

By: Representative Gipson

To: Judiciary B

HOUSE BILL NO. 917

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 \* \* \* 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 \* \* \*:

35 (a) \* \* \* "Gang" \* \* \* means \* \* \*:

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

37 1. Whose members collectively identify  
38 themselves by adopting a group identity by employing one or more  
39 of the following:

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

42 b. Style or color of clothing or  
43 hairstyle;

44 c. Hand sign, hand gesture or finger  
45 position; or

46 d. Graffiti; and

47 2. Whose members are involved in criminal  
48 gang activity.

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

52 \* \* \*



53 (b) "Public authority" means the state and political  
54 subdivisions as defined in Section 11-46-1 \* \* \*.

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

62 (d) \* \* \* Criminal gang activity means \* \* \*:

63 (i) The commission, attempted commission or  
64 conspiracy to commit, or the solicitation, coercion, encouragement  
65 or intimidation of another person to commit an act or acts in this  
66 or another state that would constitute a criminal offense or  
67 delinquent act in that jurisdiction:

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

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

73 \* \* \*3. With intent to provide \* \* \* a gang  
74 with any advantage in, or any control or dominance over, any  
75 criminal market sector, including but not limited to the unlawful  
76 manufacture, delivery, possession or sale of controlled  
77 substances; arson; traffic in stolen property or stolen credit



78 cards; traffic in prostitution, obscenity or pornography; or that  
79 involves \* \* \* burglary \* \* \*, larceny or any crime of violence as  
80 defined in Section 97-3-2; or

81 \* \* \*4. With intent to obstruct justice, or  
82 harass, intimidate or eliminate any witness reasonably expected to  
83 testify in a legal proceeding against the gang or any gang  
84 member \* \* \*; or

85 \* \* \*5. With intent to otherwise, directly  
86 or indirectly, cause any benefit, aggrandizement, gain, profit or  
87 other advantage whatsoever to or for the gang, its reputation,  
88 influence or membership \* \* \*; or

89 6. With intent to obtain or earn membership  
90 or maintain or increase the person's status or position in a  
91 criminal gang.

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

96 (iii) Communicating, directly or indirectly with  
97 another, any threat of injury or damage to the person or property  
98 of the other person or of any associate or relative of the other  
99 person with the intent to punish or retaliate against the other  
100 person for providing statements or testimony against a gang or  
101 gang member or associate.



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

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

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

116                    (vii) Communicating, directly or indirectly with  
117 another, any threat of injury or damage to the person or property  
118 of the other person or of any associate or relative of the other  
119 person with the intent to punish or retaliate against the other  
120 person for having withdrawn from a gang.

121                    (viii) Communicating, directly or indirectly with  
122 another, any threat of injury or damage to the person or property  
123 of the other person or of any associate or relative of the other  
124 person with the intent to punish or retaliate against the other  
125 person for refusing, or encouraging another to refuse, to become a



126 member or associate, or obtain the status of a member or  
127 associate, of a gang.

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

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

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

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

138 (3) \* \* \* (a) Except as provided in paragraph (b) of this  
139 subsection (3):

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

147 (ii) Where the underlying offense is a  
148 misdemeanor, a person who conducts or participates in criminal  
149 gang activity shall be punished by imprisonment for a period of



150 not more than five (5) years in addition to and consecutive to any  
151 sentence imposed for the underlying offense.

152 (b) Where the person conducts or participates in the  
153 criminal gang activity defined in Section 99-44-3(d)(ii) through  
154 99-44-3(d)(viii), the person shall be punished by imprisonment for  
155 not less than five (5) years nor more than fifteen (15) years or  
156 by a fine of not less than Ten Thousand Dollars (\$10,000.00) nor  
157 more than Fifteen Thousand Dollars (\$15,000.00), or both.

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

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

170 (6) In addition to any other penalty provided by this  
171 section, all sentences imposed under this section shall require as  
172 a special condition of the sentence that the person sentenced  
173 shall not knowingly have contact of any kind or character with any  
174 other member or associate of a gang, shall not participate in any



175 criminal gang activity, and, in cases involving a victim, shall  
176 not knowingly have contact of any kind or character with any  
177 victim or any member of a victim's family or household.

