 properly supervised community service or placement in an
222 appropriate adolescent offender program, if available, only in an
223 unusual case where the interests of justice would best be served,
224 and if the court specifies on the record and enters into the



225 minutes the circumstances and reasons that the interests of
226 justice would best be served by the suspension of enhanced
227 punishment.

228 (6) In addition to any other penalty provided by this
229 section, all sentences imposed under this section shall require as
230 a special condition of the sentence that the person sentenced
231 shall not knowingly have contact of any kind or character with any
232 other member or associate of a gang, shall not participate in any
233 criminal gang activity, and, in cases involving a victim, shall
234 not knowingly have contact of any kind or character with any
235 victim or any member of a victim's family or household.

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

238 ~~97-44-7. * * * (1) An action may be commenced under this~~
239 ~~chapter by the filing of a complaint as in civil cases.~~

240 ~~— (2) A complaint filed under this chapter, and all other~~
241 ~~ancillary or collateral matters arising therefrom, including~~
242 ~~matter relating to discovery, motions, trial and the perfection or~~
243 ~~execution of judgments shall be subject to the Rules of Civil~~
244 ~~Procedure, except as may be otherwise provided in this chapter, or~~
245 ~~except as the court may otherwise order upon motion of the~~
246 ~~prosecutor in matters relating to immunity or the physical safety~~
247 ~~of witnesses.~~

248 ~~— (3) The complaint shall name the Attorney General or his~~
249 ~~designee, if a complainant, each complaining district attorney or~~



250 ~~his designee, each complaining county attorney, and the public~~
251 ~~authority represented by him or by them.~~

252 ~~—— (4) The complaint shall also name as defendants the gang,~~
253 ~~all known gang officers, and any gang members specifically~~
254 ~~identified or alleged in the complaint as having participated in a~~
255 ~~gang-related criminal activity. The complaint may also name, as a~~
256 ~~class of defendants, all unknown gang members.~~

257 ~~—— (5) When, at any point prior to trial, other specific gang~~
258 ~~officers or members become known, the complaint may be amended to~~
259 ~~include any such person as a named defendant.~~

260 ~~—— (6) Any individual who suffers any injury under the~~
261 ~~provisions of this chapter shall have the right to file a civil~~
262 ~~action in his or her name. For purposes of this chapter, it shall~~
263 ~~not be necessary to show that a particular conspiracy, combination~~
264 ~~or conjoining of persons possesses, acknowledges or is known by~~
265 ~~any common name, insignia, flag, means of recognition, secret~~
266 ~~signal or code, creed, belief, structure, leadership or command~~
267 ~~structure, method of operation or criminal enterprise,~~
268 ~~concentration or specialty, membership, age or other~~
269 ~~qualifications, initiation rites, geographical or territorial~~
270 ~~situs or boundary or location, or other unifying mark, manner,~~
271 ~~protocol or method of expressing or indicating membership when the~~
272 ~~conspiracy's existence, in law or in fact, can be demonstrated by~~
273 ~~a preponderance of the competent evidence. However, any evidence~~
274 ~~reasonably tending to show or demonstrate, in law or in fact, the~~



275 existence of or membership in any conspiracy, confederation or
276 other association described in this chapter, or probative of the
277 existence of or membership in any criminal gang, or evidence of a
278 common name or common identifying signs, symbols, tattoos,
279 graffiti, or attire or other distinguishing characteristics,
280 including, but not limited to, common activities, customs or
281 behaviors, shall be admissible in any action or proceeding brought
282 under this chapter.

283 **SECTION 5.** The following shall be codified as Section
284 97-44-101, Mississippi Code of 1972:

285 99-44-101. (1) (a) A civil cause of action is created in
286 favor of any public authority expending money, allocating or
287 reallocating police, firefighting, emergency or other personnel or
288 resources, or otherwise incurring any loss, deprivation or injury,
289 or sustaining any damage, impairment or harm whatsoever,
290 proximately caused by criminal gang activity.

