

By: Representatives Gipson, Willis,
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To: Judiciary B

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 (4) 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 The term "gang" does not include three (3) or more persons
49 associated in law or in fact, who are not involved in criminal
50 gang activity or who are associated through a legally created
51 business or charitable entity created under Mississippi law or to
52 any sports team except for those instances where the State of
53 Mississippi has proof beyond a reasonable doubt that the legally



54 created business, charitable entity or sports team is a pretext
55 for criminal gang activity.

56 (b) "Public authority" means the state and political
57 subdivisions as defined in Section 11-46-1, Mississippi Code of
58 1972.

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

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

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

72 * * *1. With intent to increase the gang's
73 size, membership, prestige, dominance or control in any
74 geographical area; or

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

77 * * *3. With intent to provide * * * a gang
78 with any advantage in, or any control or dominance over, any



79 criminal market sector, including but not limited to the unlawful
80 manufacture, delivery, possession or sale of controlled
81 substances; arson; traffic in stolen property or stolen credit
82 cards; traffic in prostitution, obscenity or pornography; or that
83 involves * * * burglary * * *, larceny or any crimes of violence;
84 or

85 * * *4. With intent to obstruct justice, or
86 harass, influence, intimidate or eliminate any witness reasonably
87 expected to testify in a legal proceeding against * * * a gang or
88 any * * * gang member; * * *

89 * * *5. With intent to otherwise, directly
90 or indirectly, cause any benefit, aggrandizement, gain, profit or
91 other advantage whatsoever to or for the gang, its reputation,
92 influence or membership * * *; or

93 6. With intent to obtain or earn membership
94 in or maintain or increase his or her status or position in a
95 criminal gang.

96 (ii) Acquiring, maintaining or possessing,
97 directly or indirectly, through criminal gang activity, proceeds
98 derived therefrom or any interest in or control of any real or
99 personal property of any nature, including money.

100 (iii) 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 punish or retaliate against such person



104 for providing statements to law enforcement or testimony against a
105 gang or gang member or associate on behalf of a government agency.

106 (iv) Communicating, directly or indirectly, with
107 another any threat of injury or damage to the person or property
108 of the other person or of any associate or relative of the other
109 person with the intent to intimidate, deter, or prevent such
110 person from communicating to any law enforcement or corrections
111 officer, prosecuting attorney, or judge information relating to a
112 gang, gang member or associate, or criminal gang activity.

113 (v) Communicating, directly or indirectly, with
114 another any threat of injury or damage to the person or property
115 of the other person or of any associate or relative of the other
116 person with the intent to deter such person from assisting a
117 member or associate of a gang to withdraw from such gang.

118 (vi) Communicating, directly or indirectly, with
119 another any threat of injury or damage to the person or property
120 of the other person or of any associate or relative of the other
121 person with the intent to punish or retaliate against such person
122 for refusing to or encouraging another to refuse to become or
123 obtain the status of a member or associate of a gang.

124 (vii) Causing, encouraging, soliciting, recruiting
125 or coercing another to become a member or associate of a gang or
126 to commit a crime to become a member or associate of a gang.



127 (viii) Hiding proceeds or evidence of criminal
128 gang activity, or encouraging, influencing, soliciting or coercing
129 another to hide proceeds or evidence of criminal gang activity.

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

133 (e) "Underlying offense" means the act or acts that
134 would constitute a criminal offense forming the basis of criminal
135 gang activity.

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

138 97-44-5. (1) * * * It is unlawful for any person to conduct
139 or participate in criminal gang activity.

140 (2) * * * A crime committed in violation of this chapter
141 shall be considered an offense separate from any underlying
142 offense.

143 (3) * * * (a) Except as provided in paragraph (b) of this
144 subsection (3):

145 (i) Where the underlying offense is a felony, a
146 person who conducts or participates in criminal gang activity
147 shall be punished by imprisonment for not less than five (5) years
148 nor more than fifteen (15) years or by a fine of not less than Ten
149 Thousand Dollars (\$10,000.00) nor more than Fifteen Thousand
150 Dollars (\$15,000.00), or both, in addition to and consecutive to
151 any sentence imposed for the underlying offense.



