

By: Senator(s) Wiggins, Boyd

To: Judiciary, Division B

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 2459

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 GANG ACT"; TO AMEND SECTION 97-44-3, MISSISSIPPI CODE
4 OF 1972, TO REVISE DEFINITIONS; 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 CREATE NEW SECTION 97-35-53,
16 MISSISSIPPI CODE OF 1972, TO PROHIBIT THREATS AGAINST A LAW
17 ENFORCEMENT OFFICER OR JUDGE; TO PROVIDE THAT OFFENDERS WHO ARE
18 CONVICTED OF CONDUCTING OR PARTICIPATING IN CRIMINAL GANG ACTIVITY
19 SHALL NOT BE ELIGIBLE FOR PAROLE OR ANY EARLY RELEASE PROGRAM OF
20 THE MISSISSIPPI DEPARTMENT OF CORRECTIONS; TO AMEND SECTIONS
21 97-3-2, 47-5-138.1, 47-5-139 AND 47-5-142, MISSISSIPPI CODE OF
22 1972, TO CONFORM; TO AMEND SECTIONS 13-7-5 AND 13-7-7, MISSISSIPPI
23 CODE OF 1972, TO REVISE THE PROVISIONS OF LAW APPLICABLE TO GRAND
24 JURY PROCEEDINGS; TO REPEAL SECTIONS 97-44-9, 97-44-11, 97-44-13,
25 97-44-15, 97-44-17 AND 97-44-19, MISSISSIPPI CODE OF 1972, WHICH
26 CONSTITUTED VARIOUS PROVISIONS IN THE STREET GANG ACT THAT ARE
27 ELIMINATED OR SUBSUMED UNDER THIS ACT; AND FOR RELATED PURPOSES.

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

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



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

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

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

38 (a) * * * "Gang" * * * means any combination,
39 confederation, alliance, network, conspiracy, understanding, or
40 other similar conjoining, in law or in fact, of three (3) or more
41 persons with an established hierarchy that * * *:

42 (i) Has as one of its primary purposes the
43 commission of one or more criminal offenses that constitute
44 criminal gang activity; and

45 (ii) Through its membership or through the agency
46 of any member, engages in * * * criminal gang activity.

47 * * *

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

50 (c) * * * "Gang member" means any person who actually
51 and in fact belongs to a gang, and any person who knowingly acts
52 in the capacity of an agent for or accessory to, or is legally
53 accountable for, or voluntarily associates himself with * * *
54 criminal gang activity, whether in a preparatory, executory or



55 cover-up phase of any criminal gang activity, or who knowingly
56 performs, aids or abets any such criminal gang activity.

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

58 (i) * * * The commission, attempted commission,
59 conspiracy to commit, or solicitation, coercion, encouragement or
60 intimidation of another person to commit an act or acts that would
61 constitute a criminal offense under the law of this state, the
62 United States or another state in furtherance of the gang's
63 purpose.

64 (ii) With intent to * * * obtain or earn
65 membership in a gang or maintain or increase the gang member's
66 status or position in a gang.

67 (iii) * * * To acquire, maintain or possess,
68 directly or indirectly, proceeds derived from the activity or any
69 interest in or control of any real or personal property of any
70 nature, including money.

71 (iv) * * * To communicate, directly or indirectly,
72 to another a threat of injury or damage to the person or property
73 of the other person or of any associate or relative of the other
74 person with the intent to:

75 1. Punish or retaliate against the person for
76 providing statements to law enforcement or testimony against a
77 gang or gang member or associate on behalf of a government agency.

78 2. Intimidate, deter, or prevent the person
79 from communicating to any law enforcement or corrections officer,



80 prosecuting attorney, or judge information relating to a gang,
81 gang member or associate of a gang member, or criminal gang
82 activity.

83 3. Deter the person from assisting a member
84 or associate of a gang to withdraw from such gang.

85 4. Punish or retaliate against the person for
86 refusing to become or obtain the status of a member or associate
87 of a gang or encouraging another to so refuse.

