

By: Senator(s) Carlton

To: Judiciary;
Appropriations

SENATE BILL NO. 2987

1 AN ACT TO CREATE AN INFERIOR COURT TO TRY CASES OF OFFENSES
2 INVOLVING NARCOTICS, DANGEROUS DRUGS AND CONTROLLED SUBSTANCES; TO
3 PROVIDE FOR THE DESIGNATION OF JUDGES AND PROVIDE FOR THEIR
4 SUPPORT STAFFS; TO DESIGNATE DRUG COURT DISTRICTS; TO PROVIDE FOR
5 COURT REPORTERS, COURT ADMINISTRATORS, PUBLIC DEFENDERS AND SOCIAL
6 WORKERS; TO REQUIRE REPORTS AND RECOMMENDATIONS REGARDING THE DRUG
7 COURTS; TO PROVIDE THAT THE ADMINISTRATIVE OFFICE OF COURTS SHALL
8 MONITOR THE DRUG COURTS; TO AMEND SECTION 9-1-36, MISSISSIPPI CODE
9 OF 1972, TO PROVIDE AN OFFICE ALLOWANCE FOR DRUG COURT JUDGES; TO
10 AMEND SECTIONS 9-13-1, 9-13-17 AND 9-13-19, MISSISSIPPI CODE OF
11 1972, TO PROVIDE FOR COURT REPORTERS IN THE DRUG COURTS; TO AMEND
12 SECTION 9-17-1, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR COURT
13 ADMINISTRATORS IN THE DRUG COURTS; TO AMEND SECTION 13-7-35,
14 MISSISSIPPI CODE OF 1972, TO PROVIDE THAT INDICTMENTS FROM THE
15 STATE GRAND JURY SHALL BE TRIED IN A DRUG COURT WHERE APPLICABLE;
16 TO AMEND SECTIONS 63-11-30, 41-29-187, 41-29-501, 41-29-505,
17 41-29-513, 41-29-525, 41-29-536 AND 41-29-701, MISSISSIPPI CODE OF
18 1972, IN CONFORMITY TO THE PROVISIONS OF THIS ACT; AND FOR RELATED
19 PURPOSES.

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

21 SECTION 1. (1) There shall be a drug court as provided in
22 this chapter which shall be an inferior court within the meaning
23 of Section 172 of the Mississippi Constitution of 1890. The
24 jurisdiction of the drug court shall be limited to offenses
25 involving any and all conduct made unlawful by the Mississippi
26 Uniform Controlled Substances Law or any other provision of law
27 involving narcotics, dangerous drugs, controlled substances or any
28 nonviolent crime in which the underlying causes can be directly
29 traced to drug addiction. Cases involving nonviolent offenses in
30 which the underlying cause can be directly traced to drug
31 addiction shall be transferred to the drug court only upon
32 approval by the district attorney.

33 (2) The Administrative Office of Courts shall apply for and
34 make available any funds from federal grants, state appropriations

35 or any other source whether private or public for the purposes
36 prescribed by this act.

37 SECTION 2. (1) There is created the Drug Court Nomination
38 Commission which shall be comprised of one (1) person appointed by
39 The Mississippi Bar, one (1) person appointed by the Mississippi
40 Trial Lawyers Association, one (1) person appointed by the
41 Magnolia Bar, one (1) person appointed by the Supreme Court and
42 one (1) person appointed by the Court of Appeals.

43 (2) The circuit court districts for which a drug court is
44 established shall provide physical facilities for the judges and
45 support staff. Each judge shall be provided a court reporter and
46 office allowance as provided by law.

47 (3) Drug cases involving the sale, transfer, distribution or
48 manufacture of controlled substances shall be disposed of within
49 two hundred seventy (270) days of indictment.

50 (4) Drug courts may use alternative methods of sentencing
51 such as rehabilitation for cases involving first-time offenders,
52 third or subsequent DUI offenders and cases involving possession
53 of controlled substances for personal use only. The court shall
54 determine the conditions of any sentence imposed under this
55 subsection. If an offender violates the conditions of a sentence
56 imposed under this subsection, the court shall impose the
57 penalties provided by law for the offense. Public and private
58 resources may be used to carry out the provisions of this
59 subsection. An offender shall not be refused the sentencing
60 alternatives provided in this subsection if such offender is
61 indigent. The social worker for a drug court shall monitor the
62 use of such sentences in the social worker's district and report
63 quarterly to the judge as to the effect such sentencing is having
64 on the offender and on the drug court created by this act. Such
65 monitoring shall include periodic drug and alcohol testing.

66 SECTION 3. (1) Each drug court shall be provided a public
67 defender for the drug court who shall be appointed by the Governor
68 from a list of three (3) nominees submitted by the Drug Court
69 Nomination Commission created in Section 2 of this act. The drug
70 court public defenders shall serve at the will and pleasure of the
71 appointing Governor. The public defender for a drug court shall

72 receive a salary of Fifty-four Thousand Dollars (\$54,000.00) per
73 year, to be paid from the State General Fund. The drug court
74 public defender shall defend indigent defendants in drug court
75 cases.

76 (2) Except in drug court districts where the drug court
77 judge elects to come within the provisions of Section 19-17-1,
78 there shall be a court administrator for each drug court who shall
79 serve at the will and pleasure of the drug court judge. The court
80 administrator shall receive a salary of Thirty-five Thousand
81 Dollars (\$35,000.00) per year and shall perform such duties as
82 prescribed by law for court administrators. The salary of the
83 court administrators shall be paid out of the State General Fund
84 as appropriated by the Legislature.

85 (3) The drug court prosecutor shall be appointed by the
86 Governor from a list of three (3) nominees submitted by the Drug
87 Court Nomination Commission created in Section 2 of this act. The
88 term of the drug court prosecutor shall expire with the expiration
89 of the term of the appointing governor. The drug court prosecutor
90 shall receive a salary of Fifty-four Thousand Dollars (\$54,000.00)
91 per year, to be paid from the State General Fund.

92 (4) The judge of the drug court shall be appointed by the
93 Governor from a list of three (3) nominees submitted by the Drug
94 Court Nomination Commission created in Section 2 of this act. The
95 judge of the drug court shall serve at the will and pleasure of
96 the appointing governor, and shall receive a salary of Eighty-five
97 Thousand Dollars (\$85,000.00) per year, to be paid from the State
98 General Fund. The drug court judge shall be provided office space
99 in the same manner as is afforded circuit judges and chancellors.

100 (5) The circuit clerk shall be the clerk of the drug court.

101 SECTION 4. There shall be a social worker on staff for each
102 drug court who shall be appointed by the drug court judge. The
103 social worker shall meet the same qualifications required of a
104 social worker employed by the Department of Human Services. The

105 salary of the social worker provided for herein shall be Thirty
106 Thousand Dollars (\$30,000.00) per year to be paid out of the State
107 General Fund as appropriated by the Legislature. The Department
108 of Human Services may provide additional social workers to assist
109 the social workers provided by this section.

110 SECTION 5. The Administrative Office of Courts shall monitor
111 all cases in drug courts and annually report to the Supreme Court
112 and the Legislature regarding the effectiveness of the drug courts
113 along with any recommendations regarding the operation of the drug
114 courts. The drug courts shall provide the Administrative Office
115 of Courts with any necessary nonidentifying or nonconfidential
116 information so that the Administrative Office of Courts may
117 efficiently perform this function.

118 SECTION 6. Section 9-1-36, Mississippi Code of 1972, is
119 amended as follows:

120 9-1-36. (1) Each circuit judge * * *, chancellor and drug
121 court judge shall receive an office operating allowance for the
122 expenses of operating the office of such judge, including
123 retaining a law clerk, legal research, stenographic help,
124 stationery, stamps, furniture, office equipment, telephone, office
125 rent and other items and expenditures necessary and incident to
126 maintaining the office of judge. Such allowance shall be paid
127 only to the extent of actual expenses incurred by any such judge
128 as itemized and certified by such judge to the Supreme Court and
129 then in an amount of not more than Four Thousand Dollars
130 (\$4,000.00) per annum; however, such judge may expend sums in
131 excess thereof from the compensation otherwise provided for his
132 office. No part of this expense or allowance shall be used to pay
133 an official court reporter for services rendered to said court.