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

180 97-44-7. \* \* \* For purposes of this chapter, it shall not be  
181 necessary to show that a particular conspiracy, combination or  
182 conjoining of persons possesses, acknowledges or is known by any  
183 common name, insignia, flag, means of recognition, secret signal  
184 or code, creed, belief, structure, leadership or command  
185 structure, method of operation or criminal enterprise,  
186 concentration or specialty, membership, age or other  
187 qualifications, initiation rites, geographical or territorial  
188 situs or boundary or location, or other unifying mark, manner,  
189 protocol or method of expressing or indicating membership when the  
190 conspiracy's existence, in law or in fact, can be demonstrated by  
191 a preponderance of the competent evidence. However, any evidence  
192 reasonably tending to show or demonstrate, in law or in fact, the  
193 existence of or membership in any conspiracy, confederation or  
194 other association described in this chapter, or probative of the  
195 existence of or membership in any criminal gang, or evidence of a  
196 common name or common identifying signs, symbols, tattoos,  
197 graffiti, or attire or other distinguishing characteristics,  
198 including, but not limited to, common activities, customs or





199 behaviors, shall be admissible in any action or proceeding brought  
200 under this chapter.

201           **SECTION 5.** The following shall be codified as Section  
202 97-44-101, Mississippi Code of 1972:

203           97-44-101. (1) (a) A civil cause of action is created in  
204 favor of any public authority expending money, allocating or  
205 reallocating police, firefighting, emergency or other personnel or  
206 resources, or otherwise incurring any loss, deprivation or injury,  
207 or sustaining any damage, impairment or harm whatsoever,  
208 proximately caused by criminal gang activity.

209           (b) The cause of action created by this article shall  
210 lie against:

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

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

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

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

220           (c) The cause of action authorized by this article  
221 shall be brought by the Attorney General, a district attorney or  
222 attorneys, or a county attorney or attorneys. This cause of  
223 action shall be in addition to any other civil or criminal



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

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

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

241 (c) The complaint shall name the Attorney General or  
242 his designee, if a complainant, each complaining district attorney  
243 or his designee, each complaining county attorney, and the public  
244 authority represented by him or by them.

245 (d) The complaint shall also name as defendants the  
246 gang, all known gang officers, and any gang members specifically  
247 identified or alleged in the complaint as having participated in a



248 gang-related criminal activity. The complaint may also name, as a  
249 class of defendants, all unknown gang members.

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

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

256 **SECTION 6.** The following shall be codified as Section  
257 97-44-103, Mississippi Code of 1972:

258 97-44-103. (1) In an action brought under this article,  
259 venue shall lie in any county where an act charged in the  
260 complaint as part of a criminal gang activity was committed.

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

270 (3) Where an activity is alleged to have been committed or  
271 to have occurred in more than one (1) county, the district  
272 attorney or county attorney of each county may join their several



273 causes of action in a single complaint, which may be filed in any  
274 county agreed to by or among them, but no such joinder shall be  
275 had without the consent of the district attorney or county  
276 attorney having jurisdiction over each offense alleged as part of  
277 the activity.

278         **SECTION 7.** The following shall be codified as Section  
279 97-44-105, Mississippi Code of 1972:

280         97-44-105. (1) All gang members engaged in a gang-related  
281 criminal activity within this state impliedly consent to service  
282 of process upon them as set forth in this section, or as may be  
283 otherwise authorized by the Rules of Civil Procedure.

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

288                 (a) With any gang officer; or

289                 (b) With any individual member of the gang  
290 simultaneously named therein; or

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

293                 (d) With any parent, legal guardian or legal custodian  
294 of any persons charged with a criminal gang activity when any  
295 person sued civilly under this article is under seventeen (17)  
296 years of age and is also charged criminally or as a delinquent  
297 minor; or



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

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

303 (g) With such other person or agent as the court may,  
304 upon petition of the district attorney or his designee or the  
305 county attorney, authorize as appropriate and reasonable under all  
306 of the circumstances.

