

By: Representatives Flaggs, Banks, Clark,  
Hines

To: Juvenile Justice;  
Corrections

COMMITTEE SUBSTITUTE  
FOR  
HOUSE BILL NO. 1090

1 AN ACT TO CREATE THE JUVENILE TRANSFER REFORM ACT OF 2006; TO  
2 AMEND SECTION 43-21-151, MISSISSIPPI CODE OF 1972, TO REMOVE  
3 CERTAIN ACTS COMMITTED BY A CHILD FROM THE EXCLUSIVE JURISDICTION  
4 OF THE CIRCUIT COURT; TO AMEND SECTION 43-21-157, MISSISSIPPI CODE  
5 OF 1972, TO REVISE THE AGE FROM THIRTEEN TO FIFTEEN AS TO WHEN A  
6 YOUTH COURT MAY TRANSFER A CHILD TO THE CRIMINAL COURT WHEN  
7 CERTAIN OFFENSES ARE COMMITTED BY SUCH CHILD; TO AUTHORIZE THE  
8 CIRCUIT COURT TO INVOKE DUAL JURISDICTION THUS ALLOWING SUCH COURT  
9 TO IMPOSE A JUVENILE DISPOSITION WHILE SIMULTANEOUSLY IMPOSING A  
10 CRIMINAL SENTENCE, AFTER A CHILD IS TRANSFERRED TO CIRCUIT COURT  
11 AND IS CONVICTED; TO AMEND SECTION 47-7-3, MISSISSIPPI CODE OF  
12 1972, TO EXEMPT THE PAROLE ELIGIBILITY EXCEPTIONS FROM CERTAIN  
13 OFFENDERS WHO WERE UNDER 18 WHEN HE OR SHE COMMITTED AN OFFENSE;  
14 TO AMEND SECTION 99-19-1, MISSISSIPPI CODE OF 1972, IN CONFORMITY  
15 THERETO; AND FOR RELATED PURPOSES.

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

17 **SECTION 1.** Section 43-21-151, Mississippi Code of 1972, is  
18 amended as follows:

19 43-21-151. (1) The youth court shall have exclusive  
20 original jurisdiction in all proceedings concerning a delinquent  
21 child, a child in need of supervision, a neglected child, an  
22 abused child or a dependent child except \* \* \* when a charge of  
23 abuse of a child first arises in the course of a custody action  
24 between the parents of the child already pending in the chancery  
25 court and no notice of such abuse was provided prior to such  
26 chancery proceedings, the chancery court may proceed with the  
27 investigation, hearing and determination of such abuse charge as a  
28 part of its hearing and determination of the custody issue as  
29 between the parents, notwithstanding the other provisions of the  
30 Youth Court Law. The proceedings in chancery court on the abuse  
31 charge shall be confidential in the same manner as provided in  
32 youth court proceedings.

33           When a child is expelled from the public schools, the youth  
34 court shall be notified of the act of expulsion and the act or  
35 acts constituting the basis for expulsion.

36           (2) Jurisdiction of the child in the cause shall attach at  
37 the time of the offense and shall continue thereafter for that  
38 offense until the child's twentieth birthday, unless sooner  
39 terminated by order of the youth court. The youth court shall not  
40 have jurisdiction over offenses committed by a child on or after  
41 his eighteenth birthday, or over offenses committed by a child on  
42 or after his seventeenth birthday where such offenses would be a  
43 felony if committed by an adult.

44           (3) No child who has not reached his thirteenth birthday  
45 shall be held criminally responsible or criminally prosecuted for  
46 a misdemeanor or felony; however, the parent, guardian or  
47 custodian of such child may be civilly liable for any criminal  
48 acts of such child. No child under the jurisdiction of the youth  
49 court shall be held criminally responsible or criminally  
50 prosecuted by any court for any act designated as a delinquent  
51 act, unless jurisdiction is transferred to another court under  
52 Section 43-21-157.

53           (4) The youth court shall also have jurisdiction of offenses  
54 committed by a child which have been transferred to the youth  
55 court by an order of a circuit court of this state having original  
56 jurisdiction of the offense, as provided by Section 43-21-159.

57           (5) The youth court shall regulate and approve the use of  
58 teen court as provided in Section 43-21-753.

