

By: Smith

To: Judiciary;
Appropriations

SENATE BILL NO. 2411

1 AN ACT RELATING TO PUBLIC HEALTH AND SAFETY TO CREATE THE
2 ANTI-DRUG DIVERSION ACT; TO DEFINE CERTAIN TERMS; TO REQUIRE
3 TRANSMISSION OF CERTAIN INFORMATION; TO MAKE INFORMATION
4 CONFIDENTIAL; TO PROVIDE FOR ACCESS TO INFORMATION AND DUTIES FOR
5 THE CENTRAL REPOSITORY; TO GRANT CERTAIN AUTHORITY TO THE STATE
6 BUREAU OF NARCOTICS AND TO PROVIDE DUTIES TO THE BUREAU; TO MODIFY
7 PROCEDURES FOR DISPENSING PRESCRIPTION DRUGS PURSUANT TO A
8 PRESCRIPTION; TO AMEND SECTION 37-13-91, MISSISSIPPI CODE OF 1972,
9 TO ENCOURAGE ENFORCEMENT OF TRUANCY LAWS BY LOCAL LAW ENFORCEMENT
10 OFFICERS; TO PROVIDE A THREE-YEAR DRUG COURT PILOT PROJECT IN THE
11 FIRST, SECOND, TENTH, FIFTEENTH, SIXTEENTH, SEVENTEENTH,
12 NINETEENTH, TWENTY-FIRST AND TWENTY-SECOND CIRCUIT COURT DISTRICTS
13 TO TRY CASES OF OFFENSES INVOLVING NARCOTICS, DANGEROUS DRUGS AND
14 CONTROLLED SUBSTANCES; TO PROVIDE FOR THE DESIGNATION OF JUDGES
15 AND PROVIDE FOR THEIR SUPPORT STAFFS; TO PROVIDE FOR COURT
16 REPORTERS, COURT ADMINISTRATORS, PUBLIC DEFENDERS AND SOCIAL
17 WORKERS; TO REQUIRE REPORTS AND RECOMMENDATIONS REGARDING THE DRUG
18 COURTS; TO PROVIDE THAT THE ADMINISTRATIVE OFFICE OF COURTS SHALL
19 MONITOR THE DRUG COURTS; TO AMEND SECTION 9-1-36, MISSISSIPPI CODE
20 OF 1972, TO PROVIDE AN OFFICE ALLOWANCE FOR DRUG COURT JUDGES; TO
21 AMEND SECTIONS 9-13-1, 9-13-17 AND 9-13-19, MISSISSIPPI CODE OF
22 1972, TO PROVIDE FOR COURT REPORTERS IN THE DRUG COURTS; TO AMEND
23 SECTION 9-17-1, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR COURT
24 ADMINISTRATORS IN THE DRUG COURTS; TO AMEND SECTION 13-7-35,
25 MISSISSIPPI CODE OF 1972, TO PROVIDE THAT INDICTMENTS FROM THE
26 STATE GRAND JURY SHALL BE TRIED IN A DRUG COURT WHERE APPLICABLE;
27 TO AMEND SECTION 25-31-5, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR
28 ASSISTANT DISTRICT ATTORNEYS WHO SHALL ONLY PROSECUTE DRUG
29 OFFENSES; TO AMEND SECTIONS 9-7-3, 63-11-30, 41-29-187, 41-29-501,
30 41-29-505, 41-29-513, 41-29-525, 41-29-536 AND 41-29-701,
31 MISSISSIPPI CODE OF 1972, IN CONFORMITY TO THE PROVISIONS OF THIS
32 ACT; AND FOR RELATED PURPOSES.

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

34 SECTION 1. Sections 1 through 7 of this act shall be known
35 and may be cited as the "Anti-Drug Diversion Act."

36 SECTION 2. For the purposes of this act:

37 (a) "Bureau" means the Mississippi State Bureau of
38 Narcotics;

39 (b) "Dispenser" means a person who distributes a
40 Schedule II controlled dangerous substance, but does not include a
41 licensed hospital pharmacy or a licensed nurse or medication aide
42 who administers such a substance at the direction of a licensed
43 physician;

44 (c) "Dispenser's registration number" means the
45 dispenser's or pharmacist's DEA number;

46 (d) "Exception report" means an output of data
47 indicating Schedule II controlled dangerous substance dispensation
48 which is outside expected norms for a prescriber practicing a
49 particular specialty or field of health care, for a dispenser
50 doing business in a particular location, or for a recipient;

51 (e) "Recipient's identification number" means the
52 unique number contained on a Schedule II controlled dangerous
53 substance recipient's valid driver's license, valid nondriver's
54 identification card, valid military identification card, or, if
55 the recipient is less than eighteen (18) years old and has no such
56 identification, the unique number contained on the recipient's
57 parent's or guardian's valid driver's license, valid nondriver's
58 identification card, or military identification card, or, if the
59 controlled dangerous substance is obtained for an animal, the
60 unique number contained on the animal owner's valid driver's
61 license, valid nondriver's identification card or valid military
62 identification card;

63 (f) "State" means any state, territory, or possession
64 of the United States, the District of Columbia, or foreign nation.