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

157 (b) Where the person conducts or participates in the
158 criminal gang activity defined in Section 99-44-3(d)(ii) through
159 99-44-3(d)(viii), the person shall be punished by imprisonment for
160 not less than five (5) years nor more than fifteen (15) years or
161 by a fine of not less than Ten Thousand Dollars (\$10,000.00) nor
162 more than Fifteen Thousand Dollars (\$15,000.00), or both.

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

165 (5) The court may elect to suspend all or a part of any
166 additional mandatory punishment or enhanced punishment provided in
167 this chapter to impose alternative punishment in the form of
168 properly supervised community service or placement in an
169 appropriate adolescent offender program, if available, only in an
170 unusual case where the interests of justice would best be served,
171 and if the court specifies on the record and enters into the
172 minutes the circumstances and reasons that the interests of
173 justice would best be served by the suspension of enhanced
174 punishment.

175 (6) In addition to any other penalty provided by this
176 section, all sentences imposed under this section shall require as



177 a special condition of the sentence that the person sentenced
178 shall not knowingly have contact of any kind or character with any
179 other member or associate of a gang, shall not participate in any
180 criminal gang activity, and, in cases involving a victim, shall
181 not knowingly have contact of any kind or character with any
182 victim or any member of a victim's family or household.

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

185 97-44-7. * * * For purposes of this chapter, it shall not be
186 necessary to show that a particular conspiracy, combination or
187 conjoining of persons possesses, acknowledges or is known by any
188 common name, insignia, flag, means of recognition, secret signal
189 or code, creed, belief, structure, leadership or command
190 structure, method of operation or criminal enterprise,
191 concentration or specialty, membership, age or other
192 qualifications, initiation rites, geographical or territorial
193 situs or boundary or location, or other unifying mark, manner,
194 protocol or method of expressing or indicating membership when the
195 conspiracy's existence, in law or in fact, can be demonstrated by
196 a preponderance of the competent evidence. However, any evidence
197 reasonably tending to show or demonstrate, in law or in fact, the
198 existence of or membership in any conspiracy, confederation or
199 other association described in this chapter, or probative of the
200 existence of or membership in any criminal gang, or evidence of a
201 common name or common identifying signs, symbols, tattoos,



202 graffiti, or attire or other distinguishing characteristics,
203 including, but not limited to, common activities, customs or
204 behaviors, shall be admissible in any action or proceeding brought
205 under this chapter.

206 **SECTION 5.** The following shall be codified as Section
207 97-44-101, Mississippi Code of 1972:

208 97-44-101. (1) (a) A civil cause of action is created in
209 favor of any public authority expending money, allocating or
210 reallocating police, firefighting, emergency or other personnel or
211 resources, or otherwise incurring any loss, deprivation or injury,
212 or sustaining any damage, impairment or harm whatsoever,
213 proximately caused by criminal gang activity.

214 (b) The cause of action created by this article shall
215 lie against:

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

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

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

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

225 (c) The cause of action authorized by this article
226 shall be brought by the Attorney General, a district attorney or



227 attorneys, or a county attorney or attorneys. This cause of
228 action shall be in addition to any other civil or criminal
229 proceeding authorized by the laws of this state or by federal law,
230 and shall not be construed as requiring the prosecutor to elect a
231 civil, rather than criminal, remedy, or as replacing any other
232 cause of action. Liability of the gang, its officers, directors,
233 leaders and members shall be joint and several subject only to the
234 apportionment and allocation of punitive damages authorized under
235 Section 97-44-107.

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

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

246 (c) The complaint shall name the Attorney General or
247 his designee, if a complainant, each complaining district attorney
248 or his designee, each complaining county attorney, and the public
249 authority represented by him or by them.

250 (d) The complaint shall also name as defendants the
251 gang, all known gang officers, and any gang members specifically



252 identified or alleged in the complaint as having participated in a
253 gang-related criminal activity. The complaint may also name, as a
254 class of defendants, all unknown gang members.