291 (b) The cause of action created by this article shall
292 lie against:

293 (i) Any gang in whose name, for whose benefit, on
294 whose behalf or under whose direction the act was committed; and

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



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

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

302 (c) The cause of action authorized by this article
303 shall be brought by the Attorney General, a district attorney or
304 attorneys, or a county attorney or attorneys. This cause of
305 action shall be in addition to any other civil or criminal
306 proceeding authorized by the laws of this state or by federal law,
307 and shall not be construed as requiring the prosecutor to elect a
308 civil, rather than criminal, remedy, or as replacing any other
309 cause of action. Liability of the gang, its officers, directors,
310 leaders and members shall be joint and several subject only to the
311 apportionment and allocation of punitive damages authorized under
312 Section 99-44-107.

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

315 (b) A complaint filed under this article, and all other
316 ancillary or collateral matters arising therefrom, including
317 matter relating to discovery, motions, trial and the perfection or
318 execution of judgments shall be subject to the Rules of Civil
319 Procedure, except as may be otherwise provided in this article, or
320 except as the court may otherwise order upon motion of the
321 prosecutor in matters relating to immunity or the physical safety
322 of witnesses.



323 (c) The complaint shall name the Attorney General or
324 his designee, if a complainant, each complaining district attorney
325 or his designee, each complaining county attorney, and the public
326 authority represented by him or by them.

327 (d) The complaint shall also name as defendants the
328 gang, all known gang officers, and any gang members specifically
329 identified or alleged in the complaint as having participated in a
330 gang-related criminal activity. The complaint may also name, as a
331 class of defendants, all unknown gang members.

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

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

338 **SECTION 6.** The following shall be codified as Section
339 99-44-103, Mississippi Code of 1972:

340 99-44-103. (1) In an action brought under this article,
341 venue shall lie in any county where an act charged in the
342 complaint as part of a criminal gang activity was committed.

343 (2) It shall not be necessary for all offenses necessary to
344 establishing a criminal activity to have occurred in any one (1)
345 county where the district attorneys or county attorneys of several
346 counties, each complaining of an offense, elected to join in a
347 complaint; it shall be sufficient that the complaint, taken as a



348 whole, alleges a gang-related criminal activity, and each count of
349 any joint complaint shall be considered as cumulative to other
350 counts for purposes of alleging or demonstrating criminal gang
351 activity.

352 (3) Where an activity is alleged to have been committed or
353 to have occurred in more than one (1) county, the district
354 attorney or county attorney of each county may join their several
355 causes of action in a single complaint, which may be filed in any
356 county agreed to by or among them, but no such joinder shall be
357 had without the consent of the district attorney or county
358 attorney having jurisdiction over each offense alleged as part of
359 the activity.

360 **SECTION 7.** The following shall be codified as Section
361 97-44-105, Mississippi Code of 1972:

362 97-44-105. (1) All gang members engaged in a gang-related
363 criminal activity within this state impliedly consent to service
364 of process upon them as set forth in this section, or as may be
365 otherwise authorized by the Rules of Civil Procedure.

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

370 (a) With any gang officer; or

371 (b) With any individual member of the gang

372 simultaneously named therein; or



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

375 (d) With any parent, legal guardian or legal custodian
376 of any persons charged with a criminal gang activity when any
377 person sued civilly under this article is under seventeen (17)
378 years of age and is also charged criminally or as a delinquent
379 minor; or

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

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

385 (g) With such other person or agent as the court may,
386 upon petition of the district attorney or his designee or the
387 county attorney, authorize as appropriate and reasonable under all
388 of the circumstances.

389 (3) If after being summoned a gang does not appear, the
390 court shall enter an answer for the gang neither affirming nor
391 denying the allegations of the complaint but demanding strict
392 proof thereof, and proceed to trial and judgment without further
393 process.

394 (4) When any person is named as a defendant gang member in
395 any complaint, or subsequently becomes known and is added or
396 joined as a named defendant, service of process may be had as



397 authorized or provided for in the Rules of Civil Procedure for
398 service of process in a civil case.