134 (2) In addition to the amounts provided for in subsection
135 (1), there is hereby created a separate office allowance fund for
136 the purpose of providing support staff to judges. This fund shall
137 be managed by the Administrative Office of Courts.

138 (3) Each judge who desires to employ support staff after
139 July 1, 1994, shall make application to the Administrative Office
140 of Courts by submitting to the Administrative Office of Courts a
141 proposed personnel plan setting forth what support staff is deemed
142 necessary. Such plan may be submitted by a single judge or by any
143 combination of judges desiring to share support staff. In the
144 process of the preparation of the plan, the judges, at their
145 request, may receive advice, suggestions, recommendations and
146 other assistance from the Administrative Office of Courts. The
147 Administrative Office of Courts must approve the positions, job
148 descriptions and salaries before the positions may be filled. The
149 Administrative Office of Courts shall not approve any plan which
150 does not first require the expenditure of the funds in the support
151 staff fund for compensation of any of the support staff before
152 expenditure is authorized of county funds for that purpose. Upon
153 approval by the Administrative Office of Courts, the judge or
154 judges may appoint the employees to the position or positions, and
155 each employee so appointed will work at the will and pleasure of
156 the judge or judges who appointed him but will be employees of the
157 Administrative Office of Courts. Upon approval by the
158 Administrative Office of Courts, the appointment of any support
159 staff shall be evidenced by the entry of an order on the minutes
160 of the court. When support staff is appointed jointly by two (2)
161 or more judges, the order setting forth any appointment shall be
162 entered on the minutes of each participating court.

163 (4) The Administrative Office of Courts shall develop and
164 promulgate minimum qualifications for the certification of court
165 administrators. Any court administrator appointed on or after
166 October 1, 1996, shall be required to be certified by the
167 Administrative Office of Courts.

168 (5) Support staff shall receive compensation pursuant to
169 personnel policies established by the Administrative Office of
170 Courts; however, from and after July 1, 1994, the Administrative

171 Office of Courts shall allocate from the support staff fund an
172 amount not to exceed Forty Thousand Dollars (\$40,000.00) per
173 fiscal year (July 1 through June 30) per judge for whom support
174 staff is approved for the funding of support staff assigned to a
175 judge or judges. Any employment pursuant to this subsection shall
176 be subject to the provisions of Section 25-1-53.

177 The Administrative Office of Courts may approve expenditure
178 from the fund for additional equipment for support staff appointed
179 pursuant to this section in any year in which the allocation per
180 judge is sufficient to meet the equipment expense after provision
181 for the compensation of the support staff.

182 (6) For the purposes of this section, the following terms
183 shall have the meaning ascribed herein unless the context clearly
184 requires otherwise:

185 (a) "Judges" means circuit judges * * *, chancellors
186 and drug court judges, or any combination thereof;

187 (b) "Support staff" means court administrators, law
188 clerks, legal research assistants or secretaries, or any
189 combination thereof, but shall not mean school attendance
190 officers;

191 (c) "Compensation" means the gross salary plus all
192 amounts paid for benefits or otherwise as a result of employment
193 or as required by employment; provided, however, that only salary
194 earned for services rendered shall be reported and credited for
195 Public Employees' Retirement System purposes. Amounts paid for
196 benefits or otherwise, including reimbursement for travel
197 expenses, shall not be reported or credited for retirement
198 purposes.

199 (7) Title to all tangible property, excepting stamps,
200 stationery and minor expendable office supplies, procured with
201 funds authorized by this section, shall be and forever remain in
202 the State of Mississippi to be used by the circuit judge or
203 chancellor during the term of his office and thereafter by his

204 successors.

205 (8) Any circuit judge or chancellor who did not have a
206 primary office provided by the county on March 1, 1988, shall be
207 allowed an additional Four Thousand Dollars (\$4,000.00) per annum
208 to defray the actual expenses incurred by such judge or chancellor
209 in maintaining an office; however, any circuit judge or chancellor
210 who had a primary office provided by the county on March 1, 1988,
211 and who vacated the office space after such date for a legitimate
212 reason, as determined by the Department of Finance and
213 Administration, shall be allowed the additional office expense
214 allowance provided under this subsection.

215 (9) The Supreme Court, through the Administrative Office of
216 Courts, shall submit to the Department of Finance and
217 Administration the itemized and certified expenses for office
218 operating allowances that are directed to the court pursuant to
219 this section.

220 (10) The Supreme Court, through the Administrative Office of
221 Courts, shall have the power to adopt rules and regulations
222 regarding the administration of the office operating allowance
223 authorized pursuant to this section.

224 SECTION 7. (1) The state is divided into an appropriate
225 number of drug court districts severally numbered and comprised of
226 the counties as set forth in this section. A court to be styled
227 "The Drug Court of the County of ____" shall be held in each
228 county, and within each judicial district of a county having two
229 (2) judicial districts, at least twice a year. The dates upon
230 which drug court shall be held in drug court districts consisting
231 of a single county shall be the same dates state agencies and
232 political subdivisions are open for business excluding legal
233 holidays. The dates upon which terms shall commence and the
234 number of days for which such terms shall continue in drug court
235 districts consisting of more than one (1) county shall be set by
236 order of the drug court judge in accordance with the provisions of

237 subsection (2) of this section. A matter in court may extend past
238 such times if the interest of justice so requires.

239 (2) An order establishing the commencement and continuation
240 of terms of court for each of the counties within a drug court
241 district consisting of more than one (1) county shall be entered
242 annually and not later than October 1 of the year immediately
243 preceding the calendar year for which such terms of court are to
244 become effective. Notice of the dates upon which the terms of
245 court shall commence and the number of days for which such terms
246 shall continue in each of the counties within a drug court
247 district shall be posted in the office of the circuit clerk of
248 each county within the district and mailed to the office of the
249 Secretary of State for publication and distribution to all members
250 of The Mississippi Bar. In the event that an order is not timely
251 entered as herein provided, the terms of court for each of the
252 counties within any such drug court district shall remain
253 unchanged for the next calendar year. A certified copy of any
254 order entered under the provisions of this subsection shall,
255 immediately upon the entry thereof, be delivered to the clerk of
256 the board of supervisors in each of the counties within the drug
257 court district.

258 (3) There shall be one (1) judge for each drug court
259 district.

260 (4) The drug court districts shall be comprised as follows:

261 (a) Drug Court District A shall consist of the
262 following counties:

263 Desoto County;
264 Tate County;
265 Marshall County;
266 Tunica County;
267 Panola County;
268 Quitman County;
269 Lafayette County;

270 Yalobusha County; and

271 Calhoun County.

272 (b) Drug Court District B shall consist of the
273 following counties:

274 Benton County;

275 Tippah County;

276 Alcorn County;

277 Tishomingo County;

278 Prentiss County;

279 Union County;

280 Pontotoc County;

281 Lee County; and

282 Itawamba County.

283 (c) Drug Court District C shall consist of the following
284 counties:

285 Coahoma County;

286 Tallahatchie County;

287 Bolivar County;

288 Sunflower County;

289 Washington County; and

290 Leflore County.

291 (d) Drug Court District D shall consist of the
292 following counties:

293 Grenada County;

294 Montgomery County;

295 Carroll County;

296 Webster County;

297 Holmes County;

298 Choctaw County; and

299 Attala County.

300 (e) Drug Court District E shall consist of the
301 following counties:

302 Chickasaw County;

303 Monroe County;
304 Clay County;
305 Oktibbeha County;
306 Lowndes County;
307 Winston County; and
308 Noxubee County.

309 (f) Drug Court District F shall consist of the
310 following counties:

311 Humphreys County;
312 Sharkey County;
313 Issaquena County;
314 Yazoo County; and
315 Warren County.

316 (g) Drug Court District G shall consist of the
317 following counties:

318 Hinds County; and
319 Madison County.

320 (h) Drug Court District H shall consist of the
321 following counties:

322 Leake County;
323 Rankin County;
324 Scott County;
325 Simpson County; and
326 Smith County.

327 (i) Drug Court District I shall consist of the
328 following counties:

329 Neshoba County;
330 Kemper County;
331 Newton County;
332 Lauderdale County;
333 Jasper County; and
334 Clarke County.

