

# CRIMINAL LAW UPDATE

## 2014 LEGISLATURE



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# Corrections and Criminal Justice Task Force Created - HB 1231 2013 Leg.

- Judge and Prosecutor concerns about lack of certainty in sentencing/time-served
- “Budget Hawks” concerned about the fiscal cost of current system
- Humanitarian concerns about current practices

# Scope of the problem

- Mississippi is #2 in the country in incarceration rate
- More than ½ of admissions in 2012 were revocations of probation or parole
- 75% were on technical violations
- 75% were drug or property crimes
- 51% of people in prison are there for non-violent offenses

# HB 585 2014 Leg.

Mantra of the Task Force became: we need to figure out **who we're mad at and who we're afraid of!**

Task Force embarked on a 10 month process culminating with a 203 page comprehensive bill signed into law on March 31, 2014.

# Outline

- Alternatives to incarceration
- Property crimes
- Drug crime sentencing
- Parole/probation practices
- Oversight/accountability

# Prison Alternatives

- Low-level drug sales and people with old violent felony are now eligible for Drug Court **but House Burglary charge now ineligible**
- Low-level sales and DUI now eligible for non-adjudication
- Prior conviction eligible for probation
- “low-risk” condition for ISP is eliminated
- Low-level drug sale eligible for diversion

# Funding?

- AOC needed \$7M this year for Drug Court programs but only had \$4M in Special Fund revenue and received no General Funds
- Estimate to fund existing programs and expanded programs under HB 585 = \$11M
- Governor requested \$7M in General Funds to supplement \$4M Special Fund
- Legislature added \$3M General Funds and increased Special Fund revenue (for 1 yr) to \$5M leaving program \$3M short

# Property Crimes (in general)

- Under \$1,000 now misdemeanor
- Carries presumptive probation: unless “the court finds substantial and compelling reasons why the offender cannot be safely and effectively supervised in the community, ..., or poses a significant risk to public safety.”
- Graduated sentencing tied to victim’s loss
- New crime of “Organized Theft” 97-43-3.1

# Shoplifting

- Over \$1000 is a felony, up from \$500, grand larceny sentencing schedule applies
- \$1000 or less first and second offense is a misdemeanor
- 3<sup>rd</sup> Offense is a felony IF value is \$500 to \$1000 with 3 year maximum
- If 3<sup>rd</sup> or subsequent shoplifting is under \$500 it is a misdemeanor

# Drug Sentencing

- Creates tiered sentencing for drug sales reducing sentence range for most
- “New” crime of Trafficking with mandatory minimum
- Reduces sentence ranges for most possession and precursor offenses
- Eliminates felony option for <.1g/2 units

# Application to pending cases

- Daniels v. State, 742 So.2d 1140 ¶¶ 13-17 (Miss. 1999)
- Wilson v. State, 967 So.2d 32 ¶¶ 20-22 (Miss. 2007)

# Daniels v. State

- [W]e hold that when a statute is amended to provide for a lesser penalty, and the amendment takes effect before sentencing, the trial court must sentence according to the statute as amended. Any precedent holding otherwise is in error.
- The inverse, however, neither requires, nor allows, the same action. The statute, as amended, must be ameliorative in nature before it can be applied to the sentencing of a defendant. To apply a statute that has been amended after the criminal act, which provides for a stricter punishment than the statute in effect at the time of the criminal act, would be an *ex post facto* application of the law and is not allowed in this judicial system. Puckett v. Abels, 684 So.2d 671, 673 (Miss.1996).

# Wilson v. State

- Wilson was indicted for the crime of felony shoplifting.
- The statute was amended after Wilson was indicted but prior to her trial.
- This amendment effectively made the charge of shoplifting merchandise over \$250 in value but not more than \$500 in value to be a misdemeanor rather than a felony.
- Wilson argued that, according to Daniels v. State, 742 So.2d 1140 (Miss.1999), she should be sentenced as a misdemeanant instead of a felon.
- Daniels stands for the proposition that when the statutory penalty for a particular crime is legislatively reduced after the date of the commission of the crime but before the date of sentencing, the trial court must sentence the defendant under the amended statute.
- Such a proposition is a far cry from today's case where we are not dealing with an amended sentencing statute, but instead an amended statute as it relates to the elements of the criminal offense.
- In the case *sub judice*, only the elements of the crime of felony shoplifting changed and not the penalty, which has remained the same during this amendment process. Wilson was properly convicted based upon §97-23-93 as it existed on the date of the crime.