88 (v) * * * To cause, encourage, solicit, recruit or
89 coerce another to become a member or associate of a gang or to
90 commit a crime to become a member or associate of a gang.

91 (vi) To hide proceeds or evidence of criminal gang
92 activity, or encourage, influence, solicit or coerce another to
93 hide proceeds or evidence of criminal gang activity.

94 (vii) To commit any felony or misdemeanor while an
95 inmate in a prison facility or employed as a corrections officer
96 for purpose of criminal gang activity.

97 (e) "Underlying offense" means the act or acts that
98 constitute a criminal offense and form the basis of criminal gang
99 activity.

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

102 97-44-5. (1) * * * It is unlawful for any person to conduct
103 or participate in criminal gang activity.



104 (2) * * * A crime committed in violation of this chapter is
105 considered a separate offense from any other underlying offense.

106 (3) * * * If a person is convicted of criminal gang
107 activity, the person shall be punished by imprisonment for not
108 less than three (3) years nor more than fifteen (15) years or by a
109 fine of not less than Ten Thousand Dollars (\$10,000.00) nor more
110 than Fifteen Thousand Dollars (\$15,000.00), or both.

111 (4) In addition to any other penalty provided by this
112 section, all sentences imposed under this section shall require as
113 a special condition of the sentence that the person sentenced
114 shall not knowingly have contact of any kind or character with any
115 other member or associate of a gang, shall not participate in any
116 criminal gang activity, and, in cases involving a victim, shall
117 not knowingly have contact of any kind or character with any
118 victim or any member of a victim's family or household.

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

121 97-44-7. (1) * * * Any evidence reasonably tending to show
122 or demonstrate, in law or in fact, the existence of or membership
123 in any conspiracy, confederation or other association described in
124 this chapter, or probative of the existence of or membership in
125 any criminal gang, or evidence of a common name or common
126 identifying signs, symbols, tattoos, graffiti, or attire or other
127 distinguishing characteristics, including, but not limited to,



128 common activities, customs or behaviors, shall be admissible in
129 any action or proceeding brought under this chapter.

130 (2) * * * For purposes of this chapter, it is not necessary
131 to show that a particular conspiracy, combination or conjoining of
132 persons possesses, acknowledges or is known by any common name,
133 insignia, flag, means of recognition, secret signal or code,
134 creed, belief, structure, leadership or command structure, method
135 of operation or criminal enterprise, concentration or specialty,
136 membership, age or other qualifications, initiation rites,
137 geographical or territorial situs or boundary or location, or
138 other unifying mark, manner, protocol or method of expressing or
139 indicating membership when the conspiracy's existence, in law or
140 in fact, can be demonstrated by a preponderance of the competent
141 evidence.

142 * * *

143 **SECTION 5.** The following shall be codified as Section
144 97-44-101, Mississippi Code of 1972:

145 97-44-101. (1) (a) There is a civil cause of action in
146 favor of:

147 (i) Any public authority expending money,
148 allocating or reallocating police, firefighting, emergency or
149 other personnel or resources, or otherwise incurring any loss,
150 deprivation or injury, or sustaining any damage, impairment or
151 harm whatsoever, proximately caused by criminal gang activity; and



152 (ii) An individual who suffers an injury
153 proximately caused by criminal gang activity.

154 (b) The cause of action created by this article lies
155 against:

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

158 (ii) Any gang officer or director who causes,
159 orders, suggests, authorizes, consents to, agrees to, requests,
160 acquiesces in or ratifies any such act;

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

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

165 (c) The cause of action authorized by paragraph (a) (i)
166 of this subsection shall be brought by the Attorney General, a
167 district attorney or attorneys, or a county attorney or attorneys.
168 This cause of action shall be in addition to any other civil or
169 criminal proceeding authorized by the laws of this state or by
170 federal law, and shall not be construed as requiring the
171 prosecutor to elect a civil, rather than criminal, remedy, or as
172 replacing any other cause of action. Liability of the gang, its
173 officers, directors, leaders and members shall be joint and
174 several subject only to the apportionment and allocation of
175 punitive damages authorized under Section 97-44-107.



