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To: Judiciary B

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 541

1 AN ACT TO AMEND SECTION 97-44-1, MISSISSIPPI CODE OF 1972, TO
2 CHANGE THE SHORT TITLE OF THE MISSISSIPPI STREET GANG ACT TO "THE
3 MISSISSIPPI ANTI-GANG ACT"; TO AMEND SECTION 97-44-3, MISSISSIPPI
4 CODE OF 1972, TO DEFINE TERMS; TO AMEND SECTION 97-44-5,
5 MISSISSIPPI CODE OF 1972, TO PROVIDE PENALTIES FOR CRIMINAL GANG
6 ACTIVITY; TO AMEND SECTION 97-44-7, MISSISSIPPI CODE OF 1972, TO
7 CLARIFY EVIDENTIARY STANDARDS; TO CREATE NEW SECTION 97-44-101,
8 MISSISSIPPI CODE OF 1972, TO PROVIDE A CIVIL CAUSE OF ACTION BASED
9 ON GANG ACTIVITY; TO CREATE NEW SECTION 97-44-103, MISSISSIPPI
10 CODE OF 1972, TO SPECIFY VENUE; TO CREATE NEW SECTION 97-44-105,
11 MISSISSIPPI CODE OF 1972, TO PROVIDE FOR SERVICE OF PROCESS; TO
12 CREATE NEW SECTION 97-44-107, MISSISSIPPI CODE OF 1972, TO
13 AUTHORIZE INJUNCTIVE RELIEF; TO CREATE NEW SECTIONS 97-44-109 AND
14 97-44-111, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR FORFEITURE OF
15 REAL AND PERSONAL PROPERTY; TO REPEAL SECTIONS 97-44-9, 97-44-11,
16 97-44-13, 97-44-15, 97-44-17 AND 97-44-19, MISSISSIPPI CODE OF
17 1972, WHICH CONSTITUTED VARIOUS PROVISIONS IN THE STREET GANG ACT
18 THAT ARE ELIMINATED OR SUBSUMED UNDER THIS ACT; TO CREATE NEW
19 SECTION 97-35-53, MISSISSIPPI CODE OF 1972, TO PROHIBIT THREATS
20 AGAINST A LAW ENFORCEMENT OFFICER OR JUDGE; TO PROVIDE THAT
21 OFFENDERS WHO ARE CONVICTED OF CONDUCTING OR PARTICIPATING IN
22 CRIMINAL GANG ACTIVITY SHALL NOT BE ELIGIBLE FOR PAROLE OR ANY
23 EARLY RELEASE PROGRAM OF THE MISSISSIPPI DEPARTMENT OF
24 CORRECTIONS; TO AMEND SECTIONS 97-3-2, 47-5-138.1, 47-5-139 AND
25 47-5-142, MISSISSIPPI CODE OF 1972, TO CONFORM; AND FOR RELATED
26 PURPOSES.

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

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



30 97-44-1. This chapter shall be known as the
31 "Mississippi * * * Anti-Gang Act."

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

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

37 (a) * * * "Gang" means an association of three (3) or
38 more persons whose members are involved in criminal gang activity
39 as defined in paragraph (d) of this section and whose members
40 collectively identify themselves by adopting a group identity by
41 employing one or more of the following:

42 (i) A common name, slogan, identifying sign,
43 symbol, tattoo or other physical marking;

44 (ii) Style or color of clothing or hairstyle;

45 (iii) Hand sign, hand gesture or finger position;

46 or

47 (iv) Graffiti, and

48 (v) Other distinguishing characteristics or
49 indicia of gang membership, including but not limited to, common
50 activities, customs or beliefs.

51 The term "gang" also includes any group formed in law or in
52 fact that is pretextual for gang criminal activity.



53 (b) "Public authority" means the state and political
54 subdivisions as defined in Section 11-46-1, Mississippi Code of
55 1972.