335 (j) Drug Court District J shall consist of the

336 following counties:

337 Claiborne County;
338 Jefferson County;
339 Adams County;
340 Franklin County;
341 Wilkinson County; and
342 Amite County.

343 (k) Drug Court District K shall consist of the
344 following counties:

345 Copolah County;
346 Lincoln County;
347 Lawrence County;
348 Jefferson Davis County;
349 Covington County;
350 Pike County;
351 Walthall County; and
352 Marion County.

353 (l) Drug Court District L shall consist of the
354 following counties:

355 Jones County;
356 Wayne County;
357 Lamar County;
358 Forrest County;
359 Perry County;
360 Greene County; and
361 Pearl River County.

362 (m) Drug Court District M shall consist of the
363 following counties:

364 Stone County;
365 George County;
366 Hancock County;
367 Harrison County; and
368 Jackson County.

369 SECTION 8. Section 9-13-1, Mississippi Code of 1972, is
370 amended as follows:

371 9-13-1. Each circuit judge, drug court judge and chancellor
372 shall appoint a competent person as shorthand reporter in his
373 district by an entry upon the minutes of the court of an order to
374 that effect, dated and signed by him. The said shorthand reporter
375 shall be known as the official court reporter of said district.

376 SECTION 9. Section 9-13-17, Mississippi Code of 1972, is
377 amended as follows:

378 9-13-17. The circuit judge, chancellor, family court judge,
379 drug court judge or county judge may, by an order spread upon the
380 minutes and made a part of the records of the court, appoint an
381 additional court reporter for a term or part of a term whose
382 duties, qualifications and compensation shall be the same as is
383 now provided by law for official court reporters. The additional
384 court reporter shall be subject to the control of the judge or
385 chancellor, as is now provided by law for official court
386 reporters, and the judge or chancellor shall have the additional
387 power to terminate the appointment of such additional court
388 reporter, whenever in his opinion the necessity for such an
389 additional court reporter ceases to exist, by placing upon the
390 minutes of the court an order to that effect. The regular court
391 reporter shall not draw any compensation while the assistant court
392 reporter alone is serving; however, in the event the assistant
393 court reporter is serving because of the illness of the regular
394 court reporter, the court may authorize payment of said assistant
395 court reporter from the Administrative Office of Courts without
396 diminution of the salary of the regular court reporter, for a
397 period not to exceed forty-five (45) days in any one (1) calendar
398 year. However, in any circuit, chancery, county or family court
399 district within the State of Mississippi, if the judge or
400 chancellor shall determine that in order to relieve the
401 continuously crowded docket in such district, or for other good

402 cause shown, the appointment of an additional court reporter is
403 necessary for the proper administration of justice, he may, with
404 the advice and consent of the board of supervisors if the court
405 district is composed of a single county and with the advice and
406 consent of at least one-half (1/2) of the boards of supervisors if
407 the court district is composed of more than one (1) county, by an
408 order spread upon the minutes and made a part of the records of
409 the court, appoint an additional court reporter. The additional
410 court reporter shall serve at the will and pleasure of the judge
411 or chancellor, may be a resident of any county of the state, and
412 shall be paid a salary designated by the judge or chancellor not
413 to exceed the salary authorized by Section 9-13-19. The salary of
414 the additional court reporter shall be paid by the Administrative
415 Office of Courts, as provided in Section 9-13-19; and mileage
416 shall be paid to the additional court reporter by the county as
417 provided in the same section. The office of such additional court
418 reporter appointed under this section shall not be abolished or
419 compensation reduced during the term of office of the appointing
420 judge or chancellor without the consent and approval of the
421 appointing judge or chancellor.

422 SECTION 10. Section 9-13-19, Mississippi Code of 1972, is
423 amended as follows:

424 9-13-19. (1) Court reporters for circuit * * *, chancery
425 courts and drug courts shall be paid an annual salary of
426 Thirty-eight Thousand Dollars (\$38,000.00) payable by the
427 Administrative Office of Courts. In addition, any court reporter
428 performing the duties of a court administrator in the same
429 judicial district in which the person is employed as a court
430 reporter may be paid additional compensation for performing the
431 court administrator duties. The annual amount of the additional
432 compensation shall be set by vote of the judges and chancellors
433 for whom the court administrator duties are performed, with
434 consideration given to the number of hours per month devoted by

435 the court reporter to performing the duties of a court
436 administrator. The additional compensation shall be submitted to
437 the Administrative Office of Courts for approval.

438 (2) The several counties in each respective court district
439 shall transfer from the general funds of those county treasuries
440 to the Administrative Office of Courts a proportionate amount to
441 be paid toward the annual compensation of the court reporter,
442 including any additional compensation paid for the performance of
443 court administrator duties. The amount to be paid by each county
444 shall be determined by the number of weeks in which court is held
445 in each county in proportion to the total number of weeks court is
446 held in the district. For purposes of this section, the term
447 "compensation" means the gross salary plus all amounts paid for
448 benefits, or otherwise, as a result of employment or as required
449 by employment, but does not include transcript fees otherwise
450 authorized to be paid by or through the counties. However, only
451 salary earned for services rendered shall be reported and credited
452 for retirement purposes. Amounts paid for transcript fees,
453 benefits or otherwise, including reimbursement for travel
454 expenses, shall not be reported or credited for retirement
455 purposes.

456 For example, if there are thirty-eight (38) scheduled court
457 weeks in a particular district, a county in which court is
458 scheduled five (5) weeks out of the year would have to pay
459 five-thirty-eighths ($5/38$) of the total annual compensation.

460 (3) The salary and any additional compensation for the
461 performance of court administrator duties shall be paid in twelve
462 (12) installments on the last working day of each month after it
463 has been duly authorized by the appointing judge or chancellor and
464 an order duly placed on the minutes of the court. Each county
465 shall transfer to the Administrative Office of Courts one-twelfth
466 ($1/12$) of the amount required to be paid pursuant to subsection
467 (2) of this section by the twentieth day of each month for the

468 salary that is to be paid on the last working day of the month.
469 The Administrative Office of Courts shall pay to the court
470 reporter the total amount of salary due for that month. Any
471 county may pay, in the discretion of the board of supervisors, by
472 the twentieth day of January of any year, the amount due for a
473 full twelve (12) months.

474 (4) From and after October 1, 1996, all circuit and chancery
475 court reporters will be employees of the Administrative Office of
476 Courts.

477 (5) No circuit, drug or chancery court reporter shall be
478 entitled to any compensation for any special or extended term of
479 court after passage of this section.

480 (6) No chancery, drug or circuit court reporter shall
481 practice law in the court within which he or she is the court
482 reporter.

483 (7) For all travel required in the performance of official
484 duties, the circuit, drug or chancery court reporter shall be paid
485 mileage by the county in which the duties were performed at the
486 same rate as provided for state employees in Section 25-3-41. The
487 court reporter shall file in the office of the clerk of the court
488 which he serves a certificate of mileage expense incurred during
489 that term and payment of such expense to the court reporter shall
490 be paid on allowance by the judge of such court.

491 SECTION 11. Section 9-17-1, Mississippi Code of 1972, is
492 amended as follows:

493 9-17-1. (1) The judges and chancellors of judicial
494 districts, including chancery, circuit, county and drug courts,
495 may, in their discretion, jointly or independently, establish the
496 office of court administrator in any county by an order entered on
497 the minutes of each participating court in the county.

498 The establishment of the office of court administrator shall
499 be accomplished by vote of a majority of the participating judges
500 and chancellors in the county, and such court administrator shall

501 be appointed by vote of a majority of the judges or chancellors
502 and may be removed by a majority vote of the judges or
503 chancellors. In case of a tie vote, the senior judge or senior
504 chancellor shall cast two (2) votes.

505 (2) The court administrator shall be provided office space
506 in the same manner as such is afforded the judges and chancellors.

