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To: Municipalities;
Judiciary B

HOUSE BILL NO. 610

1 AN ACT TO CREATE THE "KEEPING OUR MUNICIPALITIES CLEAN
2 PRETRIAL INTERVENTION ACT"; TO PROVIDE CERTAIN DEFINITIONS; TO
3 PROVIDE THAT ONCE THE GOVERNING AUTHORITIES PROVIDE CERTAIN
4 APPROVAL, THE MUNICIPAL PROSECUTING ATTORNEY, WITH THE CONSENT OF
5 THE MUNICIPAL COURT JUDGE, MAY ESTABLISH A PRETRIAL INTERVENTION
6 PROGRAM THAT ALLOWS OFFENDERS WHO HAVE COMMITTED CRIMINAL
7 MISDEMEANOR OFFENSES TO PICK UP LITTER LOCATED ON THE PUBLIC
8 STREETS OF A MUNICIPALITY, IN LIEU OF SERVING JAIL TIME FOR THE
9 OFFENSE COMMITTED; TO PROVIDE THAT THE WORK ON PUBLIC STREETS FOR
10 PUBLIC BENEFIT SHALL BE UNDER THE DIRECTION OF THE MUNICIPAL
11 POLICE DEPARTMENT FOR A SPECIFIC NUMBER OF HOURS SET BY THE COURT;
12 TO PROVIDE CERTAIN ELIGIBILITY CRITERIA FOR OFFENDERS TO
13 PARTICIPATE IN THE INTERVENTION PROGRAM; TO PROVIDE THAT THE
14 MUNICIPAL PROSECUTING ATTORNEY MAY EXAMINE CERTAIN INFORMATION OF
15 THE OFFENDER IN DECIDING WHETHER THE OFFENDER MAY BE ADMITTED TO
16 THE PROGRAM; TO PROVIDE THAT IF AN OFFENDER ENTERS THE
17 INTERVENTION PROGRAM, HE OR SHE MUST AGREE TO CERTAIN ELEMENTS OF
18 THE PROGRAM; TO PROVIDE THAT IF AN OFFENDER SUCCESSFULLY COMPLETES
19 THE PRETRIAL INTERVENTION PROGRAM, THE COURT SHALL MAKE A
20 NONCRIMINAL DISPOSITION OF THE CHARGE OR CHARGES PENDING AGAINST
21 THE OFFENDER; TO PROVIDE THAT THE MUNICIPAL POLICE DEPARTMENT, IN
22 ITS EFFORTS TO SUPPORT THE PROGRAM, MUST CERTIFY TO A MUNICIPAL
23 COURT WHETHER THERE ARE SUFFICIENT OFFICERS TO SUPERVISE OFFENDERS
24 PLACED IN THE INTERVENTION PROGRAM; TO AMEND SECTION 21-23-7,
25 MISSISSIPPI CODE OF 1972, TO CONFORM TO THE PRECEDING SECTIONS;
26 AND FOR RELATED PURPOSES.

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

28 **SECTION 1.** Sections 1 through 12 of this act shall be known
29 and may be cited as the "Keeping Our Municipalities Clean Pretrial
30 Intervention Act."



31 **SECTION 2.** For purposes of Sections 1 through 12 of this
32 act, the following words shall have the meaning ascribed herein
33 unless the context shall otherwise require:

34 (a) "Prosecutorial discretion" means the power of the
35 municipal prosecuting attorney to consider all circumstances of
36 criminal proceedings and to determine whether any legal action is
37 to be taken and, if so taken, of what kind and degree and to what
38 conclusion.

39 (b) "Noncriminal disposition" means the dismissal of a
40 criminal charge without prejudice to the municipality to reinstate
41 criminal proceedings on motion of the municipal prosecuting
42 attorney.

43 **SECTION 3.** (1) Upon the approval of the governing
44 authorities of a municipality spread up on the official minutes of
45 the municipality, each municipal prosecuting attorney with the
46 consent of the municipal judge shall have the discretion as
47 defined herein to establish a pretrial intervention program. The
48 sole purpose of the program is to have an offender, who has been
49 indicted of a misdemeanor crime, to pick up litter, for public
50 benefit, upon the public roads and streets of the municipality in
51 which he or she was charged, in lieu of having him or her serve
52 time in jail.

53 (2) A pretrial intervention program shall be under the
54 direct supervision and control of the municipal prosecuting
55 attorney.



(3) An offender must make application to the intervention program within the time prescribed by the municipal prosecuting attorney.