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

312 (4) When any person is named as a defendant gang member in  
313 any complaint, or subsequently becomes known and is added or  
314 joined as a named defendant, service of process may be had as  
315 authorized or provided for in the Rules of Civil Procedure for  
316 service of process in a civil case.

317 **SECTION 8.** The following shall be codified as Section  
318 97-44-107, Mississippi Code of 1972:

319 97-44-107. (1) In any action brought under this article,  
320 and upon the verified application of the district attorney or the  
321 county attorney, the circuit court may at any time enter such  
322 restraining orders, injunctions or other prohibitions, or order



323 such other relief as it deems proper, including, but not limited  
324 to, ordering any person to divest himself of any involvement or  
325 interest, direct or indirect, in any criminal gang activity and  
326 imposing other reasonable restrictions on the future illegal  
327 activities of any defendant.

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

338 **SECTION 9.** The following shall be codified as Section  
339 97-44-109, Mississippi Code of 1972:

340 97-44-109. (1) Every private building or place used by  
341 members of a gang for the commission of illegal activity is a  
342 nuisance and may be the subject of an injunction or cause of  
343 action for damages or for abatement of the nuisance as provided  
344 for in this article.

345 (2) Any person may file a petition for injunctive relief  
346 with the appropriate court seeking eviction from or closure of any  
347 premises used for commission of illegal activity by a gang. Upon



348 clear and convincing proof by the plaintiff that the premises are  
349 being used by members of a gang for the commission of illegal  
350 activity, the court may order the owner of record or the lessee of  
351 the premises to remove or evict the persons from the premises and  
352 order the premises sealed, prohibit further use of the premises,  
353 or enter such order as may be necessary to prohibit the premises  
354 from being used for the commission of illegal activity by a gang  
355 and to abate the nuisance.

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

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

369 (5) A petition for injunction shall not be filed until  
370 thirty (30) days after notice of the unlawful use or criminal  
371 conduct has been provided to the owner of record or the lessee, by  
372 mail, return receipt requested, postage prepaid, to the owner's



373 last-known address, or by personal service. If the premises are  
374 abandoned or closed, or if the whereabouts of the owner of record  
375 or lessee is unknown, all notices, process, pleadings, and orders  
376 required to be delivered or served under this section may be  
377 attached to a door of the premises and mailed, return receipt  
378 requested, to the last address which is reflected on the ad  
379 valorem tax receipt on file in the office of the tax collector of  
380 the county where the property is located, and this shall have the  
381 same effect as personal service on the owner of record or lessee.  
382 No injunctive relief authorized by subsection (6) (f) of this  
383 section shall be issued in the form of a temporary restraining  
384 order.

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

393 (a) Order the premises demolished and cleared at the  
394 cost of the owner.

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





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

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

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

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

413 (iii) Any other factor deemed by the court to be  
414 relevant.

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

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

421 **SECTION 10.** The following shall be codified as Section  
422 97-44-111, Mississippi Code of 1972:



423           97-44-111. (1) Any firearm, ammunition to be used in a  
424 firearm, or dangerous weapon in the possession of a member of a  
425 gang may be seized by any law enforcement agency or peace officer  
426 when the law enforcement agency or peace officer has probable  
427 cause to believe that the firearm, ammunition to be used in a  
428 firearm, or dangerous weapon is or has been used by a gang in the  
429 commission of illegal activity.

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

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



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

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

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

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

463 (6) The issue shall be determined by the court alone, and  
464 the hearing on the claim shall be held within sixty (60) days  
465 after service of the petition unless continued for good cause.  
466 The district attorney shall have the burden of showing by clear  
467 and convincing proof that forfeiture of the property is  
468 appropriate.

469 (7) Any person who asserts a successful claim in accordance  
470 with subsection (3) of this section shall be awarded the seized  
471 property by the court, together with costs of filing such action.