399 **SECTION 8.** The following shall be codified as Section
400 99-44-107, Mississippi Code of 1972:

401 99-44-107. (1) In any action brought under this article,
402 and upon the verified application of the district attorney or the
403 county attorney, the circuit court may at any time enter such
404 restraining orders, injunctions or other prohibitions, or order
405 such other relief as it deems proper, including, but not limited
406 to, ordering any person to divest himself of any involvement or
407 interest, direct or indirect, in any criminal gang activity and
408 imposing other reasonable restrictions on the future illegal
409 activities of any defendant.

410 (2) A final judgment in favor of a public authority under
411 this article shall entitle it to recover compensatory damages for
412 all damages, losses, impairments or other harm proximately caused,
413 together with the costs of the suit and reasonable attorney's
414 fees. Punitive damages may be assessed against any gang, gang
415 officer or member found guilty of actual participation in, or to
416 be legally accountable for, a criminal gang activity under this
417 article. One hundred percent (100%) of punitive damages awarded
418 will be expended by the public authority to implement preventive
419 programs for juveniles or to fund existing programs.

420 **SECTION 9.** The following shall be codified as Section
421 99-44-109, Mississippi Code of 1972:



422 99-44-109. (1) Every private building or place used by
423 members of a gang for the commission of illegal activity is a
424 nuisance and may be the subject of an injunction or cause of
425 action for damages or for abatement of the nuisance as provided
426 for in this article.

427 (2) Any person may file a petition for injunctive relief
428 with the appropriate court seeking eviction from or closure of any
429 premises used for commission of illegal activity by a gang. Upon
430 clear and convincing proof by the plaintiff that the premises are
431 being used by members of a gang for the commission of illegal
432 activity, the court may order the owner of record or the lessee of
433 the premises to remove or evict the persons from the premises and
434 order the premises sealed, prohibit further use of the premises,
435 or enter such order as may be necessary to prohibit the premises
436 from being used for the commission of illegal activity by a gang
437 and to abate the nuisance.

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

441 (4) The court shall not issue an injunction or assess a
442 civil penalty against any owner of record or the lessee of the
443 private building or place, unless there is a showing by clear and
444 convincing proof that the person knew or should have known or had
445 been notified of the use of the premises by a gang for illegal
446 activity. Any injunctive relief other than that specifically



447 authorized in subsection (6) of this section shall be limited to
448 that which is necessary to protect the health and safety of the
449 residents or the public or that which is necessary to prevent
450 further illegal activity.

451 (5) A petition for injunction shall not be filed until
452 thirty (30) days after notice of the unlawful use or criminal
453 conduct has been provided to the owner of record or the lessee, by
454 mail, return receipt requested, postage prepaid, to the owner's
455 last-known address, or by personal service. If the premises are
456 abandoned or closed, or if the whereabouts of the owner of record
457 or lessee is unknown, all notices, process, pleadings, and orders
458 required to be delivered or served under this section may be
459 attached to a door of the premises and mailed, return receipt
460 requested, to the last address which is reflected on the ad
461 valorem tax receipt on file in the office of the tax collector of
462 the county where the property is located, and this shall have the
463 same effect as personal service on the owner of record or lessee.
464 No injunctive relief authorized by subsection (6) (f) of this
465 section shall be issued in the form of a temporary restraining
466 order.

467 (6) If the court has previously issued injunctive relief
468 ordering the owner of record or the lessee of the premises to
469 close the premises or otherwise to keep the premises from being
470 used for the commission by a gang of illegal activity, the court,
471 upon proof of failure to comply with the terms of the injunction



472 and that the premises continue to be used by a gang for the
473 commission of illegal activity, may do one or more of the
474 following:

475 (a) Order the premises demolished and cleared at the
476 cost of the owner.

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

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

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

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

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

495 (iii) Any other factor deemed by the court to be
496 relevant.



