MISSISSIPPI LEGISLATURE REGULAR SESSION 2021

By: Senator(s) Simmons (12th) To: Judiciary, Division B

SENATE BILL NO. 2137

AN ACT TO AMEND SECTION 97-17-23, MISSISSIPPI CODE OF 1972, TO REVISE THE OFFENSE OF HOUSE BURGLARY TO CREATE VIOLENT AND NONVIOLENT LEVELS OF THE OFFENSE; TO AMEND SECTION 97-3-2, MISSISSIPPI CODE OF 1972, TO CONFORM; TO AMEND SECTION 9-23-15, MISSISSIPPI CODE OF 1972, TO CONFORM ELIGIBILITY FOR DRUG INTERVENTION COURTS; TO AMEND SECTION 9-27-11, MISSISSIPPI CODE OF 1972, TO CONFORM ELIGIBILITY FOR VETERANS' INTERVENTION COURTS; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 97-17-23, Mississippi Code of 1972, is amended as follows:

97-17-23. (1) Every person who shall be convicted of breaking and entering the dwelling house or inner door of such dwelling house of another, whether armed with a deadly weapon or not, and whether there shall be at the time some human being in such dwelling house or not, while armed with a deadly weapon or with intent to commit *** * *** therein a crime of violence listed in Section 97-3-2, shall be guilty of burglary in the first degree and punished by commitment to the custody of the Department of Corrections for not less than *** * *** ten (10) years nor more than twenty-five (25) years.

(2) Every person who shall be convicted of * * * breaking and entering the dwelling house or inner door of the dwelling house of another while not armed with a deadly weapon, and with intent to commit therein a crime not listed as a crime of violence in Section 97-3-2, is guilty of burglary in the second degree and shall be punished by commitment to the custody of the Department of Corrections for not more than fifteen (15) years.

SECTION 2. Section 97-3-2, Mississippi Code of 1972, is amended as follows:

97-3-2. (1) The following shall be classified as crimes of violence:

(a) Driving under the influence as provided in Sections 63-11-30(5) and 63-11-30(12)(d);

(b) Murder and attempted murder as provided in Sections 97-1-7(2), 97-3-19, 97-3-23 and 97-3-25;

(c) Aggravated assault as provided in Sections 97-3-7(2)(a) and (b) and 97-3-7(4)(a);

(d) Manslaughter as provided in Sections 97-3-27, 97-3-29, 97-3-31, 97-3-33, 97-3-35, 97-3-39, 97-3-41, 97-3-43, 97-3-45 and 97-3-47;

(e) Killing of an unborn child as provided in Sections 97-3-37(2)(a) and 97-3-37(2)(b);

(f) Kidnapping as provided in Section 97-3-53;

(g) Human trafficking as provided in Section 97-3-54.1;

(h) Poisoning as provided in Section 97-3-61;

(i) Rape as provided in Sections 97-3-65 and 97-3-71;

(j) Robbery as provided in Sections 97-3-73 and 97-3-79;

(k) Sexual battery as provided in Section 97-3-95;

(l) Drive-by shooting or bombing as provided in Section 97-3-109;

(m) Carjacking as provided in Section 97-3-117;

(n) Felonious neglect, abuse or battery of a child as provided in Section 97-5-39;

(o) Burglary of a dwelling as provided in Sections 97-17-23(1) and 97-17-37;

(p) Use of explosives or weapons of mass destruction as provided in Section 97-37-25;

(q) Statutory rape as provided in Section 97-3-65(1), but this classification is rebuttable on hearing by a judge;

(r) Exploitation of a child as provided in Section 97-5-33;

(s) Gratification of lust as provided in Section 97-5-23; and

(t) Shooting into a dwelling as provided in Section 97-37-29.

(2) In any felony offense with a maximum sentence of no less than five (5) years, upon conviction, the judge may find and place in the sentencing order, on the record in open court, that the offense, while not listed in subsection (1) of this section, shall

be classified as a crime of violence if the facts show that the defendant used physical force, or made a credible attempt or threat of physical force against another person as part of the criminal act. No person convicted of a crime of violence listed in this section is eligible for parole or for early release from the custody of the Department of Corrections until the person has served at least fifty percent (50%) of the sentence imposed by the court.