507 (3) The annual salary of each court administrator appointed
508 pursuant to this section shall be set by vote of the judges and
509 chancellors of each participating county and shall be submitted to
510 the Administrative Office of Courts for approval pursuant to
511 Section 9-1-36. The salary shall be paid in twelve (12)
512 installments on the last working day of the month by the
513 Administrative Office of Courts after it has been authorized by
514 the participating judges and chancellors and an order has been
515 duly placed on the minutes of each participating court.

516 Any county within a judicial district having a court
517 administrator shall transfer to the Administrative Office of
518 Courts one-twelfth (1/12) of its pro rata cost of authorized
519 compensation as defined in Section 9-1-36 for the court
520 administrator by the twentieth day of each month for the
521 compensation that is to be paid on the last day of that month.
522 The board of supervisors may transfer the pro rata cost of the
523 county from the funds of that county pursuant to Section
524 9-17-5(2)(b).

525 (4) For all travel required in the performance of official
526 duties, the court administrator shall be paid mileage by the
527 county in which the duties were performed at the same rate as
528 provided for state employees in Section 25-3-41, Mississippi Code
529 of 1972. The court administrator shall file a certificate of
530 mileage expense incurred during that term with the board of
531 supervisors of each participating county and payment of such
532 expense shall be paid proportionately out of the court
533 administration fund established pursuant to Section 9-17-5.

534 SECTION 12. Section 13-7-35, Mississippi Code of 1972, is
535 amended as follows:

536 13-7-35. (1) In order to return a "True Bill" of
537 indictment, twelve (12) or more state grand jurors must find that
538 probable cause exists for the indictment and vote in favor of the
539 indictment. Upon indictment by a state grand jury, the indictment
540 shall be returned to the impaneling judge. If the impaneling
541 judge considers the indictment to be within the authority of the
542 state grand jury and otherwise in accordance with the provisions
543 of this chapter, he shall order the clerk of the state grand jury
544 to certify the indictment and return the indictment to the county
545 designated by the impaneling judge as the county in which the
546 indictment shall be tried.

547 (2) Indictments returned by a state grand jury are properly
548 triable in any county of the state where any of the alleged
549 conduct occurred and shall be triable in a drug court. The
550 impaneling judge to whom the indictment is returned shall
551 designate the county in which the indictment shall be tried. If a
552 multicount indictment returned by a state grand jury is properly
553 triable in a single proceeding as otherwise provided by law, all
554 counts may be tried in the county designated by the impaneling
555 judge notwithstanding the fact that different counts may have
556 occurred in more than one county.

557 (3) In determining the venue for indictments returned by a
558 state grand jury, the impaneling judge shall select the county in
559 which the state and defendant may receive a fair trial before an
560 impartial jury taking into consideration the totality of the
561 circumstances of each case.

562 (4) When the indictment has been returned to the circuit
563 clerk of the county designated by the impaneling judge, the *capias*
564 shall be issued as otherwise provided by law. The indictment
565 shall be kept secret until the defendant is in custody or has been
566 released pending trial.

567 SECTION 13. Section 63-11-30, Mississippi Code of 1972, is
568 amended as follows:

569 63-11-30. (1) It is unlawful for any person to drive or
570 otherwise operate a vehicle within this state who (a) is under the
571 influence of intoxicating liquor; (b) is under the influence of
572 any other substance which has impaired such person's ability to
573 operate a motor vehicle; (c) has an alcohol concentration of ten
574 one-hundredths percent (.10%) or more for persons who are above
575 the legal age to purchase alcoholic beverages under state law, or
576 two one-hundredths percent (.02%) or more for persons who are
577 below the legal age to purchase alcoholic beverages under state
578 law, in the person's blood based upon grams of alcohol per one
579 hundred (100) milliliters of blood or grams of alcohol per two
580 hundred ten (210) liters of breath as shown by a chemical analysis
581 of such person's breath, blood or urine administered as authorized
582 by this chapter; (d) is under the influence of any drug or
583 controlled substance, the possession of which is unlawful under
584 the Mississippi Controlled Substances Law; or (e) has an alcohol
585 concentration of four one-hundredths percent (.04%) or more in the
586 person's blood, based upon grams of alcohol per one hundred (100)
587 milliliters of blood or grams of alcohol per two hundred ten (210)
588 liters of breath as shown by a chemical analysis of such person's
589 blood, breath or urine, administered as authorized by this chapter
590 for persons operating a commercial motor vehicle.

591 (2) (a) Except as otherwise provided in subsection (3),
592 upon conviction of any person for the first offense of violating
593 subsection (1) of this section where chemical tests provided for
594 under Section 63-11-5 were given, or where chemical test results
595 are not available, such person shall be fined not less than Two
596 Hundred Fifty Dollars (\$250.00) nor more than One Thousand Dollars
597 (\$1,000.00), or imprisoned for not more than forty-eight (48)
598 hours in jail or both; and the court shall order such person to
599 attend and complete an alcohol safety education program as

600 provided in Section 63-11-32. The court may substitute attendance
601 at a victim impact panel instead of forty-eight (48) hours in
602 jail. In addition, the Department of Public Safety, the
603 Commissioner of Public Safety or his duly authorized agent shall,
604 after conviction and upon receipt of the court abstract, suspend
605 the driver's license and driving privileges of such person for a
606 period of not less than ninety (90) days and until such person
607 attends and successfully completes an alcohol safety education
608 program as herein provided; provided, however, in no event shall
609 such period of suspension exceed one (1) year. Commercial driving
610 privileges shall be suspended as provided in Section 63-1-83.

611 The circuit court having jurisdiction in the county in which
612 the conviction was had or the circuit court of the person's county
613 of residence may reduce the suspension of driving privileges under
614 Section 63-11-30(2)(a) if the denial of which would constitute a
615 hardship on the offender, except that no court may issue such an
616 order reducing the suspension of driving privileges under this
617 subsection until thirty (30) days have elapsed from the effective
618 date of the suspension. Hardships shall only apply to first
619 offenses under Section 63-11-30(1), and shall not apply to second,
620 third or subsequent convictions of any person violating subsection
621 (1) of this section. A reduction of suspension on the basis of
622 hardship shall not be available to any person who refused to
623 submit to a chemical test upon the request of a law enforcement
624 officer as provided in Section 63-11-5. When the petition is
625 filed, such person shall pay to the circuit clerk of the court
626 where the petition is filed a fee of Fifty Dollars (\$50.00), which
627 shall be deposited into the State General Fund to the credit of a
628 special fund hereby created in the State Treasury to be used for
629 alcohol or drug abuse treatment and education, upon appropriation
630 by the Legislature. This fee shall be in addition to any other
631 court costs or fees required for the filing of petitions.

632 The petition filed under the provisions of this subsection

633 shall contain the specific facts which the petitioner alleges to
634 constitute a hardship and the driver's license number of the
635 petitioner. A hearing may be held on any petition filed under
636 this subsection only after ten (10) days' prior written notice to
637 the Commissioner of Public Safety, or his designated agent, or the
638 attorney designated to represent the state. At such hearing, the
639 court may enter an order reducing the period of suspension.

640 The order entered under the provisions of this subsection
641 shall contain the specific grounds upon which hardship was
642 determined, and shall order the petitioner to attend and complete
643 an alcohol safety education program as provided in Section
644 63-11-32. A certified copy of such order shall be delivered to
645 the Commissioner of Public Safety by the clerk of the court within
646 five (5) days of the entry of the order. The certified copy of
647 such order shall contain information which will identify the
648 petitioner, including, but not limited to, the name, mailing
649 address, street address, Social Security number and driver's
650 license number of the petitioner.

651 At any time following at least thirty (30) days of suspension
652 for a first offense violation of this section, the court may grant
653 the person hardship driving privileges upon written petition of
654 the defendant, if it finds reasonable cause to believe that
655 revocation would hinder the person's ability to:

- 656 (i) Continue his employment;
- 657 (ii) Continue attending school or an educational
658 institution; or
- 659 (iii) Obtain necessary medical care.

660 Proof of the hardship shall be established by clear and
661 convincing evidence which shall be supported by independent
662 documentation.