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

490 (8) Any action under the provisions of this section may be  
491 consolidated with any other action or proceedings pursuant to this  
492 section relating to the same property on motion of the district  
493 attorney.

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



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

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

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

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

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

511           **SECTION 17.** Sections 1 through 4 of this act shall be  
512 codified as Article 1, and Sections 5 through 10 of this act shall  
513 be codified as Article 3, Chapter 44, Title 97, Mississippi Code  
514 of 1972.

515           **SECTION 18.** The following shall be codified as Section  
516 97-35-53, Mississippi Code of 1972:

517           97-35-53. It is unlawful for any person to threaten to  
518 assault, kidnap or murder a judge or law enforcement officer or a  
519 member of the judge's or law enforcement officer's immediate  
520 family by any means, including social media, with intent to  
521 impede, intimidate, or interfere with the judge or law enforcement



522 officer while engaged in the performance of official duties, or  
523 with intent to retaliate against the judge or law enforcement  
524 officer on account of the performance of official duties.  
525 Violation of this section is punishable by imprisonment for not  
526 more than one (1) year, a fine not to exceed Five Thousand Dollars  
527 (\$5,000.00), or both.

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

530         97-3-2. (1) The following shall be classified as crimes of  
531 violence:

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

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

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

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

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

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

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

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

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



547 (j) Robbery as provided in Sections 97-3-73 and  
548 97-3-79;

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

550 (l) Drive-by shooting or bombing as provided in Section  
551 97-3-109;

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

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

555 (o) Burglary of a dwelling as provided in Sections  
556 97-17-23 and 97-17-37;

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

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

561 (r) Exploitation of a child as provided in Section  
562 97-5-33;

563 (s) Gratification of lust as provided in Section  
564 97-5-23; \* \* \*

565 (t) Shooting into a dwelling as provided in Section  
566 97-37-29 \* \* \*; and

567 (u) Criminal gang activity as provided in Section  
568 97-44-5.

569 (2) In any felony offense with a maximum sentence of no less  
570 than five (5) years, upon conviction, the judge may find and place  
571 in the sentencing order, on the record in open court, that the



572 offense, while not listed in subsection (1) of this section, shall  
573 be classified as a crime of violence if the facts show that the  
574 defendant used physical force, or made a credible attempt or  
575 threat of physical force against another person as part of the  
576 criminal act. No person convicted of a crime of violence listed  
577 in this section is eligible for parole or for early release from  
578 the custody of the Department of Corrections until the person has  
579 served at least fifty percent (50%) of the sentence imposed by the  
580 court.

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

583       47-5-138.1. (1) In addition to any other administrative  
584 reduction of sentence, an offender in trusty status as defined by  
585 the classification board of the Department of Corrections may be  
586 awarded a trusty-time allowance of thirty (30) days' reduction of  
587 sentence for each thirty (30) days of participation during any  
588 calendar month in an approved program while in trusty status,  
589 including satisfactory participation in education or instructional  
590 programs, satisfactory participation in work projects and  
591 satisfactory participation in any special incentive program.

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

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

595               (b) The offender was convicted as an habitual offender

596 under Sections 99-19-81 through 99-19-87;





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

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

609 47-5-139. (1) An inmate shall not be eligible for the  
610 earned-time allowance if:

611 (a) The inmate was sentenced to life imprisonment; but  
612 an inmate, except an inmate sentenced to life imprisonment for  
613 capital murder, who has reached the age of sixty-five (65) or  
614 older and who has served at least fifteen (15) years may petition  
615 the sentencing court for conditional release;

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

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

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



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

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

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

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

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

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

640 47-5-142. (1) In order to provide incentive for offenders  
641 to achieve positive and worthwhile accomplishments for their  
642 personal benefit or the benefit of others, and in addition to any  
643 other administrative reductions of the length of an offender's  
644 sentence, any offender shall be eligible, subject to the



645 provisions of this section, to receive meritorious earned time as  
646 distinguished from earned time for good conduct and performance.

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

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

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

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

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

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



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

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

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

681 **SECTION 23.** This act shall take effect and be in force from  
682 and after July 1, 2018.

