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To: Juvenile Justice

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 727

1 AN ACT TO AMEND SECTION 43-21-157, MISSISSIPPI CODE OF 1972,
2 TO PROHIBIT THE CIRCUIT COURT FROM AUTOMATICALLY IMPOSING A
3 MANDATORY SENTENCE FOR ANY CHILD UNDER 17 YEARS OF AGE WHO IS
4 UNDER THE COURT'S JURISDICTION, AND TO PROHIBIT SUCH COURT FROM
5 SENTENCING ANY CHILD TO LIFE WITHOUT PAROLE; TO AMEND SECTION
6 47-7-3, MISSISSIPPI CODE OF 1972, IN CONFORMITY THERETO; TO AMEND
7 SECTION 43-21-303, MISSISSIPPI CODE OF 1972, TO CLARIFY THAT
8 DURING THE INTERROGATION OF ANY CHILD WHO IS UNDER 17 YEARS OF
9 AGE, LAW ENFORCEMENT OFFICIALS MUST MAKE CONTINUING REASONABLE
10 EFFORTS TO CONTACT THE CHILD'S PARENTS DURING SUCH QUESTIONING; TO
11 PROHIBIT THE USE OF ANY STATEMENTS OR CONFESSIONS IN ANY COURT
12 PROCEEDING THAT ARE OBTAINED FROM A CHILD UNDER THE AGE OF 17,
13 UNLESS CERTAIN CONDITIONS ARE MET; AND FOR RELATED PURPOSES.

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

15 **SECTION 1.** Section 43-21-157, Mississippi Code of 1972, is
16 amended as follows:

17 43-21-157. (1) If a child who has reached his thirteenth
18 birthday is charged by petition to be a delinquent child, the
19 youth court, either on motion of the youth court prosecutor or on
20 the youth court's own motion, after a hearing as hereinafter
21 provided, may, in its discretion, transfer jurisdiction of the
22 alleged offense described in the petition or a lesser included
23 offense to the criminal court which would have trial jurisdiction
24 of such offense if committed by an adult. The child shall be
25 represented by counsel in transfer proceedings.

26 (2) A motion to transfer shall be filed on a day prior to
27 the date set for the adjudicatory hearing but not more than ten
28 (10) days after the filing of the petition. The youth court may
29 order a transfer study at any time after the motion to transfer is
30 filed. The transfer study and any other social record which the
31 youth court will consider at the transfer hearing shall be made
32 available to the child's counsel prior to the hearing. Summons

33 shall be served in the same manner as other summons under this
34 chapter with a copy of the motion to transfer and the petition
35 attached thereto.

36 (3) The transfer hearing shall be bifurcated. At the
37 transfer hearing, the youth court shall first determine whether
38 probable cause exists to believe that the child committed the
39 alleged offense. For the purpose of the transfer hearing only,
40 the child may, with the assistance of counsel, waive the
41 determination of probable cause.

42 (4) Upon such a finding of probable cause, the youth court
43 may transfer jurisdiction of the alleged offense and the youth if
44 the youth court finds by clear and convincing evidence that there
45 are no reasonable prospects of rehabilitation within the juvenile
46 justice system.

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

50 (a) Whether or not the alleged offense constituted a
51 substantial danger to the public;

52 (b) The seriousness of the alleged offense;

53 (c) Whether or not the transfer is required to protect
54 the community;

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

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

60 (f) The sophistication, maturity and educational
61 background of the child;

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

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

67 (i) Whether or not the child can be retained in the
68 juvenile justice system long enough for effective treatment or
69 rehabilitation;

70 (j) The dispositional resources available to the
71 juvenile justice system;

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

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

77 (m) Any other factors deemed relevant by the youth
78 court; and

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

83 (6) If the youth court transfers jurisdiction of the alleged
84 offense to a criminal court, the youth court shall enter a
85 transfer order containing:

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

88 (b) Facts showing that the child was represented by
89 counsel;

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

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

95 (e) The conditions of custody or release of the child
96 pending criminal court proceedings, including bail or recognizance

97 as the case may justify, as well as a designation of the custodian
98 for the time being; and

99 (f) A designation of the alleged offense transferred
100 and of the court to which the transfer is made and a direction to
101 the clerk to forward for filing in such court a certified copy of
102 the transfer order of the youth court.