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

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

261 **SECTION 6.** The following shall be codified as Section
262 97-44-103, Mississippi Code of 1972:

263 97-44-103. (1) In an action brought under this article,
264 venue shall lie in any county where an act charged in the
265 complaint as part of a criminal gang activity was committed.

266 (2) It shall not be necessary for all offenses necessary to
267 establishing a criminal activity to have occurred in any one (1)
268 county where the district attorneys or county attorneys of several
269 counties, each complaining of an offense, elected to join in a
270 complaint; it shall be sufficient that the complaint, taken as a
271 whole, alleges a gang-related criminal activity, and each count of
272 any joint complaint shall be considered as cumulative to other
273 counts for purposes of alleging or demonstrating criminal gang
274 activity.

275 (3) Where an activity is alleged to have been committed or
276 to have occurred in more than one (1) county, the district



277 attorney or county attorney of each county may join their several
278 causes of action in a single complaint, which may be filed in any
279 county agreed to by or among them, but no such joinder shall be
280 had without the consent of the district attorney or county
281 attorney having jurisdiction over each offense alleged as part of
282 the activity.

283 **SECTION 7.** The following shall be codified as Section
284 97-44-105, Mississippi Code of 1972:

285 97-44-105. (1) All gang members engaged in a gang-related
286 criminal activity within this state impliedly consent to service
287 of process upon them as set forth in this section, or as may be
288 otherwise authorized by the Rules of Civil Procedure.

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

293 (a) With any gang officer; or

294 (b) With any individual member of the gang
295 simultaneously named therein; or

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

298 (d) With any parent, legal guardian or legal custodian
299 of any persons charged with a criminal gang activity when any
300 person sued civilly under this article is under seventeen (17)



301 years of age and is also charged criminally or as a delinquent
302 minor; or

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

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

308 (g) With such other person or agent as the court may,
309 upon petition of the district attorney or his designee or the
310 county attorney, authorize as appropriate and reasonable under all
311 of the circumstances.

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

317 (4) When any person is named as a defendant gang member in
318 any complaint, or subsequently becomes known and is added or
319 joined as a named defendant, service of process may be had as
320 authorized or provided for in the Rules of Civil Procedure for
321 service of process in a civil case.

322 **SECTION 8.** The following shall be codified as Section
323 97-44-107, Mississippi Code of 1972:

324 97-44-107. (1) In any action brought under this article,
325 and upon the verified application of the district attorney or the



326 county attorney, the circuit court may at any time enter such
327 restraining orders, injunctions or other prohibitions, or order
328 such other relief as it deems proper, including, but not limited
329 to, ordering any person to divest himself of any involvement or
330 interest, direct or indirect, in any criminal gang activity and
331 imposing other reasonable restrictions on the future illegal
332 activities of any defendant.

333 (2) A final judgment in favor of a public authority under
334 this article shall entitle it to recover compensatory damages for
335 all damages, losses, impairments or other harm proximately caused,
336 together with the costs of the suit and reasonable attorney's
337 fees. Punitive damages may be assessed against any gang, gang
338 officer or member found guilty of actual participation in, or to
339 be legally accountable for, a criminal gang activity under this
340 article. One hundred percent (100%) of punitive damages awarded
341 will be expended by the public authority to implement preventive
342 programs for juveniles or to fund existing programs.

343 **SECTION 9.** The following shall be codified as Section
344 97-44-109, Mississippi Code of 1972:

345 97-44-109. (1) Every private building or place used by
346 members of a gang for the commission of illegal activity is a
347 nuisance and may be the subject of an injunction or cause of
348 action for damages or for abatement of the nuisance as provided
349 for in this article.