59           **SECTION 2.** Section 43-21-157, Mississippi Code of 1972, is  
60 amended as follows:

61           43-21-157. (1) If a child who has reached his or her  
62 fifteenth birthday is charged by petition to be a delinquent  
63 child, the youth court, either on motion of the youth court  
64 prosecutor or on the youth court's own motion, after a hearing as  
65 hereinafter provided, may, in its discretion, transfer

66 jurisdiction of the alleged offense described in the petition or a  
67 lesser included offense to the criminal court which would have  
68 trial jurisdiction of such offense if committed by an adult. The  
69 child shall be represented by counsel in transfer proceedings.

70 (2) A motion to transfer shall be filed on a day prior to  
71 the date set for the adjudicatory hearing but not more than ten  
72 (10) days after the filing of the petition. The youth court may  
73 order a transfer study at any time after the motion to transfer is  
74 filed. The transfer study and any other social record which the  
75 youth court will consider at the transfer hearing shall be made  
76 available to the child's counsel prior to the hearing. Summons  
77 shall be served in the same manner as other summons under this  
78 chapter with a copy of the motion to transfer and the petition  
79 attached thereto.

80 (3) The transfer hearing shall be bifurcated. At the  
81 transfer hearing, the youth court shall first determine whether  
82 probable cause exists to believe that the child committed the  
83 alleged offense. For the purpose of the transfer hearing only,  
84 the child may, with the assistance of counsel, waive the  
85 determination of probable cause.

86 (4) Upon such a finding of probable cause, the youth court  
87 may transfer jurisdiction of the alleged offense and the youth if  
88 the youth court finds by clear and convincing evidence that there  
89 are no reasonable prospects of rehabilitation within the juvenile  
90 justice system.

91 (5) The factors which shall be considered by the youth court  
92 in determining the reasonable prospects of rehabilitation within  
93 the juvenile justice system are:

94 (a) Whether or not the alleged offense constituted a  
95 substantial danger to the public;

96 (b) The seriousness of the alleged offense;

97 (c) Whether or not the transfer is required to protect  
98 the community;

99                   (d) Whether or not the alleged offense was committed in  
100 an aggressive, violent, premeditated or willful manner;

101                   (e) Whether the alleged offense was against persons or  
102 against property, greater weight being given to the offense  
103 against persons, especially if personal injury resulted;

104                   (f) The sophistication, maturity and educational  
105 background of the child;

106                   (g) The child's home situation, emotional condition and  
107 life-style;

108                   (h) The history of the child, including experience with  
109 the juvenile justice system, other courts, probation, commitments  
110 to juvenile institutions or other placements;

111                   (i) Whether or not the child can be retained in the  
112 juvenile justice system long enough for effective treatment or  
113 rehabilitation;

114                   (j) The dispositional resources available to the  
115 juvenile justice system;

116                   (k) Dispositional resources available to the adult  
117 correctional system for the child if treated as an adult;

118                   (l) Whether the alleged offense was committed on school  
119 property, public or private, or at any school-sponsored event, and  
120 constituted a substantial danger to other students;

121                   (m) Any other factors deemed relevant by the youth  
122 court; and

123                   (n) Nothing in this subsection shall prohibit the  
124 transfer of jurisdiction of an alleged offense and a child if that  
125 child, at the time of the transfer hearing, previously has not  
126 been placed in a juvenile institution.

127                   (6) If the youth court transfers jurisdiction of the alleged  
128 offense to a criminal court, the youth court shall enter a  
129 transfer order containing:

130                   (a) Facts showing that the youth court had jurisdiction  
131 of the cause and of the parties;

132           (b) Facts showing that the child was represented by  
133 counsel;

134           (c) Facts showing that the hearing was held in the  
135 presence of the child and his counsel;

136           (d) A recital of the findings of probable cause and the  
137 facts and reasons underlying the youth court's decision to  
138 transfer jurisdiction of the alleged offense;

139           (e) The conditions of custody or release of the child  
140 pending criminal court proceedings, including bail or recognizance  
141 as the case may justify, as well as a designation of the custodian  
142 for the time being; and

143           (f) A designation of the alleged offense transferred  
144 and of the court to which the transfer is made and a direction to  
145 the clerk to forward for filing in such court a certified copy of  
146 the transfer order of the youth court.