# Violent crimes

- 97-3-2 (1) creates a comprehensive list of crimes that will be *per se* violent.
- (o) includes all House Burglaries
- (i) includes rape statutes but (q) allows for rebuttable presumption for statutory rape
- (2) creates a catchall provision that would allow a judge to find that a crime not on the list is violent

# Parole eligibility

- People convicted on or after July 1, 2014, of low-level drug sales, abuse of vulnerable adult, arson or non-violent crimes with enhanced sentences will be parole eligible
- Some people in this class, already in the system, may have a means to seek parole with judicial permission
- New “geriatric” parole option (?)
- Possession with intent will become Trusty Time (30/30) eligible
- All house burglaries will be **ineligible!** Strong arm carjacking and shooting into a dwelling will be ineligible

# Qualified retroactive benefit

- A person sentenced before July 1, 2014, for a non-violent offense, notwithstanding 99-19-81 - 87
- Who has served 25% of his sentence
- Can petition the sentencing court for permission to seek parole

# Parole

- “parole case plans” and presumptive parole
- Use of “risk assessment” instruments
- Transitional re-entry centers

# Supervision and Technical Violations

- Use of graduated sanctions by parole/probation officers
- Revocation hearings w/in 21 days or release
- Courts limited to graduated sanctions – 90 days on 1<sup>st</sup> violation; 120 days on 2<sup>nd</sup>; 180 days or full revocation on 3<sup>rd</sup>
- Technical Violation Centers

# Oversight and Accountability

- Oversight Task Force – 13 members: multi-branch; multi-level; victim representative and Defender representative
- Data collection and reporting requirements
- Mandated training
- Mandated fiscal note on all changes to crimes and sentences

# Worst aspects

- House Burglary as *per se* violent crime
- Judicial finding that non-listed crimes are violent – Apprendi violation
- Organized Theft statute – are we going to catch Fagin or Oliver?
- New Trafficking statute with mandatory minimum
- Mandatory minimums for time-served

# Other Laws

- **HB 412** – DUI changes: eliminates non-adjudication for commercial license; ignition interlock in lieu of hardship license; expanded expungement; non-adjudication; indigent exception for purchasing interlock device
- **HB 555** – juvenile delinquency disposition alternatives
- **SB 2430** – Katie’s Law – DNA seizure at arrest: violation of Article 3, Section 23 of Mississippi Constitution, see Graves v. State, 708 So.2d 858 (Miss. 1997)

# 2015 Session?

- Amend 97-3-2(o) to allow for a rebuttable presumption of violence in house burglaries
- Mental Health Courts and improved treatment in jail
- Indigent Defense Reform
- Juvenile Justice: parole; YOU resentencing; Youth Court original jurisdiction; sex offender registration
- Re-Entry: housing; vocational licensing; tax credits for hiring; social services; health care; expungement; etc.
- Amend 99-19-83 to allow for a sentence of less than life if the crime before the court is non-violent

# Mental Health

Implement and promote jail diversion programs: The use of mental health courts and crisis intervention team (CIT) policing has proven to be effective in diverting mentally ill persons from incarceration, but their use by the states varies widely. In states such as Utah, Arizona, New Mexico, and Connecticut, these programs are comparatively widespread, whereas in states such as Iowa, Mississippi, West Virginia, and Arkansas, they are virtually nonexistent. If we want to reduce the criminalization of mental illness, utilizing these proven diversion techniques is an obvious place to start.

*The Treatment of Persons with Mental Illness in Prisons and Jails: A State Survey*, Joint Report Published by Treatment Advocacy Center and the National Sheriffs' Association, April 8, 2014, Recommendation 2. at p. 106,

<http://www.tacreports.org/storage/documents/treatment-behind-bars/treatment-behind-bars.pdf>