SECTION 4. Intervention shall be appropriate only when:

(a) The offender is eighteen (18) years of age or older and has committed a misdemeanor offense;

(b) There is substantial likelihood that justice will be served if the offender is placed in an intervention program;

(c) It is determined that the needs of the offender and the municipality can better be met outside the traditional criminal justice process;

(d) It is apparent that the offender poses no threat to the community;

(e) It appears that the offender is unlikely to be involved in further criminal activity;

(f) The offender, in those cases where it is required, is likely to respond quickly to rehabilitative treatment;

(g) The offender has no significant history of prior delinquency or criminal activity;

(h) The offender has been indicted and is represented by an attorney; and

(i) The court has determined that the municipal prosecuting attorney or the municipal police department has sufficient support staff to administer such intervention program.



80 **SECTION 5.** Prior to admittance of an offender into the
81 intervention program, the municipal prosecuting attorney may
82 require the offender to furnish information concerning the
83 offender's past criminal record, education and work record, family
84 history, medical or psychiatric treatment or care received,
85 psychological tests taken and other information which, in the
86 municipal prosecuting attorney's opinion, bears on the decision as
87 to whether the offender should be admitted.

88 **SECTION 6.** Prior to any person's admittance to a pretrial
89 intervention program, the victim, if any, of the crime for which
90 the applicant is charged and the law enforcement agency employing
91 the arresting officer shall be asked to comment in writing as to
92 whether or not the applicant should be allowed to enter an
93 intervention program. In each case involving admission to an
94 intervention program, the municipal prosecuting attorney and the
95 municipal court judge shall consider the recommendations of the
96 law enforcement agency and the victim, if any, in making a
97 decision.

98 **SECTION 7.** An offender who enters an intervention program
99 shall:

100 (a) Waive, in writing and contingent upon his or her
101 successful completion of the program, his or her right to a speedy
102 trial;



(b) Agree, in writing, to the tolling while in the program of all periods of limitation established by statutes or rules of court;

(c) Agree, in writing, to the conditions of the intervention program established by the municipal prosecuting attorney which shall not require or include a guilty plea; and

(d) Agree, in writing, to waive extradition.

SECTION 8. In any case in which an offender agrees to an intervention program, a specific agreement shall be made between the municipal prosecuting attorney and the offender. This agreement shall include the terms of the intervention program, the length of the program, which shall not exceed one (1) year, and a section therein stating the period of time after which the prosecutor will either dismiss the charge or seek a conviction based upon that charge. The agreement shall be signed by the offender and his or her counsel and filed in the municipal prosecuting attorney's office. Before an offender is admitted to an intervention program, the municipal court judge must approve of the offender's admission to the program and the terms of the agreement.

SECTION 9. In all cases where an offender is accepted for intervention a written report shall be made and retained on file in the municipal prosecuting attorney's office, regardless of whether or not the offender successfully completes the intervention program. The municipal prosecuting attorney shall



furnish to the Mississippi Justice Information Center personal identification information on each person accepted for intervention. This information shall only be released by the Mississippi Justice Information Center in those cases where a municipal prosecuting attorney inquires as to whether a person has previously been accepted into an intervention program.

SECTION 10. (1) In the event an offender successfully completes a pretrial intervention program, the court shall make a noncriminal disposition of the charge or charges pending against the offender.

(2) In the event the offender violates the conditions of the program agreement: (a) the municipal prosecuting attorney may terminate the offender's participation in the program, (b) the waiver executed pursuant to Section 7 of this act shall be void on the date the offender is removed from the program for the violation, and (c) the prosecution of pending criminal charges against the offender shall be resumed by the municipal prosecuting attorney.

(3) Upon petition therefor, the municipal court shall expunge the record of any case in which an arrest was made, the person arrested was released and the case was dismissed or the charges were dropped or there was no disposition of such case.

SECTION 11. No law enforcement officer shall refer to, mention and/or offer participation in this program as an inducement to any statement, confession or waiver of any



constitutional rights of any person accused of a crime except those enumerated in Section 7 of this act.

SECTION 12. The municipal police department is directed to support Sections 1 through 12 of this act to the extent that field officers are available, and the chief of police shall certify to the municipal court that there are sufficient officers to supervise and oversee those individuals who may be placed in the program by the court.