147           (7) The testimony of the child respondent at a transfer  
148 hearing conducted pursuant to this chapter shall not be admissible  
149 against the child in any proceeding other than the transfer  
150 hearing.

151           (8) When jurisdiction of an offense is transferred to the  
152 circuit court, \* \* \* the jurisdiction of the youth court over the  
153 youth is forever terminated, except that such jurisdiction is not  
154 forever terminated if the circuit court transfers or remands the  
155 transferred case to the youth court or if a child who has been  
156 transferred to the circuit court or is in the original  
157 jurisdiction of the circuit court is not convicted. However, when  
158 jurisdiction of an offense is transferred to the circuit court  
159 pursuant to this section \* \* \* the circuit court shall thereafter  
160 assume and retain jurisdiction of any felony offenses committed by  
161 such youth without any additional transfer proceedings. Any  
162 misdemeanor offenses committed by youth who are in circuit court  
163 jurisdiction pursuant to this section or Section 43-21-151 shall  
164 be prosecuted in the court which would have jurisdiction over that

165 offense if committed by an adult without any additional transfer  
166 proceedings. The circuit court may review the transfer  
167 proceedings on motion of the transferred child. Such review shall  
168 be on the record of the hearing in the youth court. The circuit  
169 court shall remand the offense to the youth court if there is no  
170 substantial evidence to support the order of the youth court. The  
171 circuit court may also review the conditions of custody or release  
172 pending criminal court proceedings.

173 (9) When any youth has been the subject of a transfer to  
174 circuit court for an offense committed in any county of the  
175 state \* \* \* that transfer \* \* \* shall be recognized by all other  
176 courts of the state and no subsequent offense committed by such  
177 youth in any county of the state shall be in the jurisdiction of  
178 the youth court unless transferred to the youth court pursuant to  
179 Section 43-21-159(3). Transfers from youth courts of other states  
180 shall be recognized by the courts of this state and no youth who  
181 has a pending charge or a conviction in the adult court system of  
182 any other state shall be in the jurisdiction of the youth courts  
183 of this state, but such youths shall be in the jurisdiction of the  
184 circuit court for any felony committed in this state or in the  
185 jurisdiction of the court of competent jurisdiction for any  
186 misdemeanor committed in this state.

187 (10) (a) When a child is transferred to circuit court and  
188 his or her prosecution results in a conviction or guilty plea, the  
189 circuit court may invoke dual jurisdiction of both the criminal  
190 code and the youth court statute as set forth in this subsection.  
191 The circuit court is authorized to impose a juvenile disposition  
192 and simultaneously impose a criminal sentence, the execution of  
193 which shall be suspended pursuant to the provisions of this  
194 subsection. Successful completion of the juvenile disposition  
195 ordered shall be a condition for the suspended criminal sentence.  
196 The court may order an offender into the custody of the Department  
197 of Human Services if, after considering the factors set forth in

198 Section 43-21-603(3) paragraphs (a) through (e), the court  
199 determines that a dispositional alternative provided in Section  
200 43-21-605 is appropriate to serve both the needs of the child and  
201 protect public safety.

202 (b) If probable cause exists to believe that the  
203 offender has violated a condition of the suspended sentences or  
204 committed a new offense, the court shall conduct a hearing on the  
205 violation charged, unless the offender waives such hearing. If a  
206 violation is established, the court may continue or revoke the  
207 juvenile disposition, impose the adult criminal sanctions or enter  
208 such other order as it may see fit.

209 (c) When an offender has received a suspended sentence  
210 pursuant to this section and the division determines the child is  
211 beyond the scope of its treatment programs, the Department of  
212 Human Services may petition the court to transfer the custody of  
213 the offender. The court shall hold a hearing and shall:

214 (i) Revoke the suspension and order that the  
215 offender be taken into the custody of the Department of  
216 Corrections; or

217 (ii) Order that the offender be placed on  
218 probation.

219 (d) When an offender reaches the age of eighteen (18)  
220 or after the juvenile disposition expires, the court shall hold a  
221 hearing to determine if the offender has been sufficiently  
222 rehabilitated. Among other relevant factors, the court shall  
223 consider academic progress, medical and mental health history,  
224 facility disciplinary records and recommendations of the youth  
225 court counselor and the Department of Human Services. Based on  
226 evidence presented at the hearing, the court shall:

227 (i) Revoke the suspension and direct that the  
228 offender be taken into immediate custody of the Department of  
229 Corrections; or

230 (ii) Direct that the offender be placed on  
231 probation; or

232 (iii) Release the offender from the terms of the  
233 juvenile disposition and the suspended criminal sentence.