56 (c) * * * "Gang member" means any person who actually
57 and in fact belongs to a gang, and any person who knowingly acts
58 in the capacity of an agent for or accessory to, or is legally
59 accountable for, or voluntarily associates himself with * * *
60 criminal gang activity, whether in a preparatory, executory or
61 cover-up phase of any criminal gang activity, or who knowingly
62 performs, aids or abets any such criminal gang activity.

63 (d) * * * "Criminal gang activity" means * * *:

64 (i) The commission, attempted commission,
65 conspiracy to commit, or solicitation, coercion, encouragement or
66 intimidation of another person to commit an act or acts which
67 would constitute a felony criminal offense act in the State of
68 Mississippi, the United States or any other state thereof.

69 * * *1. With intent to increase the gang's
70 size, membership, prestige, dominance or control in any
71 geographical area; or

72 * * *2. With intent to exact revenge or
73 retribution for * * * a gang or any gang member * * *; or

74 * * *3. With intent to provide * * * a gang
75 with any advantage in, or any control or dominance over, any
76 criminal market sector * * * through the commission of any
77 felonious criminal conduct; or



78 * * *4. With intent to obstruct justice, or
79 harass, influence, intimidate or eliminate any witness reasonably
80 expected to testify in a legal proceeding against * * * a gang or
81 any * * * gang member; * * *

82 * * *5. With intent to otherwise, directly
83 or indirectly, cause any benefit, aggrandizement, gain, profit or
84 other advantage whatsoever to or for the gang, its reputation,
85 influence, protection, defense or membership * * *;
or

86 6. With intent to obtain or earn membership
87 in or maintain or increase his or her status or position in a
88 criminal gang through any of the following conduct for the
89 benefit, aggrandizement, gain, profit or other advantage
90 whatsoever for the gang.

91 (ii) Acquiring, maintaining or possessing,
92 directly or indirectly, through criminal gang activity, proceeds
93 derived therefrom or any interest in or control of any real or
94 personal property of any nature, including money.

95 (iii) Communicating, directly or indirectly, with
96 another any threat of injury or damage to the person or property
97 of the other person or of any associate or relative of the other
98 person with the intent to threaten, harass, punish or retaliate
99 against such person.

100 (iv) Communicating, directly or indirectly, with
101 another any threat of injury or damage to the person or property
102 of the other person or of any associate or relative of the other



103 person with the intent to intimidate, deter, or prevent such
104 person from communicating to any law enforcement or corrections
105 officer, prosecuting attorney, or judge information relating to a
106 gang, gang member or associate, or criminal gang activity.

107 (v) Communicating, directly or indirectly, with
108 another any threat of injury or damage to the person or property
109 of the other person or of any associate or relative of the other
110 person with the intent to deter such person from assisting a
111 member or associate of a gang to withdraw from such gang.

112 (vi) Communicating, directly or indirectly, with
113 another any threat of injury or damage to the person or property
114 of the other person or of any associate or relative of the other
115 person with the intent to punish or retaliate against such person
116 for refusing to or encouraging another to refuse to become or
117 obtain the status of a member or associate of a gang.

118 (vii) Causing, encouraging, soliciting, recruiting
119 or coercing another to become a member or associate of a gang or
120 to commit a crime to become a member or associate of a gang.

121 (viii) Hiding proceeds or evidence of criminal
122 gang activity, or encouraging, influencing, soliciting or coercing
123 another to hide proceeds or evidence of criminal gang activity.

124 (ix) Committing any act, felony or misdemeanor
125 while an inmate in a prison facility in the State of Mississippi
126 for purpose of criminal gang activity.



127 (e) "Underlying offense" means the act or acts that
128 would constitute a criminal offense forming the basis of criminal
129 gang activity.

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

132 97-44-5. (1) * * * It is unlawful for any person to conduct
133 or participate in criminal gang activity.

134 (2) * * * A crime committed in violation of this chapter
135 shall be considered an offense separate from any underlying
136 offense.