103 (7) The testimony of the child respondent at a transfer
104 hearing conducted pursuant to this chapter shall not be admissible
105 against the child in any proceeding other than the transfer
106 hearing.

107 (8) When jurisdiction of an offense is transferred to the
108 circuit court, or when a youth has committed an act which is in
109 original circuit court jurisdiction pursuant to Section 43-21-151,
110 the jurisdiction of the youth court over the youth is forever
111 terminated, except that such jurisdiction is not forever
112 terminated if the circuit court transfers or remands the
113 transferred case to the youth court or if a child who has been
114 transferred to the circuit court or is in the original
115 jurisdiction of the circuit court is not convicted. However, when
116 jurisdiction of an offense is transferred to the circuit court
117 pursuant to this section or when an offense committed by a youth
118 is in original circuit court jurisdiction pursuant to Section
119 43-21-151, the circuit court shall thereafter assume and retain
120 jurisdiction of any felony offenses committed by such youth
121 without any additional transfer proceedings. Any misdemeanor
122 offenses committed by youth who are in circuit court jurisdiction
123 pursuant to this section or Section 43-21-151 shall be prosecuted
124 in the court which would have jurisdiction over that offense if
125 committed by an adult without any additional transfer proceedings.
126 The circuit court may review the transfer proceedings on motion of
127 the transferred child. Such review shall be on the record of the
128 hearing in the youth court. The circuit court shall remand the
129 offense to the youth court if there is no substantial evidence to

130 support the order of the youth court. The circuit court may also
131 review the conditions of custody or release pending criminal court
132 proceedings.

133 (9) When any youth has been the subject of a transfer to
134 circuit court for an offense committed in any county of the state
135 or has committed any act which is in the original jurisdiction of
136 the circuit court pursuant to Section 43-21-151, that transfer or
137 original jurisdiction shall be recognized by all other courts of
138 the state and no subsequent offense committed by such youth in any
139 county of the state shall be in the jurisdiction of the youth
140 court unless transferred to the youth court pursuant to Section
141 43-21-159(3). Transfers from youth courts of other states shall
142 be recognized by the courts of this state and no youth who has a
143 pending charge or a conviction in the adult court system of any
144 other state shall be in the jurisdiction of the youth courts of
145 this state, but such youths shall be in the jurisdiction of the
146 circuit court for any felony committed in this state or in the
147 jurisdiction of the court of competent jurisdiction for any
148 misdemeanor committed in this state.

149 (10) The circuit court may not automatically impose a
150 mandatory sentence for any child who is under 17 years of age and
151 who is under its jurisdiction, nor may the court sentence any
152 child to life without parole. Before sentencing any child, the
153 court must conduct a sentencing hearing to consider the factors
154 set forth in Section 43-21-603 (3)(a-e).

155 **SECTION 2.** Section 47-7-3, Mississippi Code of 1972, is
156 amended as follows:

157 47-7-3. (1) Every prisoner who has been convicted of any
158 offense against the State of Mississippi, and is confined in the
159 execution of a judgment of such conviction in the Mississippi
160 Department of Corrections for a definite term or terms of one (1)
161 year or over, or for the term of his or her natural life, whose
162 record of conduct shows that such prisoner has observed the rules

163 of the department, and who has served not less than one-fourth
164 (1/4) of the total of such term or terms for which such prisoner
165 was sentenced, or, if sentenced to serve a term or terms of thirty
166 (30) years or more, or, if sentenced for the term of the natural
167 life of such prisoner, has served not less than ten (10) years of
168 such life sentence, may be released on parole as hereinafter
169 provided, except that:

170 (a) No prisoner convicted as a confirmed and habitual
171 criminal under the provisions of Sections 99-19-81 through
172 99-19-87 shall be eligible for parole;

173 (b) Any person who shall have been convicted of a sex
174 crime shall not be released on parole except for a person under
175 the age of nineteen (19) who has been convicted under Section
176 97-3-67;

177 (c) No one shall be eligible for parole until he shall
178 have served one (1) year of his sentence, unless such person has
179 accrued any meritorious earned time allowances, in which case he
180 shall be eligible for parole if he has served (i) nine (9) months
181 of his sentence or sentences, when his sentence or sentences is
182 two (2) years or less; (ii) ten (10) months of his sentence or
183 sentences when his sentence or sentences is more than two (2)
184 years but no more than five (5) years; and (iii) one (1) year of
185 his sentence or sentences when his sentence or sentences is more
186 than five (5) years;

187 (d) (i) No person shall be eligible for parole who
188 shall, on or after January 1, 1977, be convicted of robbery or
189 attempted robbery through the display of a firearm until he shall
190 have served ten (10) years if sentenced to a term or terms of more
191 than ten (10) years or if sentenced for the term of the natural
192 life of such person. If such person is sentenced to a term or
193 terms of ten (10) years or less, then such person shall not be
194 eligible for parole. The provisions of this paragraph (d) shall
195 also apply to any person who shall commit robbery or attempted

196 robbery on or after July 1, 1982, through the display of a deadly
197 weapon. This subparagraph (d)(i) shall not apply to persons
198 convicted after September 30, 1994;

199 (ii) No person shall be eligible for parole who
200 shall, on or after October 1, 1994, be convicted of robbery,
201 attempted robbery or carjacking as provided in Section 97-3-115 et
202 seq., through the display of a firearm or drive-by shooting as
203 provided in Section 97-3-109. The provisions of this subparagraph
204 (d)(ii) shall also apply to any person who shall commit robbery,
205 attempted robbery, carjacking or a drive-by shooting on or after
206 October 1, 1994, through the display of a deadly weapon;

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

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

214 (g) No person shall be eligible for parole who is
215 convicted or whose suspended sentence is revoked after June 30,
216 1995, except that a first offender convicted of a nonviolent crime
217 after January 1, 2000, may be eligible for parole if the offender
218 meets the requirements in subsection (1) and this paragraph. In
219 addition to other requirements, if a first offender is convicted
220 of a drug or driving under the influence felony, the offender must
221 complete a drug and alcohol rehabilitation program prior to parole
222 or the offender may be required to complete a post-release drug
223 and alcohol program as a condition of parole. For purposes of
224 this paragraph, "nonviolent crime" means a felony other than
225 homicide, robbery, manslaughter, sex crimes, arson, burglary of an
226 occupied dwelling, aggravated assault, kidnapping, felonious abuse
227 of vulnerable adults, felonies with enhanced penalties, the sale
228 or manufacture of a controlled substance under the Uniform

229 Controlled Substances Law, felony child abuse, or any crime under
230 Section 97-5-33 or Section 97-5-39(2) or a violation of Section
231 63-11-30(5) resulting in death, or serious bodily injury resulting
232 in the loss of a limb or dismemberment, loss of eyesight, a coma,
233 permanent dysfunction of any vital organ, paralysis or resulting
234 in an individual's permanent bedridden state. For purposes of
235 this paragraph, "first offender" means a person who at the time of
236 sentencing has not been convicted of a felony on a previous
237 occasion in any court or courts of the United States or in any
238 state or territory thereof. In addition, a first time offender
239 incarcerated for committing the crime of possession of a
240 controlled substance under the Uniform Controlled Substances Law
241 after July 1, 1995, shall be eligible for parole as provided for
242 such offenders in this paragraph after July 1, 2000.

243 (h) The parole eligibility exceptions contained in (a)
244 through (g) of this subsection shall not apply to any offender who
245 is under the age of 17 at the time he or she committed the
246 offense. This provision is exempt from the terms of Section
247 99-19-1.