SECTION 3. Section 9-23-15, Mississippi Code of 1972, is amended as follows:

9-23-15. (1) In order to be eligible for alternative sentencing through a local intervention court, the participant must satisfy each of the following criteria:

(a) The participant cannot have any felony convictions for any offenses that are crimes of violence as defined in Section 97-3-2 within the previous ten (10) years.

(b) The crime before the court cannot be a crime of violence as defined in Section 97-3-2.

(c) Other criminal proceedings alleging commission of a crime of violence cannot be pending against the participant.

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(*** * ***d) The crime before the court cannot be a charge of driving under the influence of alcohol or any other drug or drugs that resulted in the death of a person.

(* * *e) The crime charged cannot be one of trafficking in controlled substances under Section 41-29-139(f), nor can the participant have a prior conviction for same.

(2) Participation in the services of an alcohol and drug intervention component shall be open only to the individuals over whom the court has jurisdiction, except that the court may agree to provide the services for individuals referred from another intervention court. In cases transferred from another jurisdiction, the receiving judge shall act as a special master and make recommendations to the sentencing judge.

(3) (a) As a condition of participation in an intervention court, a participant may be required to undergo a chemical test or a series of chemical tests as specified by the intervention court. A participant is liable for the costs of all chemical tests required under this section, regardless of whether the costs are paid to the intervention court or the laboratory; however, if testing is available from other sources or the program itself, the judge may waive any fees for testing. The judge may waive all fees if the applicant is determined to be indigent.

(b) A laboratory that performs a chemical test under this section shall report the results of the test to the intervention court.

(4) A person does not have a right to participate in intervention court under this chapter. The court having jurisdiction over a person for a matter before the court shall

have the final determination about whether the person may participate in intervention court under this chapter. However, any person meeting the eligibility criteria in subsection (1) of this section shall, upon request, be screened for admission to intervention court.

SECTION 4. Section 9-27-11, Mississippi Code of 1972, is amended as follows:

9-27-11. (1) In order to be eligible for alternative sentencing through a local mental health court, the participant must satisfy each of the following criteria:

(a) The participant cannot have any felony convictions for any offenses that are crimes of violence as defined in Section 97-3-2 *** * *** within the previous ten (10) years.

(b) The crime before the court cannot be a crime of violence as defined in Section 97-3-2 *** * ***.

(c) Other criminal proceedings alleging commission of a crime of violence *** * *** <u>listed in Section 97-3-2</u> cannot be pending against the participant.

(d) The crime before the court cannot be a charge of driving under the influence of alcohol or any other substance that resulted in the death of a person. In addition, persons who are ineligible for nonadjudication under Section 63-11-30 shall be ineligible to participate in a mental health court.

(e) The crime charged cannot be one of trafficking in controlled substances under Section 41-29-139(f), nor can the participant have a prior conviction for same.

(2) Participation in the services of a mental health treatment component shall be open only to the individuals over whom the court has jurisdiction, except that the court may agree to provide the services for individuals referred from another mental health court. In cases transferred from another jurisdiction, the receiving judge shall act as a special master and make recommendations to the sentencing judge.

(3) (a) As a condition of participation in a mental health court, a participant may be required to undergo a chemical test or a series of chemical tests as specified by the program. A participant is liable for the costs of all chemical tests required under this section, regardless of whether the costs are paid to the mental health court or the laboratory; however, if testing is available from other sources or the program itself, the judge may waive any fees for testing. Fees may be waived if the applicant is determined to be indigent.

(b) A laboratory that performs a chemical test under this section shall report the results of the test to the mental health court.

(4) A person does not have a right to participate in a mental health court under this chapter. The court having jurisdiction over a person for a matter before the court shall

have the final determination about whether the person may participate in the mental health court under this chapter. However, any person meeting the eligibility criteria in subsection (1) of this section, shall, upon request, be screened for admission into the court's program.

SECTION 5. This act shall take effect and be in force from and after July 1, 2021.