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

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

503 **SECTION 10.** The following shall be codified as Section
504 97-44-111, Mississippi Code of 1972:

505 97-44-111. (1) Any firearm, ammunition to be used in a
506 firearm, or dangerous weapon in the possession of a member of a
507 gang may be seized by any law enforcement agency or peace officer
508 when the law enforcement agency or peace officer has probable
509 cause to believe that the firearm, ammunition to be used in a
510 firearm, or dangerous weapon is or has been used by a gang in the
511 commission of illegal activity.

512 (2) The district attorney or an attorney for the seizing
513 agency shall initiate, in a civil action, forfeiture proceedings
514 by petition in the circuit courts as to any property seized
515 pursuant to the provisions of this section within thirty (30) days
516 of seizure. The district attorney shall provide notice of the
517 filing of the petition to those members of the gang who become
518 known to law enforcement officials as a result of the seizure and
519 any related arrests, and to any person determined by law
520 enforcement officials to be the owner of any of the property
521 involved. After initial notice of the filing of the petition, the



522 court shall assure that all persons so notified continue to
523 receive notice of all subsequent proceedings related to the
524 property.

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

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

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

535 (4) An acquittal or dismissal in a criminal proceeding shall
536 not preclude civil proceedings under this section; however, for
537 good cause shown, on motion by the district attorney, the court
538 may stay civil forfeiture proceedings during the criminal trial
539 for related criminal indictment or information alleging a
540 violation of this section. Such a stay shall not be available
541 pending an appeal.

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

545 (6) The issue shall be determined by the court alone, and
546 the hearing on the claim shall be held within sixty (60) days



547 after service of the petition unless continued for good cause.
548 The district attorney shall have the burden of showing by clear
549 and convincing proof that forfeiture of the property is
550 appropriate.

551 (7) Any person who asserts a successful claim in accordance
552 with subsection (3) of this section shall be awarded the seized
553 property by the court, together with costs of filing such action.
554 All property as to which no claim is filed, or as to which no
555 successful claim is made, may be destroyed, sold at a public sale,
556 retained for use by the seizing agency or transferred without
557 charge to any law enforcement agency of the state for use by it.
558 Property that is sold shall be sold by the circuit court at a
559 public auction for cash to the highest and best bidder after
560 advertising the sale for at least once each week for three (3)
561 consecutive weeks, the last notice to appear not more than ten
562 (10) days nor less than five (5) days before the sale in a
563 newspaper having a general circulation in the county. The notice
564 shall contain a description of the property to be sold and a
565 statement of the time and place of sale. It shall not be
566 necessary to the validity of the sale either to have the property
567 present at the place of sale or to have the name of the owner
568 thereof stated in the notice. The proceeds of the sale, less any
569 expenses of concluding the sale, shall be deposited in the seizing
570 agency's general fund to be used only for approved law enforcement
571 activity affecting the agency's efforts to combat gang activities.



572 (8) Any action under the provisions of this section may be
573 consolidated with any other action or proceedings pursuant to this
574 section relating to the same property on motion of the district
575 attorney.

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

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

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

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

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

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

593 **SECTION 17.** Sections 1 through 4 of this act shall be
594 codified as Article 1, and Sections 5 through 10 of this act shall
595 be codified as Article 3, Chapter 44, Title 97, Mississippi Code
596 of 1972.



597 **SECTION 18.** The following shall be codified as Section
598 97-35-53, Mississippi Code of 1972:

599 97-35-53. It is unlawful for any person to threaten to
600 assault, kidnap or murder a judge or law enforcement officer or a
601 member of the judge's or law enforcement officer's immediate
602 family by any means, including social media, with intent to
603 impede, intimidate, or interfere with the judge or law enforcement
604 officer while engaged in the performance of official duties, or
605 with intent to retaliate against the judge or law enforcement
606 officer on account of the performance of official duties.
607 Violation of this section is punishable by imprisonment for not
608 more than one (1) year, a fine not to exceed Five Thousand Dollars
609 (\$5,000.00), or both.