248 (2) Notwithstanding any other provision of law, an inmate
249 shall not be eligible to receive earned time, good time or any
250 other administrative reduction of time which shall reduce the time
251 necessary to be served for parole eligibility as provided in
252 subsection (1) of this section; however, this subsection shall not
253 apply to the advancement of parole eligibility dates pursuant to
254 the Prison Overcrowding Emergency Powers Act. Moreover,
255 meritorious earned time allowances may be used to reduce the time
256 necessary to be served for parole eligibility as provided in
257 paragraph (c) of subsection (1) of this section.

258 (3) (a) The State Parole Board shall by rules and
259 regulations establish a method of determining a tentative parole
260 hearing date for each eligible offender taken into the custody of
261 the Department of Corrections. The tentative parole hearing date

262 shall be determined within ninety (90) days after the department
263 has assumed custody of the offender. Such tentative parole
264 hearing date shall be calculated by a formula taking into account
265 the offender's age upon first commitment, number of prior
266 incarcerations, prior probation or parole failures, the severity
267 and the violence of the offense committed, employment history and
268 other criteria which in the opinion of the board tend to validly
269 and reliably predict the length of incarceration necessary before
270 the offender can be successfully paroled.

271 (b) [Repealed].

272 (4) Any inmate within twenty-four (24) months of his parole
273 eligibility date and who meets the criteria established by the
274 classification board shall receive priority for placement in any
275 educational development and job training programs. Any inmate
276 refusing to participate in an educational development or job
277 training program may be ineligible for parole.

278 **SECTION 3.** Section 43-21-303, Mississippi Code of 1972, is
279 amended as follows:

280 43-21-303. (1) No child in a matter in which the youth
281 court has original exclusive jurisdiction shall be taken in
282 custody by any person without a custody order except that:

283 (a) A law enforcement officer may take a child in
284 custody if:

285 (i) Grounds exist for the arrest of an adult in
286 identical circumstances; and

287 (ii) Such law enforcement officer has probable
288 cause to believe that custody is necessary as defined in Section
289 43-21-301(3)(b); and

290 (iii) Such law enforcement officer can find no
291 reasonable alternative to custody; or

292 (b) A law enforcement officer or an agent of the
293 department of public welfare may take a child into custody if:

294 (i) There is probable cause to believe that the
295 child is in immediate danger of personal harm; and

296 (ii) Such law enforcement officer or agent has
297 probable cause to believe that immediate custody is necessary as
298 defined in Section 43-21-301(3)(b); and

299 (iii) Such law enforcement officer or agent can
300 find no reasonable alternative to custody.

301 (c) Any other person may take a child in custody if
302 grounds exist for the arrest of an adult in identical
303 circumstances. Such other person shall immediately surrender
304 custody of the child to the proper law enforcement officer who
305 shall thereupon continue custody only as provided in subsection
306 (1)(a) of this section.

307 (2) When it is necessary to take a child into custody, the
308 least restrictive custody should be selected.

309 (3) Unless the child is immediately released, the person
310 taking the child into custody shall immediately notify the judge
311 or his designee. During any interrogation of any child who is
312 under 17 years of age, law enforcement officials must make
313 continuing reasonable efforts to notify the child's parent,
314 guardian or custodian and invite the parent, guardian or custodian
315 to be present during any questioning. In addition, any statements
316 or confessions obtained from any child under 17 years of age shall
317 not be admitted in any court proceeding unless the parent, legal
318 guardian or attorney of such child consents to the use of such
319 statements or confessions in any court proceeding.

320 (4) A child taken into custody shall not be held in custody
321 for a period longer than reasonably necessary, but not to exceed
322 twenty-four (24) hours, and shall be released to his parent,
323 guardian or custodian unless the judge or his designee authorizes
324 temporary custody.

325 **SECTION 4.** This act shall take effect and be in force from
326 and after July 1, 2007.