350 (2) Any person may file a petition for injunctive relief
351 with the appropriate court seeking eviction from or closure of any
352 premises used for commission of illegal activity by a gang. Upon
353 clear and convincing proof by the plaintiff that the premises are
354 being used by members of a gang for the commission of illegal
355 activity, the court may order the owner of record or the lessee of
356 the premises to remove or evict the persons from the premises and
357 order the premises sealed, prohibit further use of the premises,
358 or enter such order as may be necessary to prohibit the premises
359 from being used for the commission of illegal activity by a gang
360 and to abate the nuisance.

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

364 (4) The court shall not issue an injunction or assess a
365 civil penalty against any owner of record or the lessee of the
366 private building or place, unless there is a showing by clear and
367 convincing proof that the person knew or should have known or had
368 been notified of the use of the premises by a gang for illegal
369 activity. Any injunctive relief other than that specifically
370 authorized in subsection (6) of this section shall be limited to
371 that which is necessary to protect the health and safety of the
372 residents or the public or that which is necessary to prevent
373 further illegal activity.



374 (5) A petition for injunction shall not be filed until
375 thirty (30) days after notice of the unlawful use or criminal
376 conduct has been provided to the owner of record or the lessee, by
377 mail, return receipt requested, postage prepaid, to the owner's
378 last-known address, or by personal service. If the premises are
379 abandoned or closed, or if the whereabouts of the owner of record
380 or lessee is unknown, all notices, process, pleadings, and orders
381 required to be delivered or served under this section may be
382 attached to a door of the premises and mailed, return receipt
383 requested, to the last address which is reflected on the ad
384 valorem tax receipt on file in the office of the tax collector of
385 the county where the property is located, and this shall have the
386 same effect as personal service on the owner of record or lessee.
387 No injunctive relief authorized by subsection (6) (f) of this
388 section shall be issued in the form of a temporary restraining
389 order.

390 (6) If the court has previously issued injunctive relief
391 ordering the owner of record or the lessee of the premises to
392 close the premises or otherwise to keep the premises from being
393 used for the commission by a gang of illegal activity, the court,
394 upon proof of failure to comply with the terms of the injunction
395 and that the premises continue to be used by a gang for the
396 commission of illegal activity, may do one or more of the
397 following:



398 (a) Order the premises demolished and cleared at the
399 cost of the owner.

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

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

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

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

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

418 (iii) Any other factor deemed by the court to be
419 relevant.

420 (7) No nonprofit, fraternal or charitable organization which
421 is conducting its affairs with ordinary care or skill nor any



422 governmental entity shall be enjoined pursuant to the provisions
423 of this article.

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

426 **SECTION 10.** The following shall be codified as Section
427 97-44-111, Mississippi Code of 1972:

428 97-44-111. (1) Any firearm, ammunition to be used in a
429 firearm, or dangerous weapon in the possession of a member of a
430 gang may be seized by any law enforcement agency or peace officer
431 when the law enforcement agency or peace officer has probable
432 cause to believe that the firearm, ammunition to be used in a
433 firearm, or dangerous weapon is or has been used by a gang in the
434 commission of illegal activity.

435 (2) The district attorney or an attorney for the seizing
436 agency shall initiate, in a civil action, forfeiture proceedings
437 by petition in the circuit courts as to any property seized
438 pursuant to the provisions of this section within thirty (30) days
439 of seizure. The district attorney shall provide notice of the
440 filing of the petition to those members of the gang who become
441 known to law enforcement officials as a result of the seizure and
442 any related arrests, and to any person determined by law
443 enforcement officials to be the owner of any of the property
444 involved. After initial notice of the filing of the petition, the
445 court shall assure that all persons so notified continue to



446 receive notice of all subsequent proceedings related to the
447 property.

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

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

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

458 (4) An acquittal or dismissal in a criminal proceeding shall
459 not preclude civil proceedings under this section; however, for
460 good cause shown, on motion by the district attorney, the court
461 may stay civil forfeiture proceedings during the criminal trial
462 for related criminal indictment or information alleging a
463 violation of this section. Such a stay shall not be available
464 pending an appeal.

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

468 (6) The issue shall be determined by the court alone, and
469 the hearing on the claim shall be held within sixty (60) days
470 after service of the petition unless continued for good cause.