137 (3) * * * (a) Except as provided in paragraph (b) of this
138 subsection (3), where the underlying offense is a felony, a person
139 who conducts or participates in criminal gang activity shall be
140 punished by imprisonment for not less than five (5) years nor more
141 than fifteen (15) years or by a fine of not less than Ten Thousand
142 Dollars (\$10,000.00) nor more than Fifteen Thousand Dollars
143 (\$15,000.00), or both, in addition to and consecutive to any
144 sentence imposed for the underlying offense.

145 (b) Where the person conducts or participates in the
146 criminal gang activity defined in Section 97-44-3(d)(i) through
147 97-44-3(d)(ix), the person shall be punished by imprisonment for
148 not less than five (5) years nor more than fifteen (15) years or
149 by a fine of not less than Ten Thousand Dollars (\$10,000.00) nor
150 more than Fifteen Thousand Dollars (\$15,000.00), or both.



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

153 (5) In addition to any other penalty provided by this
154 section, all sentences imposed under this section shall require as
155 a special condition of the sentence that the person sentenced
156 shall not knowingly have contact of any kind or character with any
157 other member or associate of a gang, shall not participate in any
158 criminal gang activity, and, in cases involving a victim, shall
159 not knowingly have contact of any kind or character with any
160 victim or any member of a victim's family or household.

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

163 97-44-7. * * * Any evidence reasonably tending to show or
164 demonstrate, in law or in fact, the existence of or membership in
165 any conspiracy, confederation or other association described in
166 this chapter, or probative of the existence of or membership in
167 any criminal gang, or evidence of a common name or common
168 identifying signs, symbols, tattoos, graffiti, or attire or other
169 distinguishing characteristics, including, but not limited to,
170 common activities, customs or behaviors, shall be admissible in
171 any action or proceeding brought under this chapter.

172 **SECTION 5.** The following shall be codified as Section
173 97-44-101, Mississippi Code of 1972:

174 97-44-101. (1) (a) A civil cause of action is created in
175 favor of any public authority expending money, allocating or



176 reallocating police, firefighting, emergency or other personnel or
177 resources, or otherwise incurring any loss, deprivation or injury,
178 or sustaining any damage, impairment or harm whatsoever,
179 proximately caused by criminal gang activity.

180 (b) The cause of action created by this article shall
181 lie against:

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

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

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

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

191 (c) The cause of action authorized by this article
192 shall be brought by the Attorney General, a district attorney or
193 attorneys, or a county attorney or attorneys. This cause of
194 action shall be in addition to any other civil or criminal
195 proceeding authorized by the laws of this state or by federal law,
196 and shall not be construed as requiring the prosecutor to elect a
197 civil, rather than criminal, remedy, or as replacing any other
198 cause of action. Liability of the gang, its officers, directors,
199 leaders and members shall be joint and several subject only to the



200 apportionment and allocation of punitive damages authorized under
201 Section 97-44-107.

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

204 (b) A complaint filed under this article, and all other
205 ancillary or collateral matters arising therefrom, including
206 matter relating to discovery, motions, trial and the perfection or
207 execution of judgments shall be subject to the Rules of Civil
208 Procedure, except as may be otherwise provided in this article, or
209 except as the court may otherwise order upon motion of the
210 prosecutor in matters relating to immunity or the physical safety
211 of witnesses.

212 (c) The complaint shall name the Attorney General or
213 his designee, if a complainant, each complaining district attorney
214 or his designee, each complaining county attorney, and the public
215 authority represented by him or by them.

216 (d) The complaint shall also name as defendants the
217 gang, all known gang officers, and any gang members specifically
218 identified or alleged in the complaint as having participated in a
219 gang-related criminal activity. The complaint may also name, as a
220 class of defendants, all unknown gang members.