234 (11) Notwithstanding any other provision of law, before  
235 sentencing any child, the court shall conduct a sentencing hearing  
236 to consider the factors set forth in Section 43-21-603(3)  
237 paragraphs (a) through (e). The court retains discretion to  
238 impose a mandatory sentence after a hearing and consideration of  
239 the factors set forth in Section 43-21-603(3) paragraphs (a)  
240 through (e).

241 (12) No judge, under any circumstances, shall order any  
242 child under this section to Oakley or Columbia Training School.

243 **SECTION 3.** Section 47-7-3, Mississippi Code of 1972, is  
244 amended as follows:

245 47-7-3. (1) Every prisoner who has been convicted of any  
246 offense against the State of Mississippi, and is confined in the  
247 execution of a judgment of such conviction in the Mississippi  
248 Department of Corrections for a definite term or terms of one (1)  
249 year or over, or for the term of his or her natural life, whose  
250 record of conduct shows that such prisoner has observed the rules  
251 of the department, and who has served not less than one-fourth  
252 (1/4) of the total of such term or terms for which such prisoner  
253 was sentenced, or, if sentenced to serve a term or terms of thirty  
254 (30) years or more, or, if sentenced for the term of the natural  
255 life of such prisoner, has served not less than ten (10) years of  
256 such life sentence, may be released on parole as hereinafter  
257 provided, except that:

258 (a) No prisoner convicted as a confirmed and habitual  
259 criminal under the provisions of Sections 99-19-81 through  
260 99-19-87 shall be eligible for parole;

261 (b) Any person who shall have been convicted of a sex  
262 crime shall not be released on parole except for a person under



263 the age of nineteen (19) who has been convicted under Section  
264 97-3-67;

265 (c) No one shall be eligible for parole until he shall  
266 have served one (1) year of his sentence, unless such person has  
267 accrued any meritorious earned time allowances, in which case he  
268 shall be eligible for parole if he has served (i) nine (9) months  
269 of his sentence or sentences, when his sentence or sentences is  
270 two (2) years or less; (ii) ten (10) months of his sentence or  
271 sentences when his sentence or sentences is more than two (2)  
272 years but no more than five (5) years; and (iii) one (1) year of  
273 his sentence or sentences when his sentence or sentences is more  
274 than five (5) years;

275 (d) (i) No person shall be eligible for parole who  
276 shall, on or after January 1, 1977, be convicted of robbery or  
277 attempted robbery through the display of a firearm until he shall  
278 have served ten (10) years if sentenced to a term or terms of more  
279 than ten (10) years or if sentenced for the term of the natural  
280 life of such person. If such person is sentenced to a term or  
281 terms of ten (10) years or less, then such person shall not be  
282 eligible for parole. The provisions of this paragraph (d) shall  
283 also apply to any person who shall commit robbery or attempted  
284 robbery on or after July 1, 1982, through the display of a deadly  
285 weapon. This subparagraph (d)(i) shall not apply to persons  
286 convicted after September 30, 1994;

287 (ii) No person shall be eligible for parole who  
288 shall, on or after October 1, 1994, be convicted of robbery,  
289 attempted robbery or carjacking as provided in Section 97-3-115 et  
290 seq., through the display of a firearm or drive-by shooting as  
291 provided in Section 97-3-109. The provisions of this subparagraph  
292 (d)(ii) shall also apply to any person who shall commit robbery,  
293 attempted robbery, carjacking or a drive-by shooting on or after  
294 October 1, 1994, through the display of a deadly weapon;

295           (e) No person shall be eligible for parole who, on or  
296 after July 1, 1994, is charged, tried, convicted and sentenced to  
297 life imprisonment without eligibility for parole under the  
298 provisions of Section 99-19-101;

299           (f) No person shall be eligible for parole who is  
300 charged, tried, convicted and sentenced to life imprisonment under  
301 the provisions of Section 99-19-101;