471 The district attorney shall have the burden of showing by clear
472 and convincing proof that forfeiture of the property is
473 appropriate.

474 (7) Any person who asserts a successful claim in accordance
475 with subsection (3) of this section shall be awarded the seized
476 property by the court, together with costs of filing such action.
477 All property as to which no claim is filed, or as to which no
478 successful claim is made, may be destroyed, sold at a public sale,
479 retained for use by the seizing agency or transferred without
480 charge to any law enforcement agency of the state for use by it.
481 Property that is sold shall be sold by the circuit court at a
482 public auction for cash to the highest and best bidder after
483 advertising the sale for at least once each week for three (3)
484 consecutive weeks, the last notice to appear not more than ten
485 (10) days nor less than five (5) days before the sale in a
486 newspaper having a general circulation in the county. The notice
487 shall contain a description of the property to be sold and a
488 statement of the time and place of sale. It shall not be
489 necessary to the validity of the sale either to have the property
490 present at the place of sale or to have the name of the owner
491 thereof stated in the notice. The proceeds of the sale, less any
492 expenses of concluding the sale, shall be deposited in the seizing
493 agency's general fund to be used only for approved law enforcement
494 activity affecting the agency's efforts to combat gang activities.



495 (8) Any action under the provisions of this section may be
496 consolidated with any other action or proceedings pursuant to this
497 section relating to the same property on motion of the district
498 attorney.

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

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

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

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

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

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

516 **SECTION 17.** The following shall be codified as Section
517 97-35-53, Mississippi Code of 1972:

518 97-35-53. It is unlawful for any person to threaten to
519 assault, kidnap or murder a judge or law enforcement officer or a



520 member of the judge's or law enforcement officer's immediate
521 family by any means, including social media, with intent to
522 impede, intimidate, or interfere with the judge or law enforcement
523 officer while engaged in the performance of official duties, or
524 with intent to retaliate against the judge or law enforcement
525 officer on account of the performance of official duties.
526 Violation of this section is punishable by imprisonment for not
527 more than one (1) year, a fine not to exceed Five Thousand Dollars
528 (\$5,000.00), or both.

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

531 97-3-2. (1) The following shall be classified as crimes of
532 violence:

533 (a) Driving under the influence as provided in Sections
534 63-11-30(5) and 63-11-30(12)(d);

535 (b) Murder and attempted murder as provided in Sections
536 97-1-7(2), 97-3-19, 97-3-23 and 97-3-25;

537 (c) Aggravated assault as provided in Sections
538 97-3-7(2)(a) and (b) and 97-3-7(4)(a);

539 (d) Manslaughter as provided in Sections 97-3-27,
540 97-3-29, 97-3-31, 97-3-33, 97-3-35, 97-3-39, 97-3-41, 97-3-43,
541 97-3-45 and 97-3-47;

542 (e) Killing of an unborn child as provided in Sections
543 97-3-37(2)(a) and 97-3-37(2)(b);

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



545 (g) Human trafficking as provided in Section 97-3-54.1;
546 (h) Poisoning as provided in Section 97-3-61;
547 (i) Rape as provided in Sections 97-3-65 and 97-3-71;
548 (j) Robbery as provided in Sections 97-3-73 and
549 97-3-79;
550 (k) Sexual battery as provided in Section 97-3-95;
551 (l) Drive-by shooting or bombing as provided in Section
552 97-3-109;
553 (m) Carjacking as provided in Section 97-3-117;
554 (n) Felonious neglect, abuse or battery of a child as
555 provided in Section 97-5-39;
556 (o) Burglary of a dwelling as provided in Sections
557 97-17-23 and 97-17-37;
558 (p) Use of explosives or weapons of mass destruction as
559 provided in Section 97-37-25;
560 (q) Statutory rape as provided in Section 97-3-65(1),
561 but this classification is rebuttable on hearing by a judge;
562 (r) Exploitation of a child as provided in Section
563 97-5-33;
564 (s) Gratification of lust as provided in Section
565 97-5-23; * * *
566 (t) Shooting into a dwelling as provided in Section
567 97-37-29 * * *; and
568 (u) Criminal gang activity as provided in Section
569 97-44-5.