610 **SECTION 19.** Section 97-3-2, Mississippi Code of 1972, is
611 amended as follows:

612 97-3-2. (1) The following shall be classified as crimes of
613 violence:

614 (a) Driving under the influence as provided in Sections
615 63-11-30(5) and 63-11-30(12) (d);

616 (b) Murder and attempted murder as provided in Sections
617 97-1-7(2), 97-3-19, 97-3-23 and 97-3-25;

618 (c) Aggravated assault as provided in Sections
619 97-3-7(2) (a) and (b) and 97-3-7(4) (a);



620 (d) Manslaughter as provided in Sections 97-3-27,
621 97-3-29, 97-3-31, 97-3-33, 97-3-35, 97-3-39, 97-3-41, 97-3-43,
622 97-3-45 and 97-3-47;

623 (e) Killing of an unborn child as provided in Sections
624 97-3-37(2) (a) and 97-3-37(2) (b);

625 (f) Kidnapping as provided in Section 97-3-53;

626 (g) Human trafficking as provided in Section 97-3-54.1;

627 (h) Poisoning as provided in Section 97-3-61;

628 (i) Rape as provided in Sections 97-3-65 and 97-3-71;

629 (j) Robbery as provided in Sections 97-3-73 and
630 97-3-79;

631 (k) Sexual battery as provided in Section 97-3-95;

632 (l) Drive-by shooting or bombing as provided in Section
633 97-3-109;

634 (m) Carjacking as provided in Section 97-3-117;

635 (n) Felonious neglect, abuse or battery of a child as
636 provided in Section 97-5-39;

637 (o) Burglary of a dwelling as provided in Sections
638 97-17-23 and 97-17-37;

639 (p) Use of explosives or weapons of mass destruction as
640 provided in Section 97-37-25;

641 (q) Statutory rape as provided in Section 97-3-65(1),
642 but this classification is rebuttable on hearing by a judge;

643 (r) Exploitation of a child as provided in Section
644 97-5-33;



645 (s) Gratification of lust as provided in Section
646 97-5-23; * * *~~and~~
647 (t) Shooting into a dwelling as provided in Section
648 97-37-29 * * *~~;~~ and
649 (u) Criminal gang activity as provided in Section
650 97-44-5.

651 (2) In any felony offense with a maximum sentence of no less
652 than five (5) years, upon conviction, the judge may find and place
653 in the sentencing order, on the record in open court, that the
654 offense, while not listed in subsection (1) of this section, shall
655 be classified as a crime of violence if the facts show that the
656 defendant used physical force, or made a credible attempt or
657 threat of physical force against another person as part of the
658 criminal act. No person convicted of a crime of violence listed
659 in this section is eligible for parole or for early release from
660 the custody of the Department of Corrections until the person has
661 served at least fifty percent (50%) of the sentence imposed by the
662 court.

663 **SECTION 20.** Section 47-5-138.1, Mississippi Code of 1972, is
664 amended as follows:

665 47-5-138.1. (1) In addition to any other administrative
666 reduction of sentence, an offender in trusty status as defined by
667 the classification board of the Department of Corrections may be
668 awarded a trusty-time allowance of thirty (30) days' reduction of
669 sentence for each thirty (30) days of participation during any



670 calendar month in an approved program while in trusty status,
671 including satisfactory participation in education or instructional
672 programs, satisfactory participation in work projects and
673 satisfactory participation in any special incentive program.

674 (2) An offender in trusty status shall not be eligible for a
675 reduction of sentence under this section if:

676 (a) The offender was sentenced to life imprisonment;

677 (b) The offender was convicted as an habitual offender
678 under Sections 99-19-81 through 99-19-87;

679 (c) The offender was convicted of a sex crime;

680 (d) The offender has not served the mandatory time
681 required for parole eligibility, as prescribed under Section
682 47-7-3, for a conviction of robbery or attempted robbery through
683 the display of a deadly weapon, carjacking through the display of
684 a deadly weapon or a drive-by shooting; * * *~~or~~

685 (e) The offender was convicted of trafficking in
686 controlled substances under Section 41-29-139 * * *~~;~~ or

687 (f) The offender was convicted of conducting or
688 participating in criminal gang activity under Section 97-44-5.