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



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

227 **SECTION 6.** The following shall be codified as Section
228 97-44-103, Mississippi Code of 1972:

229 97-44-103. (1) In an action brought under this article,
230 venue shall lie in any county where an act charged in the
231 complaint as part of a criminal gang activity was committed.

232 (2) It shall not be necessary for all offenses necessary to
233 establishing a criminal activity to have occurred in any one (1)
234 county where the district attorneys or county attorneys of several
235 counties, each complaining of an offense, elected to join in a
236 complaint; it shall be sufficient that the complaint, taken as a
237 whole, alleges a gang-related criminal activity, and each count of
238 any joint complaint shall be considered as cumulative to other
239 counts for purposes of alleging or demonstrating criminal gang
240 activity.

241 (3) Where an activity is alleged to have been committed or
242 to have occurred in more than one (1) county, the district
243 attorney or county attorney of each county may join their several
244 causes of action in a single complaint, which may be filed in any
245 county agreed to by or among them, but no such joinder shall be
246 had without the consent of the district attorney or county
247 attorney having jurisdiction over each offense alleged as part of
248 the activity.



249 **SECTION 7.** The following shall be codified as Section
250 97-44-105, Mississippi Code of 1972:

251 97-44-105. (1) All gang members engaged in a gang-related
252 criminal activity within this state impliedly consent to service
253 of process upon them as set forth in this section, or as may be
254 otherwise authorized by the Rules of Civil Procedure.

255 (2) Service of process upon a gang may be had in accordance
256 with the Mississippi Rules of Civil Procedure.

257 (a) With the director of any agency or department of
258 this state who is the legal guardian, guardianship administrator
259 or custodian of any person sued under this article; or

260 (b) With the probation or parole officer of any person
261 sued under this article; or

262 (c) With such other person or agent as the court may,
263 upon petition of the district attorney or his designee or the
264 county attorney, authorize as appropriate and reasonable under all
265 of the circumstances.

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

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



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

276 **SECTION 8.** The following shall be codified as Section
277 97-44-107, Mississippi Code of 1972:

278 97-44-107. (1) In any action brought under this article,
279 and upon the verified application of the district attorney or the
280 county attorney, the circuit court may at any time enter such
281 restraining orders, injunctions or other prohibitions, or order
282 such other relief as it deems proper, including, but not limited
283 to, ordering any person to divest himself of any involvement or
284 interest, direct or indirect, in any criminal gang activity and
285 imposing other reasonable restrictions on the future illegal
286 activities of any defendant.

287 (2) A final judgment in favor of a public authority under
288 this article shall entitle it to recover compensatory damages for
289 all damages, losses, impairments or other harm proximately caused,
290 together with the costs of the suit and reasonable attorney's
291 fees. Punitive damages may be assessed against any gang, gang
292 officer or member found guilty of actual participation in, or to
293 be legally accountable for, a criminal gang activity under this
294 article. One hundred percent (100%) of punitive damages awarded
295 will be expended by the public authority to implement preventive
296 programs for juveniles or to fund existing programs.

297 **SECTION 9.** The following shall be codified as Section
298 97-44-109, Mississippi Code of 1972:



299 97-44-109. (1) Every private building or place used by
300 members of a gang for the commission of illegal activity is a
301 nuisance and may be the subject of an injunction or cause of
302 action for damages or for abatement of the nuisance as provided
303 for in this article.

304 (2) Any person may file a petition for injunctive relief
305 with the appropriate court seeking eviction from or closure of any
306 premises used for commission of illegal activity by a gang. Upon
307 clear and convincing proof by the plaintiff that the premises are
308 being used by members of a gang for the commission of illegal
309 activity, the court may order the owner of record or the lessee of
310 the premises to remove or evict the persons from the premises and
311 order the premises sealed, prohibit further use of the premises,
312 or enter such order as may be necessary to prohibit the premises
313 from being used for the commission of illegal activity by a gang
314 and to abate the nuisance.

