

By: Representative Moak

To: Judiciary B

HOUSE BILL NO. 77

1 AN ACT TO AMEND SECTIONS 99-33-1, 99-33-13 AND 21-23-7,
2 MISSISSIPPI CODE OF 1972, TO ALLOW COUNTY GRAND JURIES TO REMAND
3 CASES TO JUSTICE OR MUNICIPAL COURT TO BE TRIED AS MISDEMEANORS;
4 AND FOR RELATED PURPOSES.

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

6 **SECTION 1.** Section 99-33-1, Mississippi Code of 1972, is
7 amended as follows:

8 99-33-1. (1) Repealed.

9 (2) Repealed.

10 (3) Upon the election of any county to employ a clerk for
11 the justice court of such county in accordance with the provisions
12 of subsection (3) of Section 9-11-27 prior to January 1, 1984, the
13 venue of criminal actions in such county shall be as provided in
14 subsection (5) of this section. Actions filed prior to such time
15 shall be concluded pursuant to the provisions of subsection (1) of
16 this section.

17 (4) Subsections (1) and (2) of this section shall stand
18 repealed from and after January 1, 1984; provided, however, that
19 criminal actions brought prior to January 1, 1984, shall be
20 concluded pursuant to subsection (1) of this section.

21 (5) From and after January 1, 1984, justice court judges
22 shall have jurisdiction concurrent with the circuit court of the
23 county over all crimes occurring in the county whereof the
24 punishment prescribed does not extend beyond a fine and
25 imprisonment in the county jail.

26 (6) A county grand jury may remand a felony case to the
27 justice court or a municipal court to be tried as a misdemeanor.

28 **SECTION 2.** Section 99-33-13, Mississippi Code of 1972, is
29 amended as follows:

30 99-33-13. If on the trial of any criminal case the justice
31 of the peace discover that it is a felony, and not a misdemeanor,
32 of which the accused has been guilty, he shall not punish the
33 offender nor render any judgment finally disposing of the case,
34 but shall require him to give bail for his appearance in the
35 circuit court, unless the felony be notailable, in which case
36 the justice shall commit him without bail. A county grand jury
37 may remand a felony case to justice or municipal court to be tried
38 as a misdemeanor.

39 **SECTION 3.** Section 21-23-7, Mississippi Code of 1972, is
40 amended as follows:

41 21-23-7. (1) The municipal judge shall hold court in a
42 public building designated by the governing authorities of the
43 municipality and may hold court every day except Sundays and legal
44 holidays if the business of the municipality so requires;
45 provided, however, the municipal judge may hold court outside the
46 boundaries of the municipality but not more than within a
47 sixty-mile radius of the municipality to handle preliminary
48 matters and criminal matters such as initial appearances and
49 felony preliminary hearings. The municipal judge shall have the
50 jurisdiction to hear and determine, without a jury and without a
51 record of the testimony, all cases charging violations of the
52 municipal ordinances and state misdemeanor laws made offenses
53 against the municipality and to punish offenders therefor as may
54 be prescribed by law. All criminal proceedings shall be brought
55 by sworn complaint filed in the municipal court. Such complaint
56 shall state the essential elements of the offense charged and the
57 statute or ordinance relied upon. Such complaint shall not be
58 required to conclude with a general averment that the offense is
59 against the peace and dignity of the state or in violation of the
60 ordinances of the municipality. He may sit as a committing court

61 in all felonies committed within the municipality, and he shall
62 have the power to bind over the accused to the grand jury or to
63 appear before the proper court having jurisdiction to try the
64 same, and to set the amount of bail or refuse bail and commit the
65 accused to jail in cases not bailable. The municipal judge is a
66 conservator of the peace within his municipality. He may conduct
67 preliminary hearings in all violations of the criminal laws of
68 this state occurring within the municipality, and any person
69 arrested for a violation of law within the municipality may be
70 brought before him for initial appearance. A county grand jury
71 may remand a felony case to justice or municipal court to be tried
72 as a misdemeanor.

73 (2) In the discretion of the court, where the objects of
74 justice would be more likely met, as an alternative to imposition
75 or payment of fine and/or incarceration, the municipal judge shall
76 have the power to sentence convicted offenders to work on a public
77 service project where the court has established such a program of
78 public service by written guidelines filed with the clerk for
79 public record. Such programs shall provide for reasonable
80 supervision of the offender and the work shall be commensurate
81 with the fine and/or incarceration that would have ordinarily been
82 imposed. Such program of public service may be utilized in the
83 implementation of the provisions of Section 99-19-20, and public
84 service work thereunder may be supervised by persons other than
85 the sheriff.

86 (3) The municipal judge may solemnize marriages, take oaths,
87 affidavits and acknowledgments, and issue orders, subpoenas,
88 summonses, citations, warrants for search and arrest upon a
89 finding of probable cause, and other such process under seal of
90 the court to any county or municipality, in a criminal case, to be
91 executed by the lawful authority of the county or the municipality
92 of the respondent, and enforce obedience thereto. The absence of
93 a seal shall not invalidate the process.