663 (b) Except as otherwise provided in subsection (3),
664 upon any second conviction of any person violating subsection (1)
665 of this section, the offenses being committed within a period of

666 five (5) years, such person shall be fined not less than Six
667 Hundred Dollars (\$600.00) nor more than One Thousand Five Hundred
668 Dollars (\$1,500.00) and shall be imprisoned not less than ten (10)
669 days nor more than one (1) year and sentenced to community service
670 work for not less than ten (10) days nor more than one (1) year.
671 Except as may otherwise be provided by paragraph (e) of this
672 subsection, the Commissioner of Public Safety shall suspend the
673 driver's license of such person for two (2) years. Suspension of
674 a commercial driver's license shall be governed by Section
675 63-1-83. Upon any second conviction as described in this
676 paragraph, the court shall ascertain whether the defendant is
677 married, and if the defendant is married shall obtain the name and
678 address of the defendant's spouse; the clerk of the court shall
679 submit this information to the Department of Public Safety.
680 Further, the commissioner shall notify in writing, by certified
681 mail, return receipt requested, the owner of the vehicle and the
682 spouse, if any, of the person convicted of the second violation of
683 the possibility of forfeiture of the vehicle if such person is
684 convicted of a third violation of subsection (1) of this section.
685 The owner of the vehicle and the spouse shall be considered
686 notified under this paragraph if the notice is deposited in the
687 United States mail and any claim that the notice was not in fact
688 received by the addressee shall not affect a subsequent forfeiture
689 proceeding.

690 (c) Except as otherwise provided in subsection (3), for
691 any third or subsequent conviction of any person violating
692 subsection (1) of this section, the offenses being committed
693 within a period of five (5) years, such person shall be guilty of
694 a felony and fined not less than Two Thousand Dollars (\$2,000.00)
695 nor more than Five Thousand Dollars (\$5,000.00) and shall be
696 imprisoned not less than one (1) year nor more than five (5) years
697 in the State Penitentiary or may be sentenced as provided in
698 Section 2 of Senate Bill No. 2987, 1999 Regular Session. The law

699 enforcement agency shall seize the vehicle operated by any person
700 charged with a third or subsequent violation of subsection (1) of
701 this section, if such convicted person was driving the vehicle at
702 the time the offense was committed. Such vehicle may be forfeited
703 in the manner provided by Sections 63-11-49 through 63-11-53.
704 Except as may otherwise be provided by paragraph (e) of this
705 subsection, the Commissioner of Public Safety shall suspend the
706 driver's license of such person for five (5) years. The
707 suspension of a commercial driver's license shall be governed by
708 Section 63-1-83.

709 (d) Except as otherwise provided in subsection (3), any
710 person convicted of a second violation of subsection (1) of this
711 section, may have the period that his driver's license is
712 suspended reduced if such person receives an in-depth diagnostic
713 assessment, and as a result of such assessment is determined to be
714 in need of treatment of his alcohol and/or drug abuse problem and
715 successfully completes treatment of his alcohol and/or drug abuse
716 problem at a program site certified by the Department of Mental
717 Health. Such person shall be eligible for reinstatement of his
718 driving privileges upon the successful completion of such
719 treatment after a period of one (1) year after such person's
720 driver's license is suspended. Each person who receives a
721 diagnostic assessment shall pay a fee representing the cost of
722 such assessment. Each person who participates in a treatment
723 program shall pay a fee representing the cost of such treatment.

724 (e) Except as otherwise provided in subsection (3), any
725 person convicted of a third or subsequent violation of subsection
726 (1) of this section may enter an alcohol and/or drug abuse program
727 approved by the Department of Mental Health for treatment of such
728 person's alcohol and/or drug abuse problem. If such person
729 successfully completes such treatment, such person shall be
730 eligible for reinstatement of his driving privileges after a
731 period of three (3) years after such person's driver's license is

732 suspended.

733 (3) (a) This subsection shall be known and may be cited as
734 Zero Tolerance for Minors. The provisions of this subsection
735 shall apply only when a person under the age of twenty-one (21)
736 years has a blood alcohol concentration two one-hundredths percent
737 (.02%) or more, but lower than eight one-hundredths percent
738 (.08%). If such person's blood alcohol concentration is eight
739 one-hundredths percent (.08%) or more, the provisions of
740 subsection (2) shall apply.

741 (b) Upon conviction of any person under the age of
742 twenty-one (21) years for the first offense of violating
743 subsection (1) of this section where chemical tests provided for
744 under Section 63-11-5 were given, or where chemical test results
745 are not available, such person shall have his driver's license
746 suspended for ninety (90) days and shall be fined Two Hundred
747 Fifty Dollars (\$250.00); and the court shall order such person to
748 attend and complete an alcohol safety education program as
749 provided in Section 63-11-32. The court may also require
750 attendance at a victim impact panel.

751 The circuit court having jurisdiction in the county in which
752 the conviction was had or the circuit court of the person's county
753 of residence may reduce the suspension of driving privileges under
754 Section 63-11-30(2)(a) if the denial of which would constitute a
755 hardship on the offender, except that no court may issue such an
756 order reducing the suspension of driving privileges under this
757 subsection until thirty (30) days have elapsed from the effective
758 date of the suspension. Hardships shall only apply to first
759 offenses under Section 63-11-30(1), and shall not apply to second,
760 third or subsequent convictions of any person violating subsection
761 (1) of this section. A reduction of suspension on the basis of
762 hardship shall not be available to any person who refused to
763 submit to a chemical test upon the request of a law enforcement
764 officer as provided in Section 63-11-5. When the petition is

765 filed, such person shall pay to the circuit clerk of the court
766 where the petition is filed a fee of Fifty Dollars (\$50.00), which
767 shall be deposited into the State General Fund to the credit of a
768 special fund hereby created in the State Treasury to be used for
769 alcohol or drug abuse treatment and education, upon appropriation
770 by the Legislature. This fee shall be in addition to any other
771 court costs or fees required for the filing of petitions.

772 The petition filed under the provisions of this subsection
773 shall contain the specific facts which the petitioner alleges to
774 constitute a hardship and the driver's license number of the
775 petitioner. A hearing may be held on any petition filed under
776 this subsection only after ten (10) days' prior written notice to
777 the Commissioner of Public Safety, or his designated agent, or the
778 attorney designated to represent the state. At such hearing, the
779 court may enter an order reducing the period of suspension.

780 The order entered under the provisions of this subsection
781 shall contain the specific grounds upon which hardship was
782 determined, and shall order the petitioner to attend and complete
783 an alcohol safety education program as provided in Section
784 63-11-32. A certified copy of such order shall be delivered to
785 the Commissioner of Public Safety by the clerk of the court within
786 five (5) days of the entry of the order. The certified copy of
787 such order shall contain information which will identify the
788 petitioner, including, but not limited to, the name, mailing
789 address, street address, Social Security number and driver's
790 license number of the petitioner.

791 At any time following at least thirty (30) days of suspension
792 for a first offense violation of this section, the court may grant
793 the person hardship driving privileges upon written petition of
794 the defendant, if it finds reasonable cause to believe that
795 revocation would hinder the person's ability to:

- 796 (i) Continue his employment;
- 797 (ii) Continue attending school or an educational

798 institution; or

799 (iii) Obtain necessary medical care.

800 Proof of the hardship shall be established by clear and
801 convincing evidence which shall be supported by independent
802 documentation.

803 (c) Upon any second conviction of any person under the
804 age of twenty-one (21) years violating subsection (1) of this
805 section, the offenses being committed within a period of five (5)
806 years, such person shall be fined not more than Five Hundred
807 Dollars (\$500.00) and shall have his driver's license suspended
808 for one (1) year.

809 (d) For any third or subsequent conviction of any
810 person under the age of twenty-one (21) years violating subsection
811 (1) of this section, the offenses being committed within a period
812 of five (5) years, such person shall be fined not more than One
813 Thousand Dollars (\$1,000.00) and shall have his driver's license
814 suspended until he reaches the age of twenty-one (21) or for two
815 (2) years, whichever is longer.