302           (g) No person shall be eligible for parole who is  
303 convicted or whose suspended sentence is revoked after June 30,  
304 1995, except that a first offender convicted of a nonviolent crime  
305 after January 1, 2000, may be eligible for parole if the offender  
306 meets the requirements in subsection (1) and this paragraph. In  
307 addition to other requirements, if a first offender is convicted  
308 of a drug or driving under the influence felony, the offender must  
309 complete a drug and alcohol rehabilitation program prior to parole  
310 or the offender may be required to complete a post-release drug  
311 and alcohol program as a condition of parole. For purposes of  
312 this paragraph, "nonviolent crime" means a felony other than  
313 homicide, robbery, manslaughter, sex crimes, arson, burglary of an  
314 occupied dwelling, aggravated assault, kidnapping, felonious abuse  
315 of vulnerable adults, felonies with enhanced penalties, the sale  
316 or manufacture of a controlled substance under the Uniform  
317 Controlled Substances Law, felony child abuse, or any crime under  
318 Section 97-5-33 or Section 97-5-39(2) or a violation of Section  
319 63-11-30(5) resulting in death, or serious bodily injury resulting  
320 in the loss of a limb or dismemberment, loss of eyesight, a coma,  
321 permanent dysfunction of any vital organ, paralysis or resulting  
322 in an individual's permanent bedridden state. For purposes of  
323 this paragraph, "first offender" means a person who at the time of  
324 sentencing has not been convicted of a felony on a previous  
325 occasion in any court or courts of the United States or in any  
326 state or territory thereof. In addition, a first time offender  
327 incarcerated for committing the crime of possession of a

328 controlled substance under the Uniform Controlled Substances Law  
329 after July 1, 1995, shall be eligible for parole as provided for  
330 such offenders in this paragraph after July 1, 2000.

331 (h) Notwithstanding any other provision of law, the  
332 parole eligibility exceptions contained in paragraphs (a) through  
333 (g) of this subsection shall not apply to any offender who was  
334 under the age of eighteen (18) at the time he or she committed the  
335 offense.

336 (2) Notwithstanding any other provision of law, an inmate  
337 shall not be eligible to receive earned time, good time or any  
338 other administrative reduction of time which shall reduce the time  
339 necessary to be served for parole eligibility as provided in  
340 subsection (1) of this section; however, this subsection shall not  
341 apply to the advancement of parole eligibility dates pursuant to  
342 the Prison Overcrowding Emergency Powers Act. Moreover,  
343 meritorious earned time allowances may be used to reduce the time  
344 necessary to be served for parole eligibility as provided in  
345 paragraph (c) of subsection (1) of this section.

346 (3) (a) The State Parole Board shall by rules and  
347 regulations establish a method of determining a tentative parole  
348 hearing date for each eligible offender taken into the custody of  
349 the Department of Corrections. The tentative parole hearing date  
350 shall be determined within ninety (90) days after the department  
351 has assumed custody of the offender. Such tentative parole  
352 hearing date shall be calculated by a formula taking into account  
353 the offender's age upon first commitment, number of prior  
354 incarcerations, prior probation or parole failures, the severity  
355 and the violence of the offense committed, employment history and  
356 other criteria which in the opinion of the board tend to validly  
357 and reliably predict the length of incarceration necessary before  
358 the offender can be successfully paroled.

359 (b) [Repealed].

360 (4) Any inmate within twenty-four (24) months of his parole  
361 eligibility date and who meets the criteria established by the  
362 classification board shall receive priority for placement in any  
363 educational development and job training programs. Any inmate  
364 refusing to participate in an educational development or job  
365 training program may be ineligible for parole.

366 **SECTION 4.** Section 99-19-1, Mississippi Code of 1972, is  
367 amended as follows:

368 99-19-1. Except as provided in Section 47-7-3, no statutory  
369 change of any law affecting a crime or its punishment or the  
370 collection of a penalty shall affect or defeat the prosecution of  
371 any crime committed prior to its enactment, or the collection of  
372 any penalty, whether such prosecution be instituted before or  
373 after such enactment; and all laws defining a crime or prescribing  
374 its punishment, or for the imposition of penalties, shall be  
375 continued in operation for the purpose of providing punishment for  
376 crimes committed under them, and for collection of such penalties,  
377 notwithstanding amendatory or repealing statutes, unless otherwise  
378 specially provided in such statutes.

379 **SECTION 5.** This act shall take effect and be in force from  
380 and after its passage.