

By: Senator(s) White

To: Judiciary, Division B

SENATE BILL NO. 2092

1 AN ACT TO AMEND SECTIONS 99-3-28 AND 21-23-7, MISSISSIPPI
2 CODE OF 1972, TO REQUIRE A PROBABLE CAUSE HEARING PRIOR TO
3 ISSUANCE OF AN ARREST WARRANT BASED UPON COMPLAINT OR AFFIDAVIT;
4 TO PROVIDE CERTAIN EXCEPTIONS; AND FOR RELATED PURPOSES.

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

6 **SECTION 1.** Section 99-3-28, Mississippi Code of 1972, is
7 amended as follows:

8 99-3-28. (1) (a) Except as provided in subsection (2) of
9 this section, before an arrest warrant shall be issued based upon
10 a sworn complaint * * *, a probable cause hearing shall be held
11 before a circuit court judge. The purpose of the hearing shall be
12 to determine if adequate probable cause exists for the issuance of
13 a warrant. All parties testifying in these proceedings shall do
14 so under oath. The accused shall have the right to enter an
15 appearance at the hearing, represented by legal counsel at his own
16 expense, to hear the accusations and evidence against him; he may
17 present evidence or testify in his own behalf.

18 (b) The authority receiving any such charge or
19 complaint * * * shall immediately present same to the county
20 prosecuting attorney having jurisdiction who shall immediately
21 present the charge or complaint to a circuit judge in the judicial
22 district where the action arose for disposition pursuant to this
23 section.

24 (2) Nothing in this section shall prohibit the issuance of
25 an arrest warrant by a circuit court judge upon presentation of
26 probable cause, without the holding of a probable cause hearing,
27 if adequate evidence is presented to satisfy the court that there
28 is a significant risk that the accused will flee the court's

29 jurisdiction or that the accused poses a threat to the safety or
30 well-being of the public.

31 **SECTION 2.** Section 21-23-7, Mississippi Code of 1972, is
32 amended as follows:

33 21-23-7. (1) The municipal judge shall hold court in a
34 public building designated by the governing authorities of the
35 municipality and may hold court every day except Sundays and legal
36 holidays if the business of the municipality so requires;
37 provided, however, the municipal judge may hold court outside the
38 boundaries of the municipality but not more than within a
39 sixty-mile radius of the municipality to handle preliminary
40 matters and criminal matters such as initial appearances and
41 felony preliminary hearings. The municipal judge shall have the
42 jurisdiction to hear and determine, without a jury and without a
43 record of the testimony, all cases charging violations of the
44 municipal ordinances and state misdemeanor laws made offenses
45 against the municipality and to punish offenders therefor as may
46 be prescribed by law. All criminal proceedings shall be brought
47 by sworn complaint filed in the municipal court. Such complaint
48 shall state the essential elements of the offense charged and the
49 statute or ordinance relied upon. Such complaint shall not be
50 required to conclude with a general averment that the offense is
51 against the peace and dignity of the state or in violation of the
52 ordinances of the municipality. He may sit as a committing court
53 in all felonies committed within the municipality, and he shall
54 have the power to bind over the accused to the grand jury or to
55 appear before the proper court having jurisdiction to try the
56 same, and to set the amount of bail or refuse bail and commit the
57 accused to jail in cases not bailable. The municipal judge is a
58 conservator of the peace within his municipality. He may conduct
59 preliminary hearings in all violations of the criminal laws of
60 this state occurring within the municipality, and any person

61 arrested for a violation of law within the municipality may be
62 brought before him for initial appearance.

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

76 (3) The municipal judge may solemnize marriages, take oaths,
77 affidavits and acknowledgments, and issue orders, subpoenas,
78 summonses, citations, warrants for search and arrest upon a
79 finding of probable cause, and other such process under seal of
80 the court to any county or municipality, in a criminal case, to be
81 executed by the lawful authority of the county or the municipality
82 of the respondent, and enforce obedience thereto. The absence of
83 a seal shall not invalidate the process.

