

By: Senator(s) Farris

To: Juvenile Justice;
Judiciary

SENATE BILL NO. 2895
(As Sent to Governor)

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 clear and convincing proof by the plaintiff
21 that the premises are being used by members of a criminal street
22 gang for the commission of illegal activity, the court may order
23 the owner of record or the lessee of the premises to remove or
24 evict the persons from the premises and order the premises sealed,
25 prohibit further use of the premises, or enter such order as may
26 be necessary to prohibit the premises from being used for the
27 commission of illegal activity by a gang and to abate the
28 nuisance.

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

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

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

57 (6) If the court has previously issued injunctive relief
58 ordering the owner of record or the lessee of the premises to
59 close the premises or otherwise to keep the premises from being
60 used for the commission by a gang of illegal activity, the court,
61 upon proof of failure to comply with the terms of the injunction

62 and that the premises continue to be used by a gang for the
63 commission of illegal activity, may do one or more of the
64 following:

65 (a) Order the premises demolished and cleared at the
66 cost of the owner.

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

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

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

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

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

85 (iii) Any other factor deemed by the court to be
86 relevant.

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

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

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

95 97-44-17. (1) Any firearm, ammunition to be used in a
96 firearm, or dangerous weapon in the possession of a member of a
97 criminal street gang may be seized by any law enforcement agency
98 or peace officer when the law enforcement agency or peace officer
99 has probable cause to believe that the firearm, ammunition to be
100 used in a firearm, or dangerous weapon is or has been used by a
101 gang in the commission of illegal activity.

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

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

119 (a) That the persons asserting the claim did not know
120 of, could not have known of, or had no reason to believe in its
121 use by a gang in the commission of illegal activity; or

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

125 (4) An acquittal or dismissal in a criminal proceeding shall
126 not preclude civil proceedings under this section; however, for
127 good cause shown, on motion by the district attorney, the court

128 may stay civil forfeiture proceedings during the criminal trial
129 for related criminal indictment or information alleging a
130 violation of this section. Such a stay shall not be available
131 pending an appeal.

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

135 (6) The issue shall be determined by the court alone, and
136 the hearing on the claim shall be held within sixty (60) days
137 after service of the petition unless continued for good cause.
138 The district attorney shall have the burden of showing by clear
139 and convincing proof that forfeiture of the property is
140 appropriate.

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

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

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

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

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

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

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

193 (4) Any person who knowingly and willfully sells or buys
194 goods or performs services for a criminal street gang in
195 furtherance of illegal activity shall be punished by imprisonment
196 for not less than one (1) year nor more than one-half (1/2) of the
197 maximum term of imprisonment provided for the underlying offense
198 and may be fined an amount not to exceed Ten Thousand Dollars
199 (\$10,000.00).

200 (5) The court may elect to suspend all or a part of any
201 additional mandatory punishment or enhanced punishment provided
202 for in this chapter to impose alternative punishment in the form
203 of properly supervised community service or placement in an
204 appropriate adolescent offender program, if available, only in an
205 unusual case where the interest of justice would best be served,
206 and if the court specifies on the record and enters into the
207 minutes the circumstances and reasons that the interests of
208 justice would best be served by that suspension of enhanced
209 punishment.

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