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To: Judiciary B

HOUSE BILL NO. 1104
(As Passed the House)

1 AN ACT TO AMEND SECTION 21-23-7, MISSISSIPPI CODE OF 1972, TO
2 INCREASE THE FEE CHARGED FOR THE DISMISSAL OF ANY AFFIDAVIT,
3 COMPLAINT OR CHARGE IN MUNICIPAL COURT FROM FIFTEEN DOLLARS TO
4 FIFTY DOLLARS; AND FOR RELATED PURPOSES.

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

6 SECTION 1. Section 21-23-7, Mississippi Code of 1972, is
7 amended as follows:

8 21-23-7. (1) The municipal judge shall hold court in a
9 public building designated by the governing authorities of the
10 municipality and may hold court every day except Sundays and legal
11 holidays if the business of the municipality so requires;
12 provided, however, the municipal judge may hold court outside the
13 boundaries of the municipality but not more than within a
14 sixty-mile radius of the municipality to handle preliminary
15 matters and criminal matters such as initial appearances and
16 felony preliminary hearings. The municipal judge shall have the
17 jurisdiction to hear and determine, without a jury and without a
18 record of the testimony, all cases charging violations of the
19 municipal ordinances and state misdemeanor laws made offenses
20 against the municipality and to punish offenders therefor as may
21 be prescribed by law. All criminal proceedings shall be brought
22 by sworn complaint filed in the municipal court. Such complaint
23 shall state the essential elements of the offense charged and the
24 statute or ordinance relied upon. Such complaint shall not be
25 required to conclude with a general averment that the offense is
26 against the peace and dignity of the state or in violation of the
27 ordinances of the municipality. He may sit as a committing court

28 in all felonies committed within the municipality, and he shall
29 have the power to bind over the accused to the grand jury or to
30 appear before the proper court having jurisdiction to try the
31 same, and to set the amount of bail or refuse bail and commit the
32 accused to jail in cases not bailable. The municipal judge is a
33 conservator of the peace within his municipality. He may conduct
34 preliminary hearings in all violations of the criminal laws of
35 this state occurring within the municipality, and any person
36 arrested for a violation of law within the municipality may be
37 brought before him for initial appearance.

38 (2) In the discretion of the court, where the objects of
39 justice would be more likely met, as an alternative to imposition
40 or payment of fine and/or incarceration, the municipal judge shall
41 have the power to sentence convicted offenders to work on a public
42 service project where the court has established such a program of
43 public service by written guidelines filed with the clerk for
44 public record. Such programs shall provide for reasonable
45 supervision of the offender and the work shall be commensurate
46 with the fine and/or incarceration that would have ordinarily been
47 imposed. Such program of public service may be utilized in the
48 implementation of the provisions of Section 99-19-20, and public
49 service work thereunder may be supervised by persons other than
50 the sheriff.

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

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

65 appointed counsel in criminal cases shall be approved and allowed
66 by the municipal judge and shall be paid by the municipality. The
67 maximum compensation shall not exceed Two Hundred Dollars
68 (\$200.00) for any one (1) case. The governing authorities of a
69 municipality may, in their discretion, appoint a public
70 defender(s) who must be a licensed attorney and who shall receive
71 a salary to be fixed by the governing authorities.

72 (5) The municipal judge of any municipality is hereby
73 authorized to suspend the sentence and to suspend the execution of
74 the sentence, or any part thereof, on such terms as may be imposed
75 by the municipal judge. However, the suspension of imposition or
76 execution of a sentence hereunder may not be revoked after a
77 period of two (2) years. The municipal judge shall have the power
78 to establish and operate a probation program, dispute resolution
79 program and other practices or procedures appropriate to the
80 judiciary and designed to aid in the administration of justice.
81 Any such program shall be established by the court with written
82 policies and procedures filed with the clerk of the court for
83 public record.

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

97 (7) Notwithstanding the provisions of subsection (6) of this

98 section, a person who was convicted in municipal court of a
99 misdemeanor before reaching his twenty-third birthday, excluding
100 conviction for a traffic violation, and who is a first offender,
101 may utilize the provisions of Section 99-19-71, to expunge such
102 misdemeanor conviction.

103 (8) In the discretion of the court, a plea of nolo
104 contendere may be entered to any charge in municipal court. Upon
105 the entry of a plea of nolo contendere the court shall convict the
106 defendant of the offense charged and shall proceed to sentence the
107 defendant according to law. The judgment of the court shall
108 reflect that the conviction was on a plea of nolo contendere. An
109 appeal may be made from a conviction on a plea of nolo contendere
110 as in other cases.

111 (9) Upon execution of a sworn complaint charging a
112 misdemeanor, the municipal court may, in its discretion and in
113 lieu of an arrest warrant, issue a citation requiring the
114 appearance of the defendant to answer the charge made against him.
115 On default of appearance, an arrest warrant may be issued for the
116 defendant. The clerk of the court or deputy clerk may issue such
117 citations.

118 (10) The municipal court shall have the power to make rules
119 for the administration of the court's business, which rules, if
120 any, shall be in writing filed with the clerk of the court.

121 (11) The municipal court shall have the power to impose
122 punishment of a fine of not more than One Thousand Dollars
123 (\$1,000.00) or six (6) months' imprisonment, or both, for contempt
124 of court. The municipal court may have the power to impose
125 reasonable costs of court, not in excess of the following:

126 Dismissal of any affidavit, complaint or charge
127 in municipal court.....\$25.00
128 Suspension of a minor's driver's license in lieu of
129 conviction..... 50.00
130 Service of scire facias or return "not found".....20.00

131 Causing search warrant to issue or causing prosecution
132 without reasonable cause or refusing to cooperate
133 after initiating action.....100.00
134 Certified copy of the court record.....5.00
135 Service of arrest warrant for failure to answer
136 citation or traffic summons.....25.00
137 Jail cost per day.....10.00
138 Any other item of court cost.....50.00
139 No filing fee or such cost shall be imposed for the bringing
140 of an action in municipal court.

141 (12) A municipal court judge shall not dismiss a criminal
142 case but may transfer the case to the justice court of the county
143 if the municipal court judge is prohibited from presiding over the
144 case by the Canons of Judicial Conduct and provided that venue and
145 jurisdiction are proper in the justice court. Upon transfer of
146 any such case, the municipal court judge shall give the municipal
147 court clerk a written order to transmit the affidavit or complaint
148 and all other records and evidence in the court's possession to
149 the justice court by certified mail or to instruct the arresting
150 officer to deliver such documents and records to the justice
151 court. There shall be no court costs charged for the transfer of
152 the case to the justice court.

153 (13) A municipal court judge may expunge the record of any
154 case in which an arrest was made, the person arrested was released
155 and the case was dismissed or the charges were dropped or there
156 was no disposition of such case.

157 SECTION 2. This act shall take effect and be in force from
158 and after July 1, 2000.