SECTION 13. Section 21-23-7, Mississippi Code of 1972, is amended as follows:

21-23-7. (1) The municipal judge shall hold court in a public building designated by the governing authorities of the municipality and may hold court every day except Sundays and legal holidays if the business of the municipality so requires; provided, however, the municipal judge may hold court outside the boundaries of the municipality but not more than within a sixty-mile radius of the municipality to handle preliminary matters and criminal matters such as initial appearances and felony preliminary hearings. The municipal judge may hold court outside the boundaries of the municipality but not more than within a one-mile radius of the municipality for any purpose. The municipal judge shall have the jurisdiction to hear and determine, without a jury and without a record of the testimony, all cases charging violations of the municipal ordinances and state misdemeanor laws made offenses against the municipality and to



178 punish offenders therefor as may be prescribed by law. Except as
179 otherwise provided by law, criminal proceedings shall be brought
180 by sworn complaint filed in the municipal court. Such complaint
181 shall state the essential elements of the offense charged and the
182 statute or ordinance relied upon. Such complaint shall not be
183 required to conclude with a general averment that the offense is
184 against the peace and dignity of the state or in violation of the
185 ordinances of the municipality. He may sit as a committing court
186 in all felonies committed within the municipality, and he shall
187 have the power to bind over the accused to the grand jury or to
188 appear before the proper court having jurisdiction to try the
189 same, and to set the amount of bail or refuse bail and commit the
190 accused to jail in cases not bailable. The municipal judge is a
191 conservator of the peace within his municipality. He may conduct
192 preliminary hearings in all violations of the criminal laws of
193 this state occurring within the municipality, and any person
194 arrested for a violation of law within the municipality may be
195 brought before him for initial appearance. The municipal court
196 shall have jurisdiction of any case remanded to it by a circuit
197 court grand jury. The municipal court shall have civil
198 jurisdiction over actions filed pursuant to and as provided in
199 Title 93, Chapter 21, Mississippi Code of 1972, the Protection
200 from Domestic Abuse Act.

201 (2) In the discretion of the court, where the objects of
202 justice would be more likely met, as an alternative to imposition



or payment of fine and/or incarceration, the municipal judge shall have the power to sentence convicted offenders to work on a public service project where the court has established such a program of public service by written guidelines filed with the clerk for public record. Such programs shall provide for reasonable supervision of the offender and the work shall be commensurate with the fine and/or incarceration that would have ordinarily been imposed. Such program of public service may be utilized in the implementation of the provisions of Section 99-19-20, and public service work thereunder may be supervised by persons other than the sheriff.

(3) The municipal judge may solemnize marriages, take oaths, affidavits and acknowledgments, and issue orders, subpoenas, summonses, citations, warrants for search and arrest upon a finding of probable cause, and other such process under seal of the court to any county or municipality, in a criminal case, to be executed by the lawful authority of the county or the municipality of the respondent, and enforce obedience thereto. The absence of a seal shall not invalidate the process.

(4) When a person shall be charged with an offense in municipal court punishable by confinement, the municipal judge, being satisfied that such person is an indigent person and is unable to employ counsel, may, in the discretion of the court, appoint counsel from the membership of The Mississippi Bar residing in his county who shall represent him. Compensation for



228 appointed counsel in criminal cases shall be approved and allowed
229 by the municipal judge and shall be paid by the municipality. The
230 maximum compensation shall not exceed Two Hundred Dollars
231 (\$200.00) for any one (1) case. The governing authorities of a
232 municipality may, in their discretion, appoint a public
233 defender(s) who must be a licensed attorney and who shall receive
234 a salary to be fixed by the governing authorities.

235 (5) The municipal judge of any municipality is hereby
236 authorized to suspend the sentence and to suspend the execution of
237 the sentence, or any part thereof, on such terms as may be imposed
238 by the municipal judge. However, the suspension of imposition or
239 execution of a sentence hereunder may not be revoked after a
240 period of two (2) years. The municipal judge shall have the power
241 to establish and operate a probation program, dispute resolution
242 program, "Keeping Our Municipalities Clean Pretrial Intervention
243 Program" as established under Sections 1 through 12 of this act
244 and other practices or procedures appropriate to the judiciary and
245 designed to aid in the administration of justice. Any such
246 program shall be established by the court with written policies
247 and procedures filed with the clerk of the court for public
248 record. Subsequent to original sentencing, the municipal judge,
249 in misdemeanor cases, is hereby authorized to suspend sentence and
250 to suspend the execution of a sentence, or any part thereof, on
251 such terms as may be imposed by the municipal judge, if (a) the
252 judge or his or her predecessor was authorized to order such



suspension when the sentence was originally imposed; and (b) such conviction (i) has not been appealed; or (ii) has been appealed and the appeal has been voluntarily dismissed.