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

178 (b) A complaint filed under this article, and all other
179 ancillary or collateral matters arising therefrom, including
180 matters relating to discovery, motions, trial, and the perfection
181 or execution of judgments, are subject to the Rules of Civil
182 Procedure except as may be otherwise provided in this article, or
183 except as the court may otherwise order upon motion of the
184 prosecutor in matters relating to immunity or the physical safety
185 of witnesses.

186 (c) A complaint filed under subsection (1)(a)(i) of
187 this section must name the Attorney General or his designee, if a
188 complainant, each complaining district attorney or his designee,
189 each complaining county attorney, and the public authority or
190 authorities so represented.

191 (d) A complaint must name as defendants the gang, all
192 known gang officers, and any gang members specifically identified
193 or alleged in the complaint as having participated in a
194 gang-related criminal activity. The complaint may also name, as a
195 class of defendants, all unknown gang members.

196 (e) When, at any point before trial, other specific
197 gang officers or members become known, the complaint may be
198 amended to include any such person as a named defendant
199 proximately caused by criminal gang activity.



200 **SECTION 6.** The following shall be codified as Section
201 97-44-103, Mississippi Code of 1972:

202 97-44-103. (1) In an action brought under this article,
203 venue is proper in any county where the underlying offense alleged
204 to constitute criminal gang activity was committed, completed or
205 begun.

206 (2) It is not necessary for all offenses necessary to
207 establish criminal activity to have occurred in any one (1) county
208 if the district attorneys or county attorneys of several counties,
209 each complaining of an offense, elect to join in a complaint; it
210 shall be sufficient that the complaint, taken as a whole, alleges
211 a gang-related criminal activity, and each count of a joint
212 complaint shall be considered as cumulative to other counts for
213 purposes of alleging or demonstrating criminal gang activity.

214 (3) Where an activity is alleged to have been committed or
215 to have occurred in more than one (1) county, the district
216 attorney or county attorney of each county may join their several
217 causes of action in a single complaint, which may be filed in any
218 county agreed to by or among them, but no such joinder shall be
219 had without the consent of the district attorney or county
220 attorney having jurisdiction over each offense alleged as part of
221 the activity.

222 **SECTION 7.** The following shall be codified as Section
223 97-44-105, Mississippi Code of 1972:



224 97-44-105. (1) A person engaged in criminal gang activity
225 within this state impliedly consent to service of process upon
226 them as set forth in this section, or as may be otherwise
227 authorized by the Rules of Civil Procedure.

228 (2) Service of process upon a gang may be had in accordance
229 with the Mississippi Rules of Civil Procedure upon any of the
230 following persons:

231 (a) The director of any agency or department of this
232 state who is the legal guardian, guardianship administrator or
233 custodian of any person sued under this article;

234 (b) The probation or parole officer of any person sued
235 under this article;

236 (c) Such other person or agent as the court, upon
237 petition of the district attorney or his designee or the county
238 attorney, may authorize as appropriate and reasonable under all of
239 the circumstances;

240 (d) Any gang officer;

241 (e) Any individual member of the gang simultaneously
242 named therein;

243 (f) In the manner provided for service by publication
244 in a civil action under the Mississippi Rules of Procedure; or

245 (g) With any parent, legal guardian or legal custodian
246 of any person charged with a criminal gang activity if the person
247 being sued civilly under this article is under seventeen (17)



248 years of age, and is also charged criminally or as a delinquent
249 minor.

250 (3) If a gang does not appear in court after being summoned
251 as described in this chapter, the court shall enter an answer for
252 the gang neither affirming nor denying the allegations of the
253 complaint but demanding strict proof thereof, and proceed to trial
254 and judgment without further process.

