

By: Senator(s) Farris

To: Juvenile Justice;  
Judiciary

SENATE BILL NO. 2895

1 AN ACT TO CODIFY SECTION 97-44-15, MISSISSIPPI CODE OF 1972,  
2 TO CREATE ACTIONS FOR INJUNCTION, ABATEMENT, DAMAGES OR OTHER  
3 REMEDIES FOR UNLAWFUL USE OF A PRIVATE BUILDING BY MEMBERS OF A  
4 CRIMINAL STREET GANG; TO CODIFY SECTION 97-44-17, MISSISSIPPI CODE  
5 OF 1972, TO PROVIDE FOR FORFEITURE OF FIREARMS, AMMUNITION AND  
6 DANGEROUS WEAPONS USED BY CRIMINAL STREET GANGS; TO CODIFY SECTION  
7 97-44-19, MISSISSIPPI CODE OF 1972, TO ENACT CRIMINAL PENALTIES  
8 FOR CRIMINAL STREET GANG ACTIVITY; AND FOR RELATED PURPOSES.

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

10 SECTION 1. The following provision shall be codified as  
11 Section 97-44-15, Mississippi Code of 1972:

12 97-44-15. (1) Every private building or place used by  
13 members of a criminal street gang for the commission of illegal  
14 activity is a nuisance and may be the subject of an injunction or  
15 cause of action for damages or for abatement of the nuisance as  
16 provided for in this chapter.

17 (2) Any person may file a petition for injunctive relief  
18 with the appropriate court seeking eviction from or closure of any  
19 premises used for commission of illegal activity by a criminal  
20 street gang. Upon proof by the plaintiff that the premises are  
21 being used by members of a criminal street gang for the commission  
22 of illegal activity, the court may order the owner of record or  
23 the lessee of the premises to remove or evict the persons from the  
24 premises and order the premises sealed, prohibit further use of  
25 the premises, or enter such order as may be necessary to prohibit  
26 the premises from being used for the commission of illegal  
27 activity by a gang and to abate the nuisance.

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

31           (4) The court shall not issue an injunction or assess a  
32 civil penalty against any owner of record or the lessee of the  
33 private building or place, unless that person knew or should have  
34 known or had been notified of the use of the premises by a gang  
35 for illegal activity. Any injunctive relief other than that  
36 specifically authorized in subsection (6) of this section shall be  
37 limited to that which is necessary to protect the health and  
38 safety of the residents or the public or that which is necessary  
39 to prevent further illegal activity.

40           (5) A petition for injunction shall not be filed until  
41 thirty (30) days after notice of the unlawful use or criminal  
42 conduct has been provided to the owner of record or the lessee, by  
43 mail, return receipt requested, postage prepaid, to the owner's  
44 last known address, or by personal service. If the premises are  
45 abandoned or closed, or if the whereabouts of the owner of record  
46 or lessee is unknown, all notices, process, pleadings, and orders  
47 required to be delivered or served under this section may be  
48 attached to a door of the premises, and this shall have the same  
49 effect as personal service on the owner of record or lessee. No  
50 injunctive relief authorized by subsection (6) of this section  
51 shall be issued in the form of a temporary restraining order.

52           (6) If the court has previously issued injunctive relief  
53 ordering the owner of record or the lessee of the premises to  
54 close the premises or otherwise to keep the premises from being  
55 used for the commission by a gang of illegal activity, the court,  
56 upon proof of failure to comply with the terms of the injunction  
57 and that the premises continue to be used by a gang for the  
58 commission of illegal activity, may do one or more of the  
59 following:

60 (a) Order the premises demolished and cleared at the  
61 cost of the owner.

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

65 (c) Order the defendant to pay damages to persons or  
66 local governing authorities who have been damaged or injured or  
67 have incurred expense as a result of the defendant's failure to  
68 take reasonable steps or precautions to comply with the terms of  
69 any injunction issued pursuant to the provisions of this chapter.

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

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

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

80 (iii) Any other factor deemed by the court to be  
81 relevant.

82 (7) No nonprofit, fraternal or charitable organization which  
83 is conducting its affairs with ordinary care or skill nor any  
84 governmental entity shall be enjoined pursuant to the provisions  
85 of this chapter.

86 (8) Nothing in this chapter shall preclude any aggrieved  
87 person from seeking any other remedy provided by law.

88 SECTION 2. The following provision shall be codified as  
89 Section 97-44-17, Mississippi Code of 1972:

90 97-44-17. (1) Any firearm, ammunition to be used in a  
91 firearm, or dangerous weapon in the possession of a member of a  
92 criminal street gang may be seized by any law enforcement agency

93 or peace officer when the law enforcement agency or peace officer  
94 has probable cause to believe that the firearm, ammunition to be  
95 used in a firearm, or dangerous weapon is or has been used by a  
96 gang in the commission of illegal activity.

