

STATE OF MISSISSIPPI



JIM HOOD  
ATTORNEY GENERAL

OPINIONS  
DIVISION

September 21, 2018

Honorable David S. Crawford  
Municipal Court Judge  
Post Office Box 1017  
Woodville, Mississippi 39669-1017

Re: House Bill No. 387

Dear Judge Crawford:

Attorney General Hood is in receipt of your request for an official opinion, and it has been assigned to me for research and reply.

### Background and Issues Presented

Your request states:

In the past few weeks I have been made aware of House Bill No. 387. Specifically, I have questions and am requesting an opinion concerning Section 1. Paragraph (2) and paragraph (3).

If a defendant is found guilty of a crime and ordered to pay a fine and court costs and the particular offense they are charged with does not carry the possibility of time in jail, and subsequently the defendant does not pay the fine and/or court cost and the court finds that the nonpayment of fine and court costs is willful after consideration of the defendants situation, means and conduct, does the court have the authority to incarcerate the defendant since the statute for this particular offense does not provide for any term of imprisonment.

### Response

The law which your opinion addresses is House Bill 387 from the 2018 Regular Session and can be found in Chapter 416 of the Laws of 2018 (hereinafter H.B. 387)<sup>1</sup>. H.B. 387

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<sup>1</sup> H.B. 387 has been codified or scheduled to be codified; but as of the time of this opinion, the applicable Mississippi Code sections are not known.

states, in relevant part:

(1) Incarceration shall not automatically follow the nonpayment of a fine, restitution, court order or court costs. Incarceration may be employed only after the court has conducted a hearing and examined the reasons for nonpayment and finds, on the record, that the defendant was not indigent or could have made payment but refused to do so. . . .

(2) If it appears to the satisfaction of the court that nonpayment is not willful, the court shall enter an order that allows the defendant additional time for payment, reduces the amount of each installment, revokes the fine, in whole or in part, or allows the defendant to perform community service at the state minimum wage per hour rate. If the court finds nonpayment is willful after consideration of the defendant's situation, means, and conduct with regard to the nonpayment, the court shall determine the period of incarceration, if any, subject to the limitations set by law and subsection (3) of this section.

(3) If ***at the time the fine, restitution or court cost is ordered, a sentence of incarceration is also imposed, the aggregate total of the period of incarceration imposed pursuant to this section and the term of the sentence originally imposed may not exceed the maximum term of imprisonment authorized for the offense.*** . . .

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(Emphasis added).

In general, H.B. 387 provides in paragraph 1 that incarceration does not automatically follow as the appropriate penalty for non-payment of a fine. As a prerequisite to incarceration, Paragraph 1 requires a hearing and a finding that the defendant was not indigent and that the defendant could have paid but refused to do so. Paragraph 2 provides that if the court, after the hearing and consideration as required under Paragraph 1, finds the nonpayment to be willful, the court may determine the period of incarceration subject to other law<sup>2</sup> and Paragraph 3. Paragraph 3 provides that if the initial offense carries a period of incarceration and incarceration is ordered, that the aggregate time of imprisonment for the initial offense and the time imposed for contempt/failure to pay cannot exceed the maximum term for the initial offense.

Under your facts, the defendant was found guilty of an offense and fined but not incarcerated because the offense carried no incarceration period. Your facts further state that the person failed to pay and that after a proper hearing and consideration the court determined correctly that such failure to make payment was willful.

Honorable David S. Crawford

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<sup>2</sup> See Miss. Code Ann. Section 99-37-7 (as amended) ("[T]he court may find that his default constitutes contempt and may order him committed until the fine or the restitution, or a specified part thereof, is paid.")

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Under these facts, it is the opinion of this office that a court may order a defendant imprisoned for contempt/willful failure to pay. Paragraph 3 is inapplicable, because in your scenario the initial offense carried no incarceration period. Paragraph 3 applies only where a sentence is authorized and imposed. Of course, the court would have to comply with any other provisions of Paragraph 2 and Section 99-37-7 and other applicable law<sup>3,4</sup>.

If we can be of further assistance, do not hesitate to call us.

Very truly yours,

JIM HOOD, ATTORNEY GENERAL

By:



Emiko Hemleben  
Special Assistant Attorney General

OFFICIAL OPINION

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<sup>3</sup> See Miss. Code Ann. Section 99-19-20 (as amended) ("In no event shall such period of imprisonment exceed one (1) day for each One Hundred Dollars (\$100.00) of the fine.").

<sup>4</sup> This opinion is limited to the application of H.B. 387. We do not attempt herein to identify every code section that may be applicable to incarceration for failure to pay a fine.