570 (2) In any felony offense with a maximum sentence of no less
571 than five (5) years, upon conviction, the judge may find and place
572 in the sentencing order, on the record in open court, that the
573 offense, while not listed in subsection (1) of this section, shall
574 be classified as a crime of violence if the facts show that the
575 defendant used physical force, or made a credible attempt or
576 threat of physical force against another person as part of the
577 criminal act. No person convicted of a crime of violence listed
578 in this section is eligible for parole or for early release from
579 the custody of the Department of Corrections until the person has
580 served at least fifty percent (50%) of the sentence imposed by the
581 court.

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

584 47-5-138.1. (1) In addition to any other administrative
585 reduction of sentence, an offender in trusty status as defined by
586 the classification board of the Department of Corrections may be
587 awarded a trusty-time allowance of thirty (30) days' reduction of
588 sentence for each thirty (30) days of participation during any
589 calendar month in an approved program while in trusty status,
590 including satisfactory participation in education or instructional
591 programs, satisfactory participation in work projects and
592 satisfactory participation in any special incentive program.

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



- 595 (a) The offender was sentenced to life imprisonment;
- 596 (b) The offender was convicted as an habitual offender
597 under Sections 99-19-81 through 99-19-87;
- 598 (c) The offender was convicted of a sex crime;
- 599 (d) The offender has not served the mandatory time
600 required for parole eligibility, as prescribed under Section
601 47-7-3, for a conviction of robbery or attempted robbery through
602 the display of a deadly weapon, carjacking through the display of
603 a deadly weapon or a drive-by shooting; * * *
- 604 (e) The offender was convicted of trafficking in
605 controlled substances under Section 41-29-139 * * *; or
- 606 (f) The offender was convicted of conducting or
607 participating in criminal gang activity under Section 97-44-5.

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

610 47-5-139. (1) An inmate shall not be eligible for the
611 earned-time allowance if:

- 612 (a) The inmate was sentenced to life imprisonment; but
613 an inmate, except an inmate sentenced to life imprisonment for
614 capital murder, who has reached the age of sixty-five (65) or
615 older and who has served at least fifteen (15) years may petition
616 the sentencing court for conditional release;
- 617 (b) The inmate was convicted as a habitual offender
618 under Sections 99-19-81 through 99-19-87;



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

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

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

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

627 (2) An offender under two (2) or more consecutive sentences
628 shall be allowed commutation based upon the total term of the
629 sentences.

630 (3) All earned time shall be forfeited by the inmate in the
631 event of escape and/or aiding and abetting an escape. The
632 commissioner may restore all or part of the earned time if the
633 escapee returns to the institution voluntarily, without expense to
634 the state, and without act of violence while a fugitive from the
635 facility.

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

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

641 47-5-142. (1) In order to provide incentive for offenders
642 to achieve positive and worthwhile accomplishments for their
643 personal benefit or the benefit of others, and in addition to any



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

648 (2) Subject to approval by the commissioner of the terms and
649 conditions of the program or project, meritorious earned time may
650 be awarded for the following: (a) successful completion of
651 educational or instructional programs; (b) satisfactory
652 participation in work projects; and (c) satisfactory participation
653 in any special incentive program.

654 (3) The programs and activities through which meritorious
655 earned time may be received shall be published in writing and
656 posted in conspicuous places at all facilities of the department
657 and such publication shall be made available to all offenders in
658 the custody of the department.

659 (4) The commissioner shall make a determination of the
660 number of days of reduction of sentence which may be awarded an
661 offender as meritorious earned time for participation in approved
662 programs or projects; the number of days shall be determined by
663 the commissioner on the basis of each particular program or
664 project.

665 (5) * * * An offender shall not be awarded any meritorious
666 earned time:

667 (a) While assigned to the maximum security facilities
668 for disciplinary purposes * * * or



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

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

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

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

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

