

By: Representatives Flaggs, Banks, Clark,  
Hines

To: Juvenile Justice;  
Corrections

HOUSE BILL NO. 1090  
(As Passed the House)

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 AUTHORIZE THE CIRCUIT COURT TO INVOKE DUAL  
6 JURISDICTION THUS ALLOWING SUCH COURT TO IMPOSE A JUVENILE  
7 DISPOSITION WHILE SIMULTANEOUSLY IMPOSING A CRIMINAL SENTENCE,  
8 AFTER A CHILD IS TRANSFERRED TO CIRCUIT COURT AND IS CONVICTED; TO  
9 AMEND SECTION 47-7-3, MISSISSIPPI CODE OF 1972, TO EXEMPT THE  
10 PAROLE ELIGIBILITY EXCEPTIONS FROM CERTAIN OFFENDERS WHO WERE  
11 UNDER 18 WHEN HE OR SHE COMMITTED AN OFFENSE; TO AMEND SECTION  
12 99-19-1, MISSISSIPPI CODE OF 1972, IN CONFORMITY THERETO; AND FOR  
13 RELATED PURPOSES.

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

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

17 43-21-151. (1) The youth court shall have exclusive  
18 original jurisdiction in all proceedings concerning a delinquent  
19 child, a child in need of supervision, a neglected child, an  
20 abused child or a dependent child except \* \* \* when a charge of  
21 abuse of a child first arises in the course of a custody action  
22 between the parents of the child already pending in the chancery  
23 court and no notice of such abuse was provided prior to such  
24 chancery proceedings, the chancery court may proceed with the  
25 investigation, hearing and determination of such abuse charge as a  
26 part of its hearing and determination of the custody issue as  
27 between the parents, notwithstanding the other provisions of the  
28 Youth Court Law. The proceedings in chancery court on the abuse  
29 charge shall be confidential in the same manner as provided in  
30 youth court proceedings.

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

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

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

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

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

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

59           43-21-157. (1) If a child who has reached his or her  
60 thirteenth birthday is charged by petition to be a delinquent  
61 child, the youth court, either on motion of the youth court  
62 prosecutor or on the youth court's own motion, after a hearing as  
63 hereinafter provided, may, in its discretion, transfer

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

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

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

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

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

92 (a) Whether or not the alleged offense constituted a  
93 substantial danger to the public;

94 (b) The seriousness of the alleged offense;

95 (c) Whether or not the transfer is required to protect  
96 the community;

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

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

102           (f) The sophistication, maturity and educational  
103 background of the child;

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

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

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

112           (j) The dispositional resources available to the  
113 juvenile justice system;

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

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

119           (m) Any other factors deemed relevant by the youth  
120 court; and

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

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

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

130 (b) Facts showing that the child was represented by  
131 counsel;

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

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

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

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

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

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

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

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

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

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

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

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

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

215 (ii) Order that the offender be placed on  
216 probation.

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

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

228 (ii) Direct that the offender be placed on  
229 probation; or

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

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

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

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

243 47-7-3. (1) Every prisoner who has been convicted of any  
244 offense against the State of Mississippi, and is confined in the  
245 execution of a judgment of such conviction in the Mississippi  
246 Department of Corrections for a definite term or terms of one (1)  
247 year or over, or for the term of his or her natural life, whose  
248 record of conduct shows that such prisoner has observed the rules  
249 of the department, and who has served not less than one-fourth  
250 (1/4) of the total of such term or terms for which such prisoner  
251 was sentenced, or, if sentenced to serve a term or terms of thirty  
252 (30) years or more, or, if sentenced for the term of the natural  
253 life of such prisoner, has served not less than ten (10) years of  
254 such life sentence, may be released on parole as hereinafter  
255 provided, except that:

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

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



261 the age of nineteen (19) who has been convicted under Section  
262 97-3-67;

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

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

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

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

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

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

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

329 (h) Notwithstanding any other provision of law, the  
330 parole eligibility exceptions contained in paragraphs (a) through  
331 (g) of this subsection shall not apply to any offender who was  
332 under the age of eighteen (18) at the time he or she committed the  
333 offense. This provision is exempt from the terms of Section  
334 99-19-1.

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

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

358 (b) [Repealed].

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

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

367           99-19-1. Except as provided in Section 47-7-3, no statutory  
368 change of any law affecting a crime or its punishment or the  
369 collection of a penalty shall affect or defeat the prosecution of  
370 any crime committed prior to its enactment, or the collection of  
371 any penalty, whether such prosecution be instituted before or  
372 after such enactment; and all laws defining a crime or prescribing  
373 its punishment, or for the imposition of penalties, shall be  
374 continued in operation for the purpose of providing punishment for  
375 crimes committed under them, and for collection of such penalties,  
376 notwithstanding amendatory or repealing statutes, unless otherwise  
377 specially provided in such statutes.

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