

STATE OF MISSISSIPPI



JIM HOOD
ATTORNEY GENERAL

OPINIONS
DIVISION

August 31, 2018

Ms. Sandra Barrett
Lamar County Justice Court Clerk
Post Office Box 1010
Purvis, MS 39475

Re: House Bill 325

Dear Ms. Barrett:

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:

HB 325 was enacted in the 2018 regular session of the Mississippi legislature, with an effective date of July 1, 2018. Under the new language of Ms. Code Ann. 63-15-4, et seq., and irrespective of indigence status, is the judge empowered to suspend the \$100.00 fine, if court costs and assessments are paid, and the required proof of insurance is provided to the Court?

Response

House Bill 325, which amended Miss. Code Ann. Section 63-15-4, has no effect on a judge's authority to suspend any portion of a fine or sentence.

Justice court judges are given the authority to suspend sentences through Miss. Code Ann. Section 99-19-25.

Section 99-19-25 of the Mississippi Code states:

The circuit courts and the county courts, in misdemeanor cases, are

hereby authorized to suspend a sentence and to suspend the execution of a sentence, or any part thereof, on such terms as may be imposed by the judge of the court. Provided, the suspension of imposition or execution of a sentence hereunder may not be revoked after a period of five (5) years.

The justice courts, in misdemeanor cases, are hereby authorized to suspend sentence and to suspend the execution of a sentence, or any part thereof, on such terms as may be imposed by the judge of the court. Subsequent to original sentencing, the justice courts, in misdemeanor cases, are hereby authorized to suspend sentence and to suspend execution of a sentence, or any part thereof, on such terms as may be imposed by the judge of the court, if (a) the judge or his or her predecessor was authorized to order such suspension when the sentence was originally imposed; and (b) such conviction (i) has not been appealed; or (ii) has been appealed and the appeal has been voluntarily dismissed. Provided, the suspension of imposition or execution of a sentence hereunder may not be revoked after a period of two (2) years. . . .

Miss. Code Ann. Section 99-19-25 was amended in 2009 by HB 674, which extended a judge's authority to suspend a sentence subsequent to the original sentencing. It should be noted that municipal court judges are given the same authority to suspend a sentence in Miss. Code Ann. Section 21-23-7.¹ Numerous opinions were written prior to the change in statutory language and, therefore, are inconsistent with current laws and our opinion today. See MS AG Op., Sheffield (October 28, 1992); MS AG Op.,

¹ Section 21-23-7(5) of the Mississippi Code states:

(5) The municipal judge of any municipality is hereby authorized to suspend the sentence and to suspend the execution of the sentence, or any part thereof, on such terms as may be imposed by the municipal judge. However, the suspension of imposition or execution of a sentence hereunder may not be revoked after a period of two (2) years. The municipal judge shall have the power to establish and operate a probation program, dispute resolution program and other practices or procedures appropriate to the judiciary and designed to aid in the administration of justice. Any such program shall be established by the court with written policies and procedures filed with the clerk of the court for public record. Subsequent to original sentencing, the municipal judge, in misdemeanor cases, is hereby authorized to suspend sentence and to suspend the execution of a sentence, or any part thereof, on such terms as may be imposed by the municipal judge, if (a) the judge or his or her predecessor was authorized to order such suspension when the sentence was originally imposed; and (b) such conviction (i) has not been appealed; or (ii) has been appealed and the appeal has been voluntarily dismissed.

This section was also amended in 2009 by SB 2967 which granted municipal court judges the authority to suspend a sentence subsequent to the original sentencing date.

Ms. Sandra Barrett
August 31, 2018
Page 3

Lawrence (February 9, 2001); and MS AG Op., Darby (May 10, 2005).

In a previous opinion, this office found that a judge could not suspend certain fines under Section 63-15-4 with regard to proof of insurance. See MS AG Op., Lawrence (May 22, 2009). The apparent reasoning was that the court was "not authorized when the sentence was originally imposed to suspend the fine." However, Miss. Code Ann. Section 63-15-4 contains no language that prevents suspension of fines imposed thereunder.

The answer to your question is yes. It is the opinion of this office that a justice or municipal court judge has the authority to suspend the \$100.00 fine imposed, pursuant to Miss. Code Ann. Section 63-15-4. Accordingly, our opinion in Lawrence is hereby withdrawn.²

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

Very truly yours,

JIM HOOD, ATTORNEY GENERAL

OFFICIAL By:  OFFICIAL

Emiko Hemleben
Special Assistant Attorney General

² MS AG Op., Lawrence (May 22, 2009), Opinion No. 2009-00183 will be removed from Westlaw.