255 (4) When a person is named as a defendant gang member in any
256 complaint, or subsequently becomes known and is added or joined as
257 a named defendant, service of process may be had as authorized or
258 provided for in the Rules of Civil Procedure for service of
259 process in a civil case.

260 **SECTION 8.** The following shall be codified as Section
261 97-44-107, Mississippi Code of 1972:

262 97-44-107. (1) In an action brought under Section
263 97-44-101(1)(a)(i), upon the verified application of the district
264 attorney or the county attorney, the circuit court may at any time
265 enter restraining orders, injunctions or other prohibitions, or
266 order such other relief as it deems proper, including, but not
267 limited to, ordering any person to divest himself of any
268 involvement or interest, direct or indirect, in any criminal gang
269 activity and imposing other reasonable restrictions on the future
270 illegal activities of any defendant.

271 (2) A final judgment in favor of a public authority or
272 individual under this article shall entitle the entity or person



273 to recover compensatory damages for all damages, losses,
274 impairments or other harm proximately caused, together with the
275 costs of the suit and reasonable attorney's fees. Punitive
276 damages may be assessed against any gang, gang officer or member
277 found guilty of actual participation in, or to be legally
278 accountable for, a criminal gang activity under this article. One
279 hundred percent (100%) of punitive damages awarded to a public
280 authority will be expended by the public authority to implement
281 preventive programs for juveniles or to fund existing programs.

282 (3) The injunctive relief authorized by this section shall
283 not be issued in the form of a temporary restraining order.

284 **SECTION 9.** The following shall be codified as Section
285 97-44-109, Mississippi Code of 1972:

286 97-44-109. (1) Every private building or place used by
287 members of a gang for the commission of illegal activity is a
288 nuisance and may be the subject of an injunction or cause of
289 action for damages or for abatement of the nuisance as provided in
290 this article.

291 (2) Any person may file a petition for injunctive relief
292 with the appropriate court seeking eviction from or closure of any
293 premises used for commission of illegal activity by a gang. Upon
294 clear and convincing proof by the plaintiff that the premises are
295 being used by members of a gang for the commission of illegal
296 activity, the court may order the owner of record or the lessee of
297 the premises to remove or evict the persons from the premises and



298 order the premises sealed, prohibit further use of the premises,
299 or enter such order as may be necessary to prohibit the premises
300 from being used for the commission of illegal activity by a gang
301 and to abate the nuisance.

302 (3) An action for injunction, damages, abatement, or other
303 relief filed under this section shall proceed according to the
304 provisions of the Rules of Civil Procedure.

305 (4) The court shall not issue an injunction or assess a
306 civil penalty against any owner of record or the lessee of the
307 private building or place unless there is a showing by clear and
308 convincing proof that the person knew or should have known or had
309 been notified of the use of the premises by a gang for illegal
310 activity. Injunctive relief other than that specifically
311 authorized in subsection (6) of this section is limited to that
312 which is necessary to protect the health and safety of the
313 residents or the public or to prevent further illegal activity.

314 (5) A petition for injunction shall not be filed until
315 thirty (30) days after notice of the unlawful use or criminal
316 conduct has been provided to the owner of record or the lessee, by
317 mail, return receipt requested, postage prepaid, to the owner's
318 last-known address, or by personal service. If the premises are
319 abandoned or closed, or if the whereabouts of the owner of record
320 or lessee is unknown, all notices, process, pleadings and orders
321 required to be delivered or served under this section may be
322 attached to a door of the premises and mailed, return receipt



323 requested, to the most recent address on file in the office of the
324 tax collector of the county where the property is located, and
325 this shall have the same effect as personal service on the owner
326 of record or lessee.

327 (6) If the court has previously issued injunctive relief
328 ordering the owner of record or the lessee of the premises to
329 close the premises or otherwise to keep the premises from being
330 used for the commission by a gang of illegal activity, the court,
331 upon proof of failure to comply with the terms of the injunction
332 and that the premises continue to be used by a gang for the
333 commission of illegal activity, may do one or more of the
334 following:

335 (a) Order the premises demolished and cleared at the
336 cost of the owner.