816 (e) Any person under the age of twenty-one (21) years
817 convicted of a second violation of subsection (1) of this section,
818 may have the period that his driver's license is suspended reduced
819 if such person receives an in-depth diagnostic assessment, and as
820 a result of such assessment is determined to be in need of
821 treatment of his alcohol and/or drug abuse problem and
822 successfully completes treatment of his alcohol and/or drug abuse
823 problem at a program site certified by the Department of Mental
824 Health. Such person shall be eligible for reinstatement of his
825 driving privileges upon the successful completion of such
826 treatment after a period of six (6) months after such person's
827 driver's license is suspended. Each person who receives a
828 diagnostic assessment shall pay a fee representing the cost of
829 such assessment. Each person who participates in a treatment
830 program shall pay a fee representing the cost of such treatment.

831 (f) Any person under the age of twenty-one (21) years
832 convicted of a third or subsequent violation of subsection (1) of
833 this section shall complete treatment of an alcohol and/or drug
834 abuse program at a site certified by the Department of Mental
835 Health.

836 (g) The court shall have the discretion to rule that a
837 first offense of this subsection by a person under the age of
838 twenty-one (21) years shall be nonadjudicated. Such person shall
839 be eligible for nonadjudication only once. The Department of
840 Public Safety shall maintain a confidential registry of all cases
841 which are nonadjudicated as provided in this paragraph. A judge
842 who rules that a case is nonadjudicated shall forward such ruling
843 to the Department of Public Safety. Judges and prosecutors
844 involved in implied consent violations shall have access to the
845 confidential registry for the purpose of determining
846 nonadjudication eligibility. A record of a person who has been
847 nonadjudicated shall be maintained for five (5) years or until
848 such person reaches the age of twenty-one (21) years. Any person
849 whose confidential record has been disclosed in violation of this
850 paragraph shall have a civil cause of action against the person
851 and/or agency responsible for such disclosure.

852 (4) Every person convicted of operating a vehicle while
853 under the influence of intoxicating liquor or any other substance
854 which has impaired such person's ability to operate a motor
855 vehicle where the person (a) refused a law enforcement officer's
856 request to submit to a chemical test of his breath as provided in
857 this chapter, or (b) was unconscious at the time of a chemical
858 test and refused to consent to the introduction of the results of
859 such test in any prosecution, shall be punished consistent with
860 the penalties prescribed herein for persons submitting to the
861 test, except that there shall be an additional suspension of
862 driving privileges as follows:

863 The Commissioner of Public Safety or his authorized agent

864 shall suspend the driver's license or permit to drive or deny the
865 issuance of a license or permit to such person as provided for
866 first, second and third or subsequent offenders in subsection (2)
867 of this section. Such suspension shall be in addition to any
868 suspension imposed pursuant to subsection (1) of Section 63-11-23.

869 (5) Every person who operates any motor vehicle in violation
870 of the provisions of subsection (1) of this section and who in a
871 negligent manner causes the death of another or mutilates,
872 disfigures, permanently disables or destroys the tongue, eye, lip,
873 nose or any other limb, organ or member of another shall, upon
874 conviction, be guilty of a felony and shall be committed to the
875 custody of the State Department of Corrections for a period of
876 time not to exceed twenty-five (25) years.

877 (6) Upon conviction of any violation of subsection (1) of
878 this section, the trial judge shall sign in the place provided on
879 the traffic ticket, citation or affidavit stating that the person
880 arrested either employed an attorney or waived his right to an
881 attorney after having been properly advised. If the person
882 arrested employed an attorney, the name, address and telephone
883 number of the attorney shall be written on the ticket, citation or
884 affidavit. The judge shall cause a copy of the traffic ticket,
885 citation or affidavit, and any other pertinent documents
886 concerning the conviction, to be sent to the Commissioner of
887 Public Safety. A copy of the traffic ticket, citation or
888 affidavit and any other pertinent documents, having been attested
889 as true and correct by the Commissioner of Public Safety, or his
890 designee, shall be sufficient proof of the conviction for purposes
891 of determining the enhanced penalty for any subsequent convictions
892 of violations of subsection (1) of this section.

893 (7) Convictions in other states of violations for driving or
894 operating a vehicle while under the influence of an intoxicating
895 liquor or while under the influence of any other substance that
896 has impaired the person's ability to operate a motor vehicle

897 occurring after July 1, 1992, shall be counted for the purposes of
898 determining if a violation of subsection (1) of this section is a
899 first, second, third or subsequent offense and the penalty that
900 shall be imposed upon conviction for a violation of subsection (1)
901 of this section.

902 (8) For the purposes of determining how to impose the
903 sentence for a second, third or subsequent conviction under this
904 section, the indictment shall not be required to enumerate
905 previous convictions. It shall only be necessary that the
906 indictment state the number of times that the defendant has been
907 convicted and sentenced within the past five (5) years under this
908 section to determine if an enhanced penalty shall be imposed. The
909 amount of fine and imprisonment imposed in previous convictions
910 shall not be considered in calculating offenses to determine a
911 second, third or subsequent offense of this section.

912 (9) Any person under the legal age to obtain a license to
913 operate a motor vehicle convicted under this section shall not be
914 eligible to receive such license until the person reaches the age
915 of eighteen (18) years.

916 (10) Suspension of driving privileges for any person
917 convicted of violations of Section 63-11-30(1) shall run
918 consecutively.

919 SECTION 14. Section 41-29-187, Mississippi Code of 1972, is
920 amended as follows:

921 41-29-187. (1) Attorneys for the Mississippi Bureau of
922 Narcotics, by and through the Director of the Mississippi Bureau
923 of Narcotics, are authorized to seek judicial subpoenas to require
924 any person, firm or corporation in the State of Mississippi to
925 produce for inspection and copying business records and other
926 documents which are relevant to the investigation of any felony
927 violation of the Uniform Controlled Substances Law of the State of
928 Mississippi. The production of the designated documents shall be
929 at the location of the named person's, firm's or corporation's

930 principal place of business, residence or other place at which the
931 person, firm or corporation agrees to produce the documents. The
932 cost of reproducing the documents shall be borne by the bureau at
933 prevailing rates. At the conclusion of the investigation and any
934 related judicial proceedings, the person, firm or corporation from
935 whom the records or documents were subpoenaed shall, upon written
936 request, be entitled to the return or destruction of all copies
937 remaining in the possession of the bureau.

938 (2) The bureau is authorized to make an ex parte and in
939 camera application to the county, drug or circuit court of the
940 county in which such person, firm or corporation resides or has
941 his principal place of business, or if the person, firm or
942 corporation is absent or a nonresident of the State of
943 Mississippi, to the county, drug or circuit court of Hinds County.

944 On application of the county, drug or circuit court, a subpoena
945 duces tecum shall be issued only upon a showing of probable cause
946 that the documents sought are relevant to the investigation of a
947 felony violation of the Uniform Controlled Substances Law or may
948 reasonably lead to the discovery of such relevant evidence.
949 Nothing contained in this section shall affect the right of a
950 person to assert a claim that the information sought is privileged
951 by law. Such application to the court shall be in writing and
952 accompanied by a sworn affidavit from an agent of the Bureau of
953 Narcotics which sets forth facts which the court shall consider in
954 determining that probable cause exists.

955 (3) Any person, firm or corporation complying in good faith
956 with a judicial subpoena issued pursuant to this section shall not
957 be liable to any other person, firm or corporation for damages
958 caused in whole or in part by such compliance.

959 (4) Documents in the possession of the Mississippi Bureau of
960 Narcotics gathered pursuant to the provisions of this section and
961 subpoenas issued by the court shall be maintained in confidential
962 files with access limited to prosecutorial and other law

963 enforcement investigative personnel on a "need to know" basis and
964 shall be exempt from the provisions of the Mississippi Public
965 Records Act of 1983, except that upon the filing of an indictment
966 or information, or upon the filing of an action for forfeiture or
967 recovery of property, funds or fines, such documents shall be
968 subject to such disclosure as may be required pursuant to the
969 applicable statutes or court rules governing the trial of any such
970 judicial proceeding.

971 (5) The circuit, drug or county judge shall seal each
972 application and affidavit filed and each subpoena issued after
973 service of said subpoena. The application, affidavit and subpoena
974 may not be disclosed except in the course of a judicial
975 proceeding. Any unauthorized disclosure of a sealed subpoena,
976 application or affidavit shall be punishable as contempt of court.