94 (4) When a person shall be charged with an offense in
95 municipal court punishable by confinement, the municipal judge,
96 being satisfied that such person is an indigent person and is
97 unable to employ counsel, may, in the discretion of the court,
98 appoint counsel from the membership of The Mississippi Bar
99 residing in his county who shall represent him. Compensation for
100 appointed counsel in criminal cases shall be approved and allowed
101 by the municipal judge and shall be paid by the municipality. The
102 maximum compensation shall not exceed Two Hundred Dollars
103 (\$200.00) for any one (1) case. The governing authorities of a
104 municipality may, in their discretion, appoint a public
105 defender(s) who must be a licensed attorney and who shall receive
106 a salary to be fixed by the governing authorities.

107 (5) The municipal judge of any municipality is hereby
108 authorized to suspend the sentence and to suspend the execution of
109 the sentence, or any part thereof, on such terms as may be imposed
110 by the municipal judge. However, the suspension of imposition or
111 execution of a sentence hereunder may not be revoked after a
112 period of two (2) years. The municipal judge shall have the power
113 to establish and operate a probation program, dispute resolution
114 program and other practices or procedures appropriate to the
115 judiciary and designed to aid in the administration of justice.
116 Any such program shall be established by the court with written
117 policies and procedures filed with the clerk of the court for
118 public record.

119 (6) Upon prior notice to the municipal prosecuting attorney
120 and upon a showing in open court of rehabilitation, good conduct
121 for a period of two (2) years since the last conviction in any
122 court and that the best interest of society would be served, the
123 court may, in its discretion, order the record of conviction of a
124 person of any or all misdemeanors in that court expunged, and upon
125 so doing the said person thereafter legally stands as though he
126 had never been convicted of the said misdemeanor(s) and may

127 lawfully so respond to any query of prior convictions. This order
128 of expunction does not apply to the confidential records of law
129 enforcement agencies and has no effect on the driving record of a
130 person maintained under Title 63, Mississippi Code of 1972, or any
131 other provision of said Title 63.

132 (7) Notwithstanding the provisions of subsection (6) of this
133 section, a person who was convicted in municipal court of a
134 misdemeanor before reaching his twenty-third birthday, excluding
135 conviction for a traffic violation, and who is a first offender,
136 may utilize the provisions of Section 99-19-71, to expunge such
137 misdemeanor conviction.

138 (8) In the discretion of the court, a plea of nolo
139 contendere may be entered to any charge in municipal court. Upon
140 the entry of a plea of nolo contendere the court shall convict the
141 defendant of the offense charged and shall proceed to sentence the
142 defendant according to law. The judgment of the court shall
143 reflect that the conviction was on a plea of nolo contendere. An
144 appeal may be made from a conviction on a plea of nolo contendere
145 as in other cases.

146 (9) Upon execution of a sworn complaint charging a
147 misdemeanor, the municipal court may, in its discretion and in
148 lieu of an arrest warrant, issue a citation requiring the
149 appearance of the defendant to answer the charge made against him.
150 On default of appearance, an arrest warrant may be issued for the
151 defendant. The clerk of the court or deputy clerk may issue such
152 citations.

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

156 (11) The municipal court shall have the power to impose
157 punishment of a fine of not more than One Thousand Dollars
158 (\$1,000.00) or six (6) months' imprisonment, or both, for contempt

159 of court. The municipal court may have the power to impose
160 reasonable costs of court, not in excess of the following:

- 161 Dismissal of any affidavit, complaint or charge
- 162 in municipal court..... \$ 50.00
- 163 Suspension of a minor's driver's license in lieu of
- 164 conviction..... \$ 50.00
- 165 Service of scire facias or return "not found"..... \$ 20.00
- 166 Causing search warrant to issue or causing prosecution
- 167 without reasonable cause or refusing to cooperate
- 168 after initiating action..... \$ 100.00
- 169 Certified copy of the court record..... \$ 5.00
- 170 Service of arrest warrant for failure to answer
- 171 citation or traffic summons..... \$ 25.00
- 172 Jail cost per day..... \$ 10.00
- 173 Any other item of court cost..... \$ 50.00
- 174 No filing fee or such cost shall be imposed for the bringing
- 175 of an action in municipal court.

176 (12) A municipal court judge shall not dismiss a criminal
177 case but may transfer the case to the justice court of the county
178 if the municipal court judge is prohibited from presiding over the
179 case by the Canons of Judicial Conduct and provided that venue and
180 jurisdiction are proper in the justice court. Upon transfer of
181 any such case, the municipal court judge shall give the municipal
182 court clerk a written order to transmit the affidavit or complaint
183 and all other records and evidence in the court's possession to
184 the justice court by certified mail or to instruct the arresting
185 officer to deliver such documents and records to the justice
186 court. There shall be no court costs charged for the transfer of
187 the case to the justice court.

188 (13) A municipal court judge shall expunge the record of any
189 case in which an arrest was made, the person arrested was released
190 and the case was dismissed or the charges were dropped or there
191 was no disposition of such case.

192 **SECTION 4.** This act shall take effect and be in force from
193 and after July 1, 2005.