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

340 (c) Order the defendant to pay damages to persons or
341 local governing authorities who have been damaged or injured or
342 have incurred expense as a result of the defendant's failure to
343 take reasonable steps or precautions to comply with the terms of
344 any injunction issued under the provisions of this article.

345 (d) Assess a civil penalty not to exceed Five Thousand
346 Dollars (\$5,000.00) against the defendant based upon the severity
347 of the nuisance and its duration. In establishing the amount of a



348 civil penalty, the court shall consider all of the following
349 factors:

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

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

355 (iii) Any other factor deemed by the court to be
356 relevant.

357 (7) A nonprofit, fraternal or charitable organization or
358 governmental entity that is conducting its affairs with ordinary
359 care or skill shall not be enjoined under the provisions of this
360 article.

361 (8) Nothing in this article precludes an aggrieved person
362 from seeking any other remedy provided by law.

363 **SECTION 10.** The following shall be codified as Section
364 97-44-111, Mississippi Code of 1972:

365 97-44-111. (1) Any firearm, ammunition to be used in a
366 firearm, or dangerous weapon in the possession of a member of a
367 gang may be seized by any law enforcement agency or peace officer
368 when the law enforcement agency or peace officer has probable
369 cause to believe that the firearm, ammunition to be used in a
370 firearm, or dangerous weapon is or has been used by a gang in the
371 commission of illegal activity.



372 (2) The district attorney or an attorney for the seizing
373 agency shall initiate, in a civil action, forfeiture proceedings
374 by petition in the circuit courts as to any property seized under
375 the provisions of this section within thirty (30) days of seizure.
376 The district attorney must provide notice of the filing of the
377 petition to those members of the gang who become known to law
378 enforcement officials as a result of the seizure and any related
379 arrests, and to any person determined by law enforcement officials
380 to be the owner of any of the property involved. After initial
381 notice of the filing of the petition, the court shall assure that
382 all persons so notified continue to receive notice of all
383 subsequent proceedings related to the property.

384 (3) A person who claims an interest in seized property, in
385 order to assert a claim that the property should not be forfeited,
386 must file a notice with the court, without necessity of paying
387 costs, of the intent to establish either of the following:

388 (a) That the persons asserting the claim did not know,
389 could not have known, or had no reason to believe that the seized
390 property was used by a gang in the commission of illegal activity;
391 or

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

395 (4) An acquittal or dismissal in a criminal proceeding does
396 not preclude civil proceedings under this section; however, for



397 good cause shown, on motion by the district attorney, the court
398 may stay civil forfeiture proceedings during the criminal trial
399 for related criminal indictment or information alleging a
400 violation of this section. Such a stay is not available pending
401 an appeal.

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

405 (6) The issue shall be determined by the court alone, and
406 the hearing on the claim shall be held within sixty (60) days
407 after service of the petition unless continued for good cause.
408 The district attorney shall have the burden of showing by clear
409 and convincing proof that forfeiture of the property is
410 appropriate.

411 (7) A person who asserts a successful claim in accordance
412 with subsection (3) of this section shall be awarded the seized
413 property by the court, together with costs of filing the action.
414 All property as to which no claim is filed, or as to which no
415 successful claim is made, may be destroyed, sold at a public sale,
416 retained for use by the seizing agency or transferred without
417 charge to any law enforcement agency of the state for use by it.
418 Property that is sold shall be sold by the circuit court at a
419 public auction for cash to the highest and best bidder after
420 advertising the sale for at least once each week for three (3)
421 consecutive weeks, the last notice to appear not more than ten



422 (10) days nor less than five (5) days before the sale in a
423 newspaper having a general circulation in the county. The notice
424 shall contain a description of the property to be sold and a
425 statement of the time and place of sale. It shall not be
426 necessary to the validity of the sale either to have the property
427 present at the place of sale or to have the name of the owner
428 thereof stated in the notice. The proceeds of the sale, less any
429 expenses of concluding the sale, shall be deposited in the seizing
430 agency's general fund to be used only for approved law enforcement
431 activity affecting the agency's efforts to combat gang activities.

