

By: Representative Bain

To: Judiciary B

HOUSE BILL NO. 406

1 AN ACT TO AMEND SECTION 25-61-12, MISSISSIPPI CODE OF 1972,
 2 TO EXEMPT BOOKING INFORMATION FROM THE PUBLIC RECORDS ACT IF THE
 3 PERSON BEING BOOKED IS HELD IN CUSTODY SOLELY ON THE BASIS OF THE
 4 PERSON'S MENTAL HEALTH STATUS; TO AMEND SECTION 25-61-3,
 5 MISSISSIPPI CODE OF 1972, TO DEFINE THE TERM "BOOKING INFORMATION"
 6 FOR PURPOSES OF THE EXEMPTION; AND FOR RELATED PURPOSES.

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

8 **SECTION 1.** Section 25-61-12, Mississippi Code of 1972, is
 9 amended as follows:

10 25-61-12. (1) The home address, any telephone number of a
 11 privately paid account or other private information of any law
 12 enforcement officer, criminal investigator, judge or district
 13 attorney, or the spouse or child of the law enforcement officer,
 14 criminal investigator, judge or district attorney, shall be exempt
 15 from the Mississippi Public Records Act of 1983. This exemption
 16 does not apply to any court transcript or recording if given under
 17 oath and not otherwise excluded by law.

18 (2) (a) When in the possession of a law enforcement agency,
 19 investigative reports shall be exempt from the provisions of this



20 chapter; however, a law enforcement agency, in its discretion, may
21 choose to make public all or any part of any investigative report.

22 (b) Nothing in this chapter shall be construed to
23 prevent any * * * public * * * body from having among themselves a
24 free flow of information for the purpose of achieving a
25 coordinated and effective detection and investigation of unlawful
26 activity. Where the confidentiality of records covered by this
27 section is being determined in a private hearing before a judge
28 under Section 25-61-13, the public body may redact or separate
29 from the records the identity of confidential informants or the
30 identity of the person or persons under investigation or other
31 information other than the nature of the incident, time, date and
32 location.

33 (c) Except as otherwise provided in subsection (5) of
34 this section, nothing in this chapter shall be construed to exempt
35 from public disclosure a law enforcement incident report. An
36 incident report shall be a public record. A law enforcement
37 agency may release information in addition to the information
38 contained in the incident report.

39 (d) Nothing in this chapter shall be construed to
40 require the disclosure of information that would reveal the
41 identity of the victim.

42 (3) Personal information of victims, including victim impact
43 statements and letters of support on behalf of victims that are
44 contained in records on file with the Mississippi Department of



45 Corrections and State Parole Board, shall be exempt from the
46 provisions of this chapter.

47 (4) Records of a public hospital board relating to the
48 purchase or sale of medical or other practices or other business
49 operations, and the recruitment of physicians and other health
50 care professionals, shall be exempt from the provisions of this
51 chapter.

52 (5) The booking information of a person who is in custody
53 solely because the person's mental health status is in question or
54 is at issue, and who is not under arrest for committing a criminal
55 act, shall be exempt from the provisions of this chapter.

56 **SECTION 2.** Section 25-61-3, Mississippi Code of 1972, is
57 amended as follows:

58 25-61-3. The following words shall have the meanings
59 ascribed herein unless the context clearly requires otherwise:

60 (a) "Public body" shall mean any department, bureau,
61 division, council, commission, committee, subcommittee, board,
62 agency and any other entity of the state or a political
63 subdivision thereof, and any municipal corporation and any other
64 entity created by the Constitution or by law, executive order,
65 ordinance or resolution. The term "public body" includes the
66 governing board of a charter school authorized by the Mississippi
67 Charter School Authorizer Board. Within the meaning of this
68 chapter, the term "entity" shall not be construed to include



69 individuals employed by a public body or any appointed or elected
70 public official.

71 (b) "Public records" shall mean all books, records,
72 papers, accounts, letters, maps, photographs, films, cards, tapes,
73 recordings or reproductions thereof, and any other documentary
74 materials, regardless of physical form or characteristics, having
75 been used, being in use, or prepared, possessed or retained for
76 use in the conduct, transaction or performance of any business,
77 transaction, work, duty or function of any public body, or
78 required to be maintained by any public body. "Public records"
79 shall not mean "personal information" as defined in Section
80 25-62-1.

81 (c) "Data processing software" means the programs and
82 routines used to employ and control the capabilities of data
83 processing hardware, including, but not limited to, operating
84 systems, compilers, assemblers, utilities, library routines,
85 maintenance routines, applications and computer networking
86 programs.

87 (d) "Proprietary software" means data processing
88 software that is obtained under a licensing agreement and is
89 protected by copyright or trade secret laws.

90 (e) "Incident report" means a narrative description, if
91 such narrative description exists and if such narrative
92 description does not contain investigative information, of an
93 alleged offense, and at a minimum shall include the name and



94 identification of each person charged with and arrested for the
95 alleged offense, the time, date and location of the alleged
96 offense, and the property involved, to the extent this information
97 is known.

98 (f) "Investigative report" means records of a law
99 enforcement agency containing information beyond the scope of the
100 matters contained in an incident report, and generally will
101 include, but not be limited to, the following matters if beyond
102 the scope of the matters contained in an incident report:

103 (i) Records that are compiled in the process of
104 detecting and investigating any unlawful activity or alleged
105 unlawful activity, the disclosure of which would harm the
106 investigation which may include crime scene reports and
107 demonstrative evidence;

108 (ii) Records that would reveal the identity of
109 informants and/or witnesses;

110 (iii) Records that would prematurely release
111 information that would impede the public body's enforcement,
112 investigative or detection efforts;

113 (iv) Records that would disclose investigatory
114 techniques and/or results of investigative techniques;

115 (v) Records that would deprive a person of a right
116 to a fair trial or an impartial adjudication;



117 (vi) Records that would endanger the life or
118 safety of a public official or law enforcement personnel, or
119 confidential informants or witnesses;

120 (vii) Records pertaining to quality control or
121 PEER review activities; or

122 (viii) Records that would impede or jeopardize a
123 prosecutor's ability to prosecute the alleged offense.

124 (g) "Law enforcement agency" means a public body that
125 performs as one (1) of its principal functions activities
126 pertaining to the enforcement of criminal laws, the apprehension
127 and investigation of criminal offenders, or the investigation of
128 criminal activities.

129 (h) "Booking information" means the jail docket, "mug
130 shots" or other photographs taken of a person in custody and any
131 other record generated as a part of the taking of a person into
132 custody or holding a person under arrest by any law enforcement
133 agency.

134 **SECTION 3.** This act shall take effect and be in force from
135 and after July 1, 2023.