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

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



324 authorized in subsection (6) of this section shall be limited to
325 that which is necessary to protect the health and safety of the
326 residents or the public or that which is necessary to prevent
327 further illegal activity.

328 (5) A petition for injunction shall not be filed until
329 thirty (30) days after notice of the unlawful use or criminal
330 conduct has been provided to the owner of record or the lessee, by
331 mail, return receipt requested, postage prepaid, to the owner's
332 last-known address, or by personal service. If the premises are
333 abandoned or closed, or if the whereabouts of the owner of record
334 or lessee is unknown, all notices, process, pleadings, and orders
335 required to be delivered or served under this section may be
336 attached to a door of the premises and mailed, return receipt
337 requested, to the last address which is reflected on the ad
338 valorem tax receipt on file in the office of the tax collector of
339 the county where the property is located, and this shall have the
340 same effect as personal service on the owner of record or lessee.
341 No injunctive relief authorized by subsection (6) (f) of this
342 section shall be issued in the form of a temporary restraining
343 order.

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



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

352 (a) Order the premises demolished and cleared at the
353 cost of the owner.

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

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

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

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

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

372 (iii) Any other factor deemed by the court to be
373 relevant.



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

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

380 **SECTION 10.** The following shall be codified as Section
381 97-44-111, Mississippi Code of 1972:

382 97-44-111. (1) Any firearm, ammunition to be used in a
383 firearm, or dangerous weapon in the possession of a member of a
384 gang may be seized by any law enforcement agency or peace officer
385 when the law enforcement agency or peace officer has probable
386 cause to believe that the firearm, ammunition to be used in a
387 firearm, or dangerous weapon is or has been used by a gang in the
388 commission of illegal activity.

389 (2) The district attorney or an attorney for the seizing
390 agency shall initiate, in a civil action, forfeiture proceedings
391 by petition in the circuit courts as to any property seized
392 pursuant to the provisions of this section within thirty (30) days
393 of seizure. The district attorney shall provide notice of the
394 filing of the petition to those members of the gang who become
395 known to law enforcement officials as a result of the seizure and
396 any related arrests, and to any person determined by law
397 enforcement officials to be the owner of any of the property
398 involved. After initial notice of the filing of the petition, the



399 court shall assure that all persons so notified continue to
400 receive notice of all subsequent proceedings related to the
401 property.

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

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

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

412 (4) An acquittal or dismissal in a criminal proceeding shall
413 not preclude civil proceedings under this section; however, for
414 good cause shown, on motion by the district attorney, the court
415 may stay civil forfeiture proceedings during the criminal trial
416 for related criminal indictment or information alleging a
417 violation of this section. Such a stay shall not be available
418 pending an appeal.

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

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



424 after service of the petition unless continued for good cause.
425 The district attorney shall have the burden of showing by clear
426 and convincing proof that forfeiture of the property is
427 appropriate.

428 (7) Any person who asserts a successful claim in accordance
429 with subsection (3) of this section shall be awarded the seized
430 property by the court, together with costs of filing such action.
431 All property as to which no claim is filed, or as to which no
432 successful claim is made, may be destroyed, sold at a public sale,
433 retained for use by the seizing agency or transferred without
434 charge to any law enforcement agency of the state for use by it.
435 Property that is sold shall be sold by the circuit court at a
436 public auction for cash to the highest and best bidder after
437 advertising the sale for at least once each week for three (3)
438 consecutive weeks, the last notice to appear not more than ten
439 (10) days nor less than five (5) days before the sale in a
440 newspaper having a general circulation in the county. The notice
441 shall contain a description of the property to be sold and a
442 statement of the time and place of sale. It shall not be
443 necessary to the validity of the sale either to have the property
444 present at the place of sale or to have the name of the owner
445 thereof stated in the notice. The proceeds of the sale, less any
446 expenses of concluding the sale, shall be deposited in the seizing
447 agency's general fund to be used only for approved law enforcement
448 activity affecting the agency's efforts to combat gang activities.