432 (8) An action under the provisions of this section may be
433 consolidated with any other action or proceedings under this
434 section relating to the same property on motion of the district
435 attorney.

436 **SECTION 11.** The following shall be codified as Section
437 97-35-53, Mississippi Code of 1972:

438 97-35-53. It is unlawful for any person to threaten to
439 assault, kidnap or murder a judge or law enforcement officer or a
440 member of the judge's or law enforcement officer's immediate
441 family by any means, including social media, with intent to
442 impede, intimidate, or interfere with the judge or law enforcement
443 officer while engaged in the performance of official duties, or
444 with intent to retaliate against the judge or law enforcement
445 officer on account of the performance of official duties.
446 Violation of this section is a misdemeanor punishable by



447 imprisonment for not more than one (1) year, a fine not to exceed
448 Five Thousand Dollars (\$5,000.00), or both.

449 **SECTION 12.** Section 97-3-2, Mississippi Code of 1972, is
450 amended as follows:

451 97-3-2. (1) The following shall be classified as crimes of
452 violence:

453 (a) Driving under the influence as provided in Sections
454 63-11-30(5) and 63-11-30(12) (d);

455 (b) Murder and attempted murder as provided in Sections
456 97-1-7(2), 97-3-19, 97-3-23 and 97-3-25;

457 (c) Aggravated assault as provided in Sections
458 97-3-7(2) (a) and (b) and 97-3-7(4) (a);

459 (d) Manslaughter as provided in Sections 97-3-27,
460 97-3-29, 97-3-31, 97-3-33, 97-3-35, 97-3-39, 97-3-41, 97-3-43,
461 97-3-45 and 97-3-47;

462 (e) Killing of an unborn child as provided in Sections
463 97-3-37(2) (a) and 97-3-37(2) (b);

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

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

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

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

468 (j) Robbery as provided in Sections 97-3-73 and
469 97-3-79;

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



471 (1) Drive-by shooting or bombing as provided in Section
472 97-3-109;

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

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

476 (o) Burglary of a dwelling as provided in Sections
477 97-17-23 and 97-17-37;

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

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

482 (r) Exploitation of a child as provided in Section
483 97-5-33;

484 (s) Gratification of lust as provided in Section
485 97-5-23; * * *

486 (t) Shooting into a dwelling as provided in Section
487 97-37-29 * * *; and

488 (u) Criminal gang activity as provided in Section
489 97-44-5.

490 (2) In any felony offense with a maximum sentence of no less
491 than five (5) years, upon conviction, the judge may find and place
492 in the sentencing order, on the record in open court, that the
493 offense, while not listed in subsection (1) of this section, shall
494 be classified as a crime of violence if the facts show that the
495 defendant used physical force, or made a credible attempt or



496 threat of physical force against another person as part of the
497 criminal act. No person convicted of a crime of violence listed
498 in this section is eligible for parole or for early release from
499 the custody of the Department of Corrections until the person has
500 served at least fifty percent (50%) of the sentence imposed by the
501 court.

502 **SECTION 13.** Section 47-5-138.1, Mississippi Code of 1972, is
503 amended as follows:

504 47-5-138.1. (1) In addition to any other administrative
505 reduction of sentence, an offender in trusty status as defined by
506 the classification board of the Department of Corrections may be
507 awarded a trusty-time allowance of thirty (30) days' reduction of
508 sentence for each thirty (30) days of participation during any
509 calendar month in an approved program while in trusty status,
510 including satisfactory participation in education or instructional
511 programs, satisfactory participation in work projects and
512 satisfactory participation in any special incentive program.