84 (4) When a person shall be charged with an offense in
85 municipal court punishable by confinement, the municipal judge,
86 being satisfied that such person is an indigent person and is
87 unable to employ counsel, may, in the discretion of the court,
88 appoint counsel from the membership of The Mississippi Bar
89 residing in his county who shall represent him. Compensation for
90 appointed counsel in criminal cases shall be approved and allowed
91 by the municipal judge and shall be paid by the municipality. The
92 maximum compensation shall not exceed Two Hundred Dollars
93 (\$200.00) for any one (1) case. The governing authorities of a

94 municipality may, in their discretion, appoint a public
95 defender(s) who must be a licensed attorney and who shall receive
96 a salary to be fixed by the governing authorities.

97 (5) The municipal judge of any municipality is hereby
98 authorized to suspend the sentence and to suspend the execution of
99 the sentence, or any part thereof, on such terms as may be imposed
100 by the municipal judge. However, the suspension of imposition or
101 execution of a sentence hereunder may not be revoked after a
102 period of two (2) years. The municipal judge shall have the power
103 to establish and operate a probation program, dispute resolution
104 program and other practices or procedures appropriate to the
105 judiciary and designed to aid in the administration of justice.
106 Any such program shall be established by the court with written
107 policies and procedures filed with the clerk of the court for
108 public record.

109 (6) Upon prior notice to the municipal prosecuting attorney
110 and upon a showing in open court of rehabilitation, good conduct
111 for a period of two (2) years since the last conviction in any
112 court and that the best interest of society would be served, the
113 court may, in its discretion, order the record of conviction of a
114 person of any or all misdemeanors in that court expunged, and upon
115 so doing the said person thereafter legally stands as though he
116 had never been convicted of the said misdemeanor(s) and may
117 lawfully so respond to any query of prior convictions. This order
118 of expunction does not apply to the confidential records of law
119 enforcement agencies and has no effect on the driving record of a
120 person maintained under Title 63, Mississippi Code of 1972, or any
121 other provision of said Title 63.

122 (7) Notwithstanding the provisions of subsection (6) of this
123 section, a person who was convicted in municipal court of a
124 misdemeanor before reaching his twenty-third birthday, excluding
125 conviction for a traffic violation, and who is a first offender,

126 may utilize the provisions of Section 99-19-71, to expunge such
127 misdemeanor conviction.

128 (8) In the discretion of the court, a plea of nolo
129 contendere may be entered to any charge in municipal court. Upon
130 the entry of a plea of nolo contendere the court shall convict the
131 defendant of the offense charged and shall proceed to sentence the
132 defendant according to law. The judgment of the court shall
133 reflect that the conviction was on a plea of nolo contendere. An
134 appeal may be made from a conviction on a plea of nolo contendere
135 as in other cases.

136 (9) Upon execution of a sworn complaint charging a
137 misdemeanor, the municipal court may, in its discretion and in
138 lieu of an arrest warrant, issue a citation requiring the
139 appearance of the defendant to answer the charge made against him.
140 On default of appearance, an arrest warrant may be issued for the
141 defendant. The clerk of the court or deputy clerk may issue such
142 citations. Issuance of an arrest warrant prior to default of
143 appearance pursuant to citation shall comply with Section 99-3-28.

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

147 (11) The municipal court shall have the power to impose
148 punishment of a fine of not more than One Thousand Dollars
149 (\$1,000.00) or six (6) months' imprisonment, or both, for contempt
150 of court. The municipal court may have the power to impose
151 reasonable costs of court, not in excess of the following:

152	Dismissal of any affidavit, complaint or charge	
153	in municipal court.....	\$ 50.00
154	Suspension of a minor's driver's license in lieu of	
155	conviction.....	\$ 50.00
156	Service of scire facias or return "not found".....	\$ 20.00
157	Causing search warrant to issue or causing prosecution	
158	without reasonable cause or refusing to cooperate	

159 after initiating action..... \$ 100.00
 160 Certified copy of the court record..... \$ 5.00
 161 Service of arrest warrant for failure to answer
 162 citation or traffic summons..... \$ 25.00
 163 Jail cost per day..... \$ 10.00
 164 Any other item of court cost..... \$ 50.00
 165 No filing fee or such cost shall be imposed for the bringing
 166 of an action in municipal court.

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

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

183 **SECTION 3.** This act shall take effect and be in force from
 184 and after July 1, 2005.