689 **SECTION 21.** Section 47-5-139, Mississippi Code of 1972, is
690 amended as follows:

691 47-5-139. (1) An inmate shall not be eligible for the
692 earned-time allowance if:

693 (a) The inmate was sentenced to life imprisonment; but
694 an inmate, except an inmate sentenced to life imprisonment for



695 capital murder, who has reached the age of sixty-five (65) or
696 older and who has served at least fifteen (15) years may petition
697 the sentencing court for conditional release;

698 (b) The inmate was convicted as a habitual offender
699 under Sections 99-19-81 through 99-19-87;

700 (c) The inmate has forfeited his earned time allowance
701 by order of the commissioner;

702 (d) The inmate was convicted of a sex crime; * * *~~or~~

703 (e) The inmate has not served the mandatory time
704 required for parole eligibility for a conviction of robbery or
705 attempted robbery with a deadly weapon * * *~~;~~ or

706 (f) The inmate was convicted of conducting or
707 participating in criminal gang activity under Section 97-44-5.

708 (2) An offender under two (2) or more consecutive sentences
709 shall be allowed commutation based upon the total term of the
710 sentences.

711 (3) All earned time shall be forfeited by the inmate in the
712 event of escape and/or aiding and abetting an escape. The
713 commissioner may restore all or part of the earned time if the
714 escapee returns to the institution voluntarily, without expense to
715 the state, and without act of violence while a fugitive from the
716 facility.

717 (4) Any officer or employee who shall willfully violate the
718 provisions of this section and be convicted therefor shall be
719 removed from office or employment.



720 **SECTION 22.** Section 47-5-142, Mississippi Code of 1972, is
721 amended as follows:

722 47-5-142. (1) In order to provide incentive for offenders
723 to achieve positive and worthwhile accomplishments for their
724 personal benefit or the benefit of others, and in addition to any
725 other administrative reductions of the length of an offender's
726 sentence, any offender shall be eligible, subject to the
727 provisions of this section, to receive meritorious earned time as
728 distinguished from earned time for good conduct and performance.

729 (2) Subject to approval by the commissioner of the terms and
730 conditions of the program or project, meritorious earned time may
731 be awarded for the following: (a) successful completion of
732 educational or instructional programs; (b) satisfactory
733 participation in work projects; and (c) satisfactory participation
734 in any special incentive program.

735 (3) The programs and activities through which meritorious
736 earned time may be received shall be published in writing and
737 posted in conspicuous places at all facilities of the department
738 and such publication shall be made available to all offenders in
739 the custody of the department.

740 (4) The commissioner shall make a determination of the
741 number of days of reduction of sentence which may be awarded an
742 offender as meritorious earned time for participation in approved
743 programs or projects; the number of days shall be determined by



744 the commissioner on the basis of each particular program or
745 project.

746 (5) * * * ~~No~~ An offender shall not be awarded any meritorious
747 earned time:

748 (a) While assigned to the maximum security facilities
749 for disciplinary purposes * * * ~~;~~ or

750 (b) If the offender was convicted of conducting or
751 participating in criminal gang activity under Section 97-44-5.

752 (6) All meritorious earned time shall be forfeited by the
753 offender in the event of escape and/or aiding and abetting an
754 escape.

755 (7) Any officer or employee of the department who shall
756 willfully violate the provisions of this section and be convicted
757 therefor shall be removed from office or employment.

758 (8) An offender may forfeit all or any part of his
759 meritorious earned-time allowance for just cause upon the written
760 order of the commissioner, or his designee. Any meritorious
761 earned-time allowance forfeited under this section shall not be
762 restored nor shall it be re-earned by the offender.

763 **SECTION 23.** This act shall take effect and be in force from
764 and after July 1, 2017.