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

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

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

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

519 (d) The offender has not served the mandatory time
520 required for parole eligibility, as prescribed under Section



521 47-7-3, for a conviction of robbery or attempted robbery through
522 the display of a deadly weapon, carjacking through the display of
523 a deadly weapon or a drive-by shooting; * * *

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

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

528 **SECTION 14.** Section 47-5-139, Mississippi Code of 1972, is
529 amended as follows:

530 47-5-139. (1) An inmate shall not be eligible for the
531 earned-time allowance if:

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

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

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

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

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



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

547 (2) An offender under two (2) or more consecutive sentences
548 shall be allowed commutation based upon the total term of the
549 sentences.

550 (3) All earned time shall be forfeited by the inmate in the
551 event of escape and/or aiding and abetting an escape. The
552 commissioner may restore all or part of the earned time if the
553 escapee returns to the institution voluntarily, without expense to
554 the state, and without act of violence while a fugitive from the
555 facility.

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

559 **SECTION 15.** Section 47-5-142, Mississippi Code of 1972, is
560 amended as follows:

561 47-5-142. (1) In order to provide incentive for offenders
562 to achieve positive and worthwhile accomplishments for their
563 personal benefit or the benefit of others, and in addition to any
564 other administrative reductions of the length of an offender's
565 sentence, any offender shall be eligible, subject to the
566 provisions of this section, to receive meritorious earned time as
567 distinguished from earned time for good conduct and performance.

568 (2) Subject to approval by the commissioner of the terms and
569 conditions of the program or project, meritorious earned time may



570 be awarded for the following: (a) successful completion of
571 educational or instructional programs; (b) satisfactory
572 participation in work projects; and (c) satisfactory participation
573 in any special incentive program.

574 (3) The programs and activities through which meritorious
575 earned time may be received shall be published in writing and
576 posted in conspicuous places at all facilities of the department
577 and such publication shall be made available to all offenders in
578 the custody of the department.

579 (4) The commissioner shall make a determination of the
580 number of days of reduction of sentence which may be awarded an
581 offender as meritorious earned time for participation in approved
582 programs or projects; the number of days shall be determined by
583 the commissioner on the basis of each particular program or
584 project.

585 (5) * * * An offender shall not be awarded any meritorious
586 earned time:

587 (a) While assigned to the maximum security facilities
588 for disciplinary purposes * * *; or

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

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



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

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

602 **SECTION 16.** Section 13-7-5, Mississippi Code of 1972, is
603 amended as follows:

604 13-7-5. There is established a state grand jury system.
605 Each state grand jury shall consist of * * * up to twenty-five
606 (25) persons who may be impaneled and who may meet at any suitable
607 location within the state as designated by the * * * Attorney
608 General. Fifteen (15) members of a state grand jury constitute a
609 quorum and upon a vote of at least twelve (12) members, an
610 indictment shall issue.

611 **SECTION 17.** Section 13-7-7, Mississippi Code of 1972, is
612 amended as follows:

613 13-7-7. (1) The jurisdiction of a state grand jury
614 impaneled under this chapter extends throughout the state. The
615 subject matter jurisdiction of a state grand jury in all cases is
616 limited to offenses involving any and all conduct made unlawful by
617 the Mississippi Uniform Controlled Substances Law or any other
618 provision of law involving narcotics, dangerous drugs or



619 controlled substances, or any crime arising out of or in
620 connection with a crime involving narcotics, dangerous drugs or
621 controlled substances, and crimes involving any attempt, aiding,
622 abetting, solicitation or conspiracy to commit any of the
623 aforementioned crimes if the crimes occur within more than one (1)
624 circuit court district or have transpired or are transpiring or
625 have significance in more than one (1) circuit court district of
626 this state.