449 (8) Any action under the provisions of this section may be
450 consolidated with any other action or proceedings pursuant to this
451 section relating to the same property on motion of the district
452 attorney.

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

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

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

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

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

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

470 **SECTION 17.** The following shall be codified as Section
471 97-35-53, Mississippi Code of 1972:

472 97-35-53. It is unlawful for any person to threaten to
473 assault, kidnap or murder a judge or law enforcement officer or a



474 member of the judge's or law enforcement officer's immediate
475 family by any means, including social media, with intent to
476 impede, intimidate, or interfere with the judge or law enforcement
477 officer while engaged in the performance of official duties, or
478 with intent to retaliate against the judge or law enforcement
479 officer on account of the performance of official duties.
480 Violation of this section is punishable by imprisonment for not
481 more than one (1) year, a fine not to exceed Five Thousand Dollars
482 (\$5,000.00), or both.

483 **SECTION 18.** Section 97-3-2, Mississippi Code of 1972, is
484 amended as follows:

485 97-3-2. (1) The following shall be classified as crimes of
486 violence:

487 (a) Driving under the influence as provided in Sections
488 63-11-30(5) and 63-11-30(12) (d);

489 (b) Murder and attempted murder as provided in Sections
490 97-1-7(2), 97-3-19, 97-3-23 and 97-3-25;

491 (c) Aggravated assault as provided in Sections
492 97-3-7(2) (a) and (b) and 97-3-7(4) (a);

493 (d) Manslaughter as provided in Sections 97-3-27,
494 97-3-29, 97-3-31, 97-3-33, 97-3-35, 97-3-39, 97-3-41, 97-3-43,
495 97-3-45 and 97-3-47;

496 (e) Killing of an unborn child as provided in Sections
497 97-3-37(2) (a) and 97-3-37(2) (b);

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



499 (g) Human trafficking as provided in Section 97-3-54.1;
500 (h) Poisoning as provided in Section 97-3-61;
501 (i) Rape as provided in Sections 97-3-65 and 97-3-71;
502 (j) Robbery as provided in Sections 97-3-73 and
503 97-3-79;
504 (k) Sexual battery as provided in Section 97-3-95;
505 (l) Drive-by shooting or bombing as provided in Section
506 97-3-109;
507 (m) Carjacking as provided in Section 97-3-117;
508 (n) Felonious neglect, abuse or battery of a child as
509 provided in Section 97-5-39;
510 (o) Burglary of a dwelling as provided in Sections
511 97-17-23 and 97-17-37;
512 (p) Use of explosives or weapons of mass destruction as
513 provided in Section 97-37-25;
514 (q) Statutory rape as provided in Section 97-3-65(1),
515 but this classification is rebuttable on hearing by a judge;
516 (r) Exploitation of a child as provided in Section
517 97-5-33;
518 (s) Gratification of lust as provided in Section
519 97-5-23; * * *
520 (t) Shooting into a dwelling as provided in Section
521 97-37-29 * * *; and
522 (u) Criminal gang activity as provided in Section
523 97-44-5.



524 (2) In any felony offense with a maximum sentence of no less
525 than five (5) years, upon conviction, the judge may find and place
526 in the sentencing order, on the record in open court, that the
527 offense, while not listed in subsection (1) of this section, shall
528 be classified as a crime of violence if the facts show that the
529 defendant used physical force, or made a credible attempt or
530 threat of physical force against another person as part of the
531 criminal act. No person convicted of a crime of violence listed
532 in this section is eligible for parole or for early release from
533 the custody of the Department of Corrections until the person has
534 served at least fifty percent (50%) of the sentence imposed by the
535 court.