977 (6) No person, including the Director of the Mississippi
978 Bureau of Narcotics, an agent or member of his staff, prosecuting
979 attorney, law enforcement officer, witness, court reporter,
980 attorney or other person, shall disclose to an unauthorized person
981 documents gathered by the bureau pursuant to the provisions of
982 this section, nor investigative demands and subpoenas issued and
983 served, except that upon the filing of an indictment or
984 information, or upon the filing of an action for forfeiture or
985 recovery of property, funds or fines, or in other legal
986 proceedings, the documents shall be subject to such disclosure as
987 may be required pursuant to applicable statutes and court rules
988 governing the trial of any such judicial proceeding. In the event
989 of an unauthorized disclosure of any such documents gathered by
990 the Mississippi Bureau of Narcotics pursuant to the provisions of
991 this section, the person making any such unauthorized disclosure
992 shall be guilty of a misdemeanor, and upon conviction thereof
993 shall be punished by a fine of not more than One Thousand Dollars
994 (\$1,000.00), or imprisonment of not more than six (6) months, or
995 by both such fine and imprisonment.

996 (7) No person, agent or employee upon whom a subpoena is
997 served pursuant to this section shall disclose the existence of
998 said subpoena or the existence of the investigation to any person
999 unless such disclosure is necessary for compliance with the
1000 subpoena. Any person who willfully violates this subsection shall
1001 be guilty of a misdemeanor and may be confined in the county jail,
1002 for a period not to exceed one (1) year, or fined not more than
1003 Ten Thousand Dollars (\$10,000.00), or both.

1004 SECTION 15. Section 41-29-501, Mississippi Code of 1972, is
1005 amended as follows:

1006 41-29-501. As used in this article, the following terms
1007 shall have the meaning ascribed to them herein unless the context
1008 requires otherwise:

1009 (a) "Aggrieved person" means a person who was a party
1010 to an intercepted wire, oral or other communication or a person
1011 against whom the interception was directed.

1012 (b) "Communication common carrier" has the meaning
1013 given the term "common carrier" by 47 U.S.C.S. 153(h) and shall
1014 also mean a provider of communication services.

1015 (c) "Contents," when used with respect to a wire, oral
1016 or other communication, includes any information concerning the
1017 identity of the parties to the communication or the existence,
1018 substance, purport or meaning of that communication.

1019 (d) "Covert entry" means any entry into or onto
1020 premises which if made without a court order allowing such an
1021 entry under this article would be a violation of criminal law.

1022 (e) "Director" means the Director of the Bureau of
1023 Narcotics or, if the director is absent or unable to serve, the
1024 Assistant Director of the Bureau of Narcotics.

1025 (f) "Electronic, mechanical or other device" means a
1026 device or apparatus primarily designed or used for the
1027 nonconsensual interception of wire, oral or other communications.

1028 (g) "Intercept" means the aural or other acquisition of

1029 the contents of a wire, oral or other communication through the
1030 use of an electronic, mechanical or other device.

1031 (h) "Investigative or law enforcement officer" means an
1032 officer of this state or of a political subdivision of this state
1033 who is empowered by law to conduct investigations of, or to make
1034 arrests for, offenses enumerated in Section 41-29-505, or an
1035 attorney authorized by law to prosecute or participate in the
1036 prosecution of such offenses.

1037 (i) "Judge of competent jurisdiction" means a justice
1038 of the Supreme Court or a circuit or drug court judge.

1039 (j) "Oral communication" means an oral communication
1040 uttered by a person exhibiting an expectation that the
1041 communication is not subject to interception under circumstances
1042 justifying that expectation.

1043 (k) "Other communication" means any transfer of an
1044 electronic or other signal, including fax signals, computer
1045 generated signals, other similar signals, or any scrambled or
1046 encrypted signal transferred via wire, radio, electromagnetic,
1047 photoelectric or photooptical system from one party to another in
1048 which the involved parties may reasonably expect the communication
1049 to be private.

1050 (l) "Prosecutor" means a district attorney with
1051 jurisdiction in the county in which the facility or place where
1052 the communication to be intercepted is located or a legal
1053 assistant to the district attorney if designated in writing by the
1054 district attorney on a case by case basis.

1055 (m) "Residence" means a structure or the portion of a structure
1056 used as a person's home or fixed place of habitation to which the
1057 person indicates an intent to return after any temporary absence.

1058 (n) "Wire communication" means a communication made in
1059 whole or in part through the use of facilities for the
1060 transmission of communications by the aid of wire, cable or other
1061 like connection between the point of origin and the point of

1062 reception furnished or operated by a person engaged as a common
1063 carrier in providing or operating the facilities for the
1064 transmission of communications and includes cordless telephones,
1065 voice pagers, cellular telephones, any mobile telephone, or any
1066 communication conducted through the facilities of a provider of
1067 communication services.

1068 SECTION 16. Section 41-29-505, Mississippi Code of 1972, is
1069 amended as follows:

1070 41-29-505. A judge of competent jurisdiction in the circuit
1071 or drug court district of the location where the interception of
1072 wire, oral or other communications is sought, or a circuit or drug
1073 court district contiguous to such circuit or drug court district,
1074 may issue an order authorizing interception of wire, oral or other
1075 communications only if the prosecutor applying for the order shows
1076 probable cause to believe that the interception will provide
1077 evidence of the commission of a felony under the Uniform
1078 Controlled Substances Law.

1079 SECTION 17. Section 41-29-513, Mississippi Code of 1972, is
1080 amended as follows:

1081 41-29-513. (1) To be valid, an application for an order
1082 authorizing the interception of a wire, oral or other
1083 communication must be made in writing under oath to a judge of
1084 competent jurisdiction in the circuit or drug court district of
1085 the location where the interception of wire, oral or other
1086 communications is sought, or a circuit or drug court district
1087 contiguous to such circuit or drug court district, and must state
1088 the applicant's authority to make the application. An applicant
1089 must include the following information in the application:

1090 (a) A statement that the application has been requested
1091 by the director and the identity of the prosecutor making the
1092 application;

1093 (b) A full and complete statement of the facts and
1094 circumstances relied on by the applicant to justify his belief

1095 that an order should be issued including:

1096 (i) Details about the particular offense that has
1097 been, is being, or is about to be committed;

1098 (ii) A particular description of the nature and
1099 location of the facilities from which or the place where the
1100 communication is to be intercepted;

1101 (iii) A particular description of the type of
1102 communication sought to be intercepted; and

1103 (iv) The identity of the person, if known,
1104 committing the offense and whose communications are to be
1105 intercepted;

1106 (c) A full and complete statement as to whether or not
1107 other investigative procedures have been tried and failed or why
1108 they reasonably appear to be unlikely to succeed or to be too
1109 dangerous if tried;

1110 (d) A statement of the period of time for which the
1111 interception is required to be maintained and, if the nature of
1112 the investigation is such that the authorization for interception
1113 should not automatically terminate when the described type of
1114 communication is first obtained, a particular description of the
1115 facts establishing probable cause to believe that additional
1116 communications of the same type will occur after the described
1117 type of communication is obtained;

1118 (e) A statement whether a covert entry will be
1119 necessary to properly and safely install the wiretapping or
1120 electronic surveillance or eavesdropping equipment and, if a
1121 covert entry is requested, a statement as to why such an entry is
1122 necessary and proper under the facts of the particular
1123 investigation, including a full and complete statement as to
1124 whether other investigative techniques have been tried and have
1125 failed or why they reasonably appear to be unlikely to succeed or
1126 to be too dangerous if tried or are not feasible under the
1127 circumstances or exigencies of time;

1128 (f) A full and complete statement of the facts
1129 concerning all applications known to the prosecutor making the
1130 application that have been previously made to a judge for
1131 authorization to intercept wire, oral or other communications
1132 involving any of the persons, facilities or places specified in
1133 the application and of the action taken by the judge on each
1134 application; and

1135 (g) If the application is for the extension of an
1136 order, a statement setting forth the results already obtained from
1137 the interception or a reasonable explanation of the failure to
1138 obtain results.