627 (2) Whenever the Attorney General considers it necessary,
628 and normal investigative or prosecutorial procedures are not
629 adequate, the Attorney General may petition in writing to the
630 senior circuit court judge of any circuit court district in this
631 state for an order impaneling a state grand jury. For the
632 purposes of this chapter, such judge shall be referred to as the
633 impaneling judge. The petition must allege the following:

634 (a) The type of offenses to be inquired into;

635 (b) That the state grand jury has jurisdiction to
636 consider such matters;

637 (c) That the offenses to be inquired into have occurred
638 within more than one (1) circuit court district or have transpired
639 or are transpiring or have significance in more than one (1)
640 circuit court district of this state;

641 (d) That the Attorney General has conferred with the
642 Commissioner of Public Safety and the Director of the Mississippi



643 Bureau of Narcotics and that each of such officials join in the
644 petition; and

645 (e) That the Attorney General has conferred with the
646 appropriate district attorney for each jurisdiction in which the
647 crime or crimes are alleged to have occurred.

648 (3) The impaneling judge, after due consideration of the
649 petition, may order the impanelment of a state grand jury in
650 accordance with the petition for a term of twelve (12) calendar
651 months. Upon petition by the Attorney General, the impaneling
652 judge, by order, may extend the term of that state grand jury for
653 a period of six (6) months, but the term of that state grand jury,
654 including any extension thereof, shall not exceed two (2) years.

655 (4) The impaneling judge shall preside over the state grand
656 jury until its discharge.

657 (5) The impaneling judge may discharge a state grand jury
658 prior to the end of its original term or any extensions thereof,
659 upon a determination that its business has been completed, or upon
660 the request of the Attorney General.

661 (6) If, at any time within the original term of any state
662 grand jury or any extension thereof, the impaneling judge
663 determines that the state grand jury is not conducting
664 investigative activity within its jurisdiction or proper
665 investigative activity, the impaneling judge may limit the
666 investigations so that the investigation conforms with the
667 jurisdiction of the state grand jury and existing law or he may



668 discharge the state grand jury. An order issued pursuant to this
669 subsection or under subsection (5) of this section shall not
670 become effective less than ten (10) days after the date on which
671 it is issued and actual notice given to the Attorney General and
672 the foreman of the state grand jury, and may be appealed by the
673 Attorney General to the Supreme Court. If an appeal from the
674 order is made, the state grand jury, except as otherwise ordered
675 by the Supreme Court, shall continue to exercise its powers
676 pending disposition of the appeal.

677 (7) The Attorney General shall have the authority to issue
678 any subpoena for and on behalf of the state grand jury to assist
679 any investigation thereof, and the subpoena shall be returnable to
680 the circuit court in which the grand jury is sitting. The
681 impaneling judge shall have the power of attachment, enforcement
682 and contempt to ensure compliance with the subpoena.

683 **SECTION 18.** Section 97-44-9, Mississippi Code of 1972, which
684 provides venue for civil actions based on criminal gang activity,
685 is repealed.

686 **SECTION 19.** Section 97-44-11, Mississippi Code of 1972,
687 which provides service of process for civil actions based on
688 criminal gang activity, is repealed.

689 **SECTION 20.** Section 97-44-13, Mississippi Code of 1972,
690 which provides punitive damages for civil actions based on
691 criminal gang activity, is repealed.



692 **SECTION 21.** Section 97-44-15, Mississippi Code of 1972,
693 which provides for forfeiture of real property in civil actions
694 based on criminal gang activity, is repealed.

695 **SECTION 22.** Section 97-44-17, Mississippi Code of 1972,
696 which provides for forfeiture of personal property in civil
697 actions based on criminal gang activity, is repealed.

698 **SECTION 23.** Section 97-44-19, Mississippi Code of 1972,
699 which provides penalties for criminal gang activity, is repealed.

700 **SECTION 24.** Sections 5 through 10 of this act shall be
701 codified as a separate article of Title 97, Chapter 44,
702 Mississippi Code of 1972, and Sections 97-44-1 through 97-44-19,
703 Mississippi Code of 1972, also shall be noted as a separate
704 article.

705 **SECTION 25.** This act shall take effect and be in force from
706 and after July 1, 2020.