536 **SECTION 19.** Section 47-5-138.1, Mississippi Code of 1972, is
537 amended as follows:

538 47-5-138.1. (1) In addition to any other administrative
539 reduction of sentence, an offender in trusty status as defined by
540 the classification board of the Department of Corrections may be
541 awarded a trusty-time allowance of thirty (30) days' reduction of
542 sentence for each thirty (30) days of participation during any
543 calendar month in an approved program while in trusty status,
544 including satisfactory participation in education or instructional
545 programs, satisfactory participation in work projects and
546 satisfactory participation in any special incentive program.

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



- 549 (a) The offender was sentenced to life imprisonment;
- 550 (b) The offender was convicted as an habitual offender
551 under Sections 99-19-81 through 99-19-87;
- 552 (c) The offender was convicted of a sex crime;
- 553 (d) The offender has not served the mandatory time
554 required for parole eligibility, as prescribed under Section
555 47-7-3, for a conviction of robbery or attempted robbery through
556 the display of a deadly weapon, carjacking through the display of
557 a deadly weapon or a drive-by shooting; * * *
- 558 (e) The offender was convicted of trafficking in
559 controlled substances under Section 41-29-139 * * *; or
- 560 (f) The offender was convicted of conducting or
561 participating in criminal gang activity under Section 97-44-5.

562 **SECTION 20.** Section 47-5-139, Mississippi Code of 1972, is
563 amended as follows:

564 47-5-139. (1) An inmate shall not be eligible for the
565 earned-time allowance if:

- 566 (a) The inmate was sentenced to life imprisonment; but
567 an inmate, except an inmate sentenced to life imprisonment for
568 capital murder, who has reached the age of sixty-five (65) or
569 older and who has served at least fifteen (15) years may petition
570 the sentencing court for conditional release;
- 571 (b) The inmate was convicted as a habitual offender
572 under Sections 99-19-81 through 99-19-87;



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

575 (d) The inmate was convicted of a sex crime; * * *

576 (e) The inmate has not served the mandatory time
577 required for parole eligibility for a conviction of robbery or
578 attempted robbery with a deadly weapon * * *; or

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

581 (2) An offender under two (2) or more consecutive sentences
582 shall be allowed commutation based upon the total term of the
583 sentences.

584 (3) All earned time shall be forfeited by the inmate in the
585 event of escape and/or aiding and abetting an escape. The
586 commissioner may restore all or part of the earned time if the
587 escapee returns to the institution voluntarily, without expense to
588 the state, and without act of violence while a fugitive from the
589 facility.

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

593 **SECTION 21.** Section 47-5-142, Mississippi Code of 1972, is
594 amended as follows:

595 47-5-142. (1) In order to provide incentive for offenders
596 to achieve positive and worthwhile accomplishments for their
597 personal benefit or the benefit of others, and in addition to any



598 other administrative reductions of the length of an offender's
599 sentence, any offender shall be eligible, subject to the
600 provisions of this section, to receive meritorious earned time as
601 distinguished from earned time for good conduct and performance.

602 (2) Subject to approval by the commissioner of the terms and
603 conditions of the program or project, meritorious earned time may
604 be awarded for the following: (a) successful completion of
605 educational or instructional programs; (b) satisfactory
606 participation in work projects; and (c) satisfactory participation
607 in any special incentive program.

608 (3) The programs and activities through which meritorious
609 earned time may be received shall be published in writing and
610 posted in conspicuous places at all facilities of the department
611 and such publication shall be made available to all offenders in
612 the custody of the department.

613 (4) The commissioner shall make a determination of the
614 number of days of reduction of sentence which may be awarded an
615 offender as meritorious earned time for participation in approved
616 programs or projects; the number of days shall be determined by
617 the commissioner on the basis of each particular program or
618 project.

619 (5) * * * An offender shall not be awarded any meritorious
620 earned time:

621 (a) While assigned to the maximum security facilities
622 for disciplinary purposes * * * or



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

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

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

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

636 **SECTION 22.** This act shall take effect and be in force from
637 and after July 1, 2018.