1139 (2) The judge may, in an ex parte in camera hearing, require
1140 additional testimony or documentary evidence in support of the
1141 application, and such testimony or documentary evidence shall be
1142 preserved as part of the application.

1143 SECTION 18. Section 41-29-525, Mississippi Code of 1972, is
1144 amended as follows:

1145 41-29-525. (1) The contents of an intercepted wire, oral or
1146 other communication or evidence derived from the communication may
1147 not be received in evidence or otherwise disclosed in a trial,
1148 hearing or other proceeding in a federal or state court unless
1149 each party has been furnished with a copy of the court order and
1150 application under which the interception was authorized or
1151 approved not less than ten (10) days before the date of the trial,
1152 hearing or other proceeding. The ten-day period may be waived by
1153 the judge if he finds that it is not possible to furnish the party
1154 with the information ten (10) days before the trial, hearing or
1155 proceeding and that the party will not be prejudiced by the delay
1156 in receiving the information.

1157 (2) An aggrieved person charged with an offense in a trial,
1158 hearing or proceeding in or before a court, department, officer,
1159 agency, regulatory body, or other authority of the United States
1160 or of this state or a political subdivision of this state, may

1161 move to suppress the contents of an intercepted wire, oral or
1162 other communication or evidence derived from the communication on
1163 the ground that:

1164 (a) The communication was unlawfully intercepted;

1165 (b) The order authorizing the interception is
1166 insufficient on its face; or

1167 c) The interception was not made in conformity with the
1168 order.

1169 (3) The motion to suppress shall be made before the trial,
1170 hearing or proceeding unless there was no opportunity to make the
1171 motion before the trial, hearing or proceeding, or the person was
1172 not aware of the grounds of the motion before the trial, hearing
1173 or proceeding. The hearing on the motion shall be held in camera
1174 upon the written request of the aggrieved person. If the motion
1175 is granted, the contents of the intercepted wire, oral or other
1176 communication and evidence derived from the communication shall be
1177 treated as inadmissible evidence. The judge, on the filing of the
1178 motion by the aggrieved person, shall make available to the
1179 aggrieved person or his counsel for inspection any portion of the
1180 intercepted communication or evidence derived from the
1181 communication that the judge determines is in the interest of
1182 justice to make available.

1183 (4) Any circuit or drug court judge of this state, upon
1184 hearing a pretrial motion regarding conversations intercepted by
1185 wire pursuant to this article, or who otherwise becomes informed
1186 that there exists on such intercepted wire, oral or other
1187 communication identification of a specific individual who is not a
1188 party or suspect to the subject of interception:

1189 (a) Shall give notice and an opportunity to be heard on
1190 the matter of suppression of references to that person if
1191 identification is sufficient so as to give notice; or

1192 (b) Shall suppress references to that person if
1193 identification is sufficient to potentially cause embarrassment or

1194 harm which outweighs the probative value, if any, of the mention
1195 of such person, but insufficient to require the notice provided
1196 for in paragraph (a) of this subsection.

1197 SECTION 19. Section 41-29-536, Mississippi Code of 1972, is
1198 amended as follows:

1199 41-29-536. (1) Attorneys for the Bureau of Narcotics may
1200 file a motion with a circuit or drug court judge of the circuit or
1201 drug court district in which the subscriber, instrument or other
1202 device exists, for communication records which will be material to
1203 an ongoing investigation of a felony violation of the Uniform
1204 Controlled Substances Law.

1205 (2) The motion shall be made in writing, under oath, and
1206 shall include the name of the subscriber, the number or numbers,
1207 and the location of the instrument or other device, if known and
1208 applicable. The motion shall be accompanied by an affidavit from
1209 an agent of the Bureau of Narcotics which sets forth facts which
1210 the court shall consider in determining that probable cause exists
1211 to believe that the information sought will be material to an
1212 ongoing felony violation of the Uniform Controlled Substances Law.

1213 (3) Upon consideration of the motion and the determination
1214 that probable cause exists, the circuit or drug court judge may
1215 order a communications common carrier as defined by 47 USC 153(h)
1216 or a provider of communication services to provide the Bureau of
1217 Narcotics with communication billing records, call records,
1218 subscriber information, or other communication record information.

1219 The communications common carrier or the provider of
1220 communication services shall be entitled to compensation at the
1221 prevailing rates from the Bureau of Narcotics.

1222 (4) The circuit or drug court judge shall seal each order
1223 issued pursuant to this section. The contents of a motion,
1224 affidavit and order may not be disclosed except in the course of a
1225 judicial proceeding. Any unauthorized disclosure of a sealed
1226 order, motion or affidavit shall be punishable as contempt of

1227 court.

1228 SECTION 20. Section 41-29-701, Mississippi Code of 1972, is
1229 amended as follows:

1230 41-29-701. (1) As used in this section, the following words
1231 and phrases shall have the meanings ascribed to them herein unless
1232 the context clearly requires otherwise:

1233 (a) "Pen register" means a mechanical or electronic
1234 device that attaches to a telephone line and is capable of
1235 recording outgoing numbers dialed from that line and date, time
1236 and duration of any incoming communication to that line.

1237 (b) "Trap and trace device" means a device which
1238 captures the incoming electronic or other signals which identifies
1239 the originating number of an instrument or device from which a
1240 wire or other communication was transmitted.

1241 (c) "Caller ID" means a service offered by a provider
1242 of communications services which identifies either or both of the
1243 originating number or the subscriber of such number of an
1244 instrument or device from which a wire or other communication was
1245 transmitted.

1246 (2) (a) Attorneys for the Bureau of Narcotics, upon their
1247 own motion, may file an application with a circuit or drug court
1248 judge of the circuit or drug court district in which the proposed
1249 installation will be made, for the installation and use of a pen
1250 register, trap and trace device or caller ID to obtain information
1251 material to an ongoing investigation of a felony violation of the
1252 Uniform Controlled Substances Law.

1253 (b) The application shall be made in writing under oath
1254 and shall include the name of the subscriber, the telephone number
1255 or numbers, and the location of the telephone instrument or
1256 instruments upon which the pen register will be utilized. The
1257 application shall also set forth facts which the court shall
1258 consider in determining that probable cause exists that the
1259 installation and utilization of the pen register, trap and trace

1260 device or caller ID will be material to an ongoing investigation
1261 of a felony violation of the Uniform Controlled Substances Law.

1262 (c) Upon consideration of the application and a
1263 determination that probable cause exists, the circuit or drug
1264 court judge may order the installation and utilization of the pen
1265 register, trap and trace device or caller ID, and in the order the
1266 circuit or drug court judge shall direct a communications common
1267 carrier, as defined by 47 USC 153(h), to furnish all information,
1268 facilities and technical assistance necessary to facilitate the
1269 installation and utilization of the pen register, trap and trace
1270 device or caller ID unobtrusively and with a minimum of
1271 interference to the services provided by the carrier. The carrier
1272 is entitled to compensation at the prevailing rates for the
1273 facilities and assistance provided to the Bureau of Narcotics.

1274 (d) An order for the installation and utilization of a
1275 pen register, trap and trace device or caller ID is valid for not
1276 more than thirty (30) days from the date the order is granted
1277 unless, prior to the expiration of the order, an attorney for the
1278 Bureau of Narcotics applies for and obtains from the court an
1279 extension of the order. The period of extension may not exceed
1280 thirty (30) days for each extension granted.

1281 (e) The circuit or drug court shall seal an application
1282 and order for the installation and utilization of a pen register,
1283 trap and trace device or caller ID granted under this section.
1284 The contents of an application or order may not be disclosed
1285 except in the course of a judicial proceeding and an unauthorized
1286 disclosure is punishable as contempt of court.

1287 (3) On or before January 5 of each year, the Director of the
1288 Bureau of Narcotics shall submit a report to the Mississippi
1289 Administrative Office of Courts detailing the number of
1290 applications for pen registers sought and the number of orders for
1291 the installation and utilization of pen registers, trap and trace
1292 devices or caller ID granted during the preceding calendar year.

1293 SECTION 21. This act shall take effect and be in force from
1294 and after July 1, 1999.