97 (2) The district attorney or an attorney for the seizing  
98 agency shall initiate, in a civil action, forfeiture proceedings  
99 by petition in the circuit courts as to any property seized  
100 pursuant to the provisions of this section within thirty (30) days  
101 of seizure. The district attorney shall provide notice of the  
102 filing of the petition to those members of the gang who become  
103 known to law enforcement officials as a result of the seizure and  
104 any related arrests, and to any person determined by law  
105 enforcement officials to be the owner of any of the property  
106 involved. After initial notice of the filing of the petition, the  
107 court shall assure that all persons so notified continue to  
108 receive notice of all subsequent proceedings related to the  
109 property.

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

114 (a) That the persons asserting the claim did not know  
115 and could not have known of its use by a gang in the commission of  
116 illegal activity; or

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

120 (4) An acquittal or dismissal in a criminal proceeding shall  
121 not preclude civil proceedings under this section; however, for  
122 good cause shown, on motion by the district attorney, the court  
123 may stay civil forfeiture proceedings during the criminal trial  
124 for related criminal indictment or information alleging a

125 violation of this section. Such a stay shall not be available  
126 pending an appeal.

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

130 (6) The issue shall be determined by the court alone, and  
131 the hearing on the claim shall be held within sixty (60) days  
132 after service of the petition unless continued for good cause.  
133 The district attorney shall have the initial burden of showing the  
134 existence of probable cause for forfeiture of the property. If  
135 the state shows probable cause, the claimant has the burden of  
136 showing by a preponderance of the evidence that the claimant's  
137 interest in the property is not subject to forfeiture.

138 (7) Any person who asserts a successful claim in accordance  
139 with subsection (3) of this section shall be awarded the seized  
140 property by the court, together with costs of filing such action.  
141 All property as to which no claim is filed, or as to which no  
142 successful claim is made, may be destroyed, sold at a public sale,  
143 retained for use by the seizing agency or transferred without  
144 charge to any law enforcement agency of the state for use by it.  
145 Property that is sold shall be sold by the circuit court at a  
146 public auction for cash to the highest and best bidder after  
147 advertising the sale for at least once each week for three (3)  
148 consecutive weeks, the last notice to appear not more than ten  
149 (10) days nor less than five (5) days prior to such sale in a  
150 newspaper having a general circulation in the county. Such notice  
151 shall contain a description of the property to be sold and a  
152 statement of the time and place of sale. It shall not be  
153 necessary to the validity of such sale either to have the property  
154 present at the place of sale or to have the name of the owner  
155 thereof stated in such notice. The proceeds of the sale, less any  
156 expenses of concluding the sale, shall be deposited in the seizing

157 agency's general fund to be used only for approved law enforcement  
158 activity affecting the agency's efforts to combat gang activities.

159 (8) Any action under the provisions of this section may be  
160 consolidated with any other action or proceedings pursuant to this  
161 section relating to the same property on motion of the district  
162 attorney.

163 SECTION 3. The following provision shall be codified as  
164 Section 97-44-19, Mississippi Code of 1972:

165 97-44-19. (1) Any person who intentionally directs,  
166 participates, conducts, furthers, or assists in the commission of  
167 illegal gang activity shall be punished by imprisonment for not  
168 less than one (1) year nor more than one-half (1/2) of the maximum  
169 term of imprisonment provided for an underlying offense and may be  
170 fined an amount not to exceed Ten Thousand Dollars (\$10,000.00).  
171 Any sentence of imprisonment imposed pursuant to this section  
172 shall be in addition and consecutive to any sentence imposed for  
173 the underlying offense.

174 (2) Any person who is convicted of a felony or an attempted  
175 felony which is committed for the benefit of, at the direction of,  
176 or in association with any criminal street gang, with the intent  
177 to promote, further, or assist in the affairs of a criminal gang,  
178 shall, upon conviction of that felony, in addition and consecutive  
179 to the punishment prescribed for the felony or attempted felony of  
180 which he or she has been convicted, be imprisoned for not less  
181 than one (1) year nor more than one-half (1/2) of the maximum term  
182 of imprisonment provided for that offense.

183 (3) Any person who is convicted of an offense other than a  
184 felony which is committed for the benefit of, at the direction of,  
185 or in association with, any criminal street gang, with the  
186 specific intent to promote, further or assist in any criminal  
187 conduct or enterprise by gang members, shall, in addition and  
188 consecutive to the penalty provided for that offense, be  
189 imprisoned for an additional period of not more than one (1) year.

190           (4) The court may elect to suspend all or a part of any  
191 additional mandatory punishment or enhanced punishment provided  
192 for in this chapter to impose alternative punishment in the form  
193 of properly supervised community service or placement in an  
194 appropriate adolescent offender program, if available, only in an  
195 unusual case where the interest of justice would best be served,  
196 and if the court specifies on the record and enters into the  
197 minutes the circumstances and reasons that the interests of  
198 justice would best be served by that suspension of enhanced  
199 punishment.

200           SECTION 4. This act shall take effect and be in force from  
201 and after July 1, 2001.