(6) Upon prior notice to the municipal prosecuting attorney and upon a showing in open court of rehabilitation, good conduct for a period of two (2) years since the last conviction in any court and that the best interest of society would be served, the court may, in its discretion, order the record of conviction of a person of any or all misdemeanors in that court expunged, and upon so doing the said person thereafter legally stands as though he had never been convicted of the said misdemeanor(s) and may lawfully so respond to any query of prior convictions. This order of expunction does not apply to the confidential records of law enforcement agencies and has no effect on the driving record of a person maintained under Title 63, Mississippi Code of 1972, or any other provision of said Title 63.

(7) Notwithstanding the provisions of subsection (6) of this section, a person who was convicted in municipal court of a misdemeanor before reaching his twenty-third birthday, excluding conviction for a traffic violation, and who is a first offender, may utilize the provisions of Section 99-19-71, to expunge such misdemeanor conviction.

(8) In the discretion of the court, a plea of nolo contendere may be entered to any charge in municipal court. Upon the entry of a plea of nolo contendere the court shall convict the



278 defendant of the offense charged and shall proceed to sentence the
279 defendant according to law. The judgment of the court shall
280 reflect that the conviction was on a plea of nolo contendere. An
281 appeal may be made from a conviction on a plea of nolo contendere
282 as in other cases.

283 (9) Upon execution of a sworn complaint charging a
284 misdemeanor, the municipal court may, in its discretion and in
285 lieu of an arrest warrant, issue a citation requiring the
286 appearance of the defendant to answer the charge made against him.
287 On default of appearance, an arrest warrant may be issued for the
288 defendant. The clerk of the court or deputy clerk may issue such
289 citations.

290 (10) The municipal court shall have the power to make rules
291 for the administration of the court's business, which rules, if
292 any, shall be in writing filed with the clerk of the court and
293 shall include the enactment of rules related to the court's
294 authority to issue domestic abuse protection orders pursuant to
295 Section 93-21-1 et seq.

296 (11) The municipal court shall have the power to impose
297 punishment of a fine of not more than One Thousand Dollars
298 (\$1,000.00) or six (6) months imprisonment, or both, for contempt
299 of court. The municipal court may have the power to impose
300 reasonable costs of court, not in excess of the following:

301 Dismissal of any affidavit, complaint or charge
302 in municipal court.....\$ 50.00



303 Suspension of a minor's driver's license in lieu of
 304 conviction.....\$ 50.00
 305 Service of scire facias or return "not found".....\$ 20.00
 306 Causing search warrant to issue or causing
 307 prosecution without reasonable cause or refusing to
 308 cooperate after initiating action.....\$ 100.00
 309 Certified copy of the court record.....\$ 5.00
 310 Service of arrest warrant for failure to answer
 311 citation or traffic summons.....\$ 25.00
 312 Jail cost per day - actual jail cost paid by the municipality
 313 but not to exceed.....\$ 35.00
 314 Service of court documents related to the filing
 315 of a petition or issuance of a protection from domestic
 316 abuse order under Title 93, Chapter 21, Mississippi
 317 Code of 1972\$ 25.00
 318 Any other item of court cost.....\$ 50.00
 319 No filing fee or such cost shall be imposed for the bringing
 320 of an action in municipal court.
 321 (12) A municipal court judge shall not dismiss a criminal
 322 case but may transfer the case to the justice court of the county
 323 if the municipal court judge is prohibited from presiding over the
 324 case by the Canons of Judicial Conduct and provided that venue and
 325 jurisdiction are proper in the justice court. Upon transfer of
 326 any such case, the municipal court judge shall give the municipal
 327 court clerk a written order to transmit the affidavit or complaint



328 and all other records and evidence in the court's possession to
329 the justice court by certified mail or to instruct the arresting
330 officer to deliver such documents and records to the justice
331 court. There shall be no court costs charged for the transfer of
332 the case to the justice court.

333 (13) A municipal court judge shall expunge the record of any
334 case in which an arrest was made, the person arrested was released
335 and the case was dismissed or the charges were dropped, there was
336 no disposition of such case or the person was found not guilty at
337 trial.

338 **SECTION 14.** This act shall take effect and be in force from
339 and after July 1, 2020.