65 SECTION 3. (1) A dispenser of a Schedule II controlled
66 dangerous substance shall transmit to a central repository
67 designated by the bureau the following information for each

68 dispensation:

69 (a) Recipient's name, when feasible to submit;

70 (b) Recipient's identification number;

71 (c) National Drug Code number of the substance

72 dispensed;

73 (d) Date of the dispensation;

74 (e) Quantity of the substance dispensed;

75 (f) Prescriber's U.S. Drug Enforcement Agency

76 registration number; and

77 (g) Dispenser's registration number and location.

78 (2) The information required by this section shall be

79 transmitted:

80 (a) On an electronic device which is compatible with

81 the receiving device of the central repository or by computer

82 diskette, magnetic tape, or, in the case of fewer than twenty (20)

83 submissions per month, by pharmacy universal claim form, which

84 meets the specifications provided by rules of the bureau; and

85 (b) Within fifteen (15) days of the time that the

86 substance is dispensed.

87 (3) Willful failure to transmit information as required by

88 this section shall be a misdemeanor punishable, upon conviction,

89 by not more than one (1) year in the county jail or a fine of not

90 more than One Thousand Dollars (\$1,000.00) or both such

91 imprisonment and fine.

92 (4) The director of the bureau shall have the authority to

93 waive the limit on the number of submissions on the universal

94 claim form, and to allow a dispenser of a Schedule II controlled

95 dangerous substance to submit more than twenty (20) universal

96 claim forms per month if the dispenser has an appropriate
97 hardship.

98 SECTION 4. (1) The information collected at the central
99 repository pursuant to the Anti-Drug Diversion Act shall be
100 confidential and shall not be open to the public. Access to the
101 information shall be limited to:

102 (a) Agents of the bureau, special contract agents, and
103 other bureau employees as designated by the director;

104 (b) The United States Drug Enforcement Administration
105 Diversion Group Supervisor;

106 (c) The executive director or chief investigator, as
107 designated by each board, of the following state boards:

108 (i) Board of Podiatric Medical Examiners;

109 (ii) Board of Dentistry;

110 (iii) Board of Pharmacy;

111 (iv) State Board of Medical Licensure;

112 (v) State Board of Osteopathic Examiners; and

113 (vi) Board of Veterinary Medical Examiners;

114 provided, however, that the executive director or chief
115 investigator of each of these boards shall be limited to access to
116 information relevant to licensees of the employing board of such
117 executive director or chief investigator; and

118 (d) A statewide grand jury properly convened pursuant
119 to the Statewide Grand Jury Act.

120 (2) This section shall not prevent the disclosure, at the
121 discretion of the director of the bureau, of investigative
122 information to law enforcement officers or federal, state, county
123 or municipal law enforcement agencies, district attorneys and the

124 Attorney General in furtherance of criminal investigations or
125 prosecutions within their respective jurisdictions.

126 (3) Any unauthorized disclosure of any information collected
127 at the central repository provided by the Anti-Drug Diversion Act
128 shall be a misdemeanor. Violation of the provisions of this
129 section shall be deemed willful neglect of duty and shall be
130 grounds for removal from office.

131 (4) All access to information in the central repository
132 shall be controlled by and made through the bureau.

133 SECTION 5. (1) The central repository provided by the
134 Anti-Drug Diversion Act shall:

135 (a) Be capable of providing the collected information
136 in forms required by the bureau, including, but not limited to,
137 dispensations by prescriber name or registration number, dispenser
138 name or registration number, recipient name or identification
139 number, type of substance, frequency, quantity and location of
140 dispensation;

141 (b) Provide the bureau with continual, twenty-four-hour
142 per day, on-line access to the collected information;

143 (c) Secure the collected information against access by
144 unauthorized persons;

145 (d) Provide the bureau, in a reasonable time, with all
146 collected information in a format readily usable by the bureau, in
147 the event the relationship between the state and central
148 repository is terminated; and

149 (e) Not withhold access to the collected information
150 for any reason other than failure of the bureau to timely pay
151 agreed fees and charges for use of the central repository.

152 (2) The bureau is authorized to enter into a contract with a
153 vendor to serve as the central repository provided for in the
154 Anti-Drug Diversion Act or to purchase the necessary equipment to
155 create the central repository within the bureau.

156 SECTION 6. The bureau shall develop criteria for the
157 production of exception reports out of the information collected
158 at the central repository. In developing these criteria, the
159 bureau shall seek the counsel of the following entities:

- 160 (a) State Board of Pharmacy;
- 161 (b) Mississippi Board of Dental Examiners;
- 162 (c) Mississippi Board of Veterinary Medicine;
- 163 (d) State Board of Medical Licensure; and
- 164 (e) Mississippi State Board of Health.

165 SECTION 7. The director of the bureau shall promulgate and
166 adopt rules to implement and enforce the Anti-Drug Diversion Act.

167 SECTION 8. Section 37-13-91, Mississippi Code of 1972, is
168 amended as follows:[MS1]

169 37-13-91. (1) This section shall be referred to as the
170 "Mississippi Compulsory School Attendance Law."

171 (2) The following terms as used in this section are defined
172 as follows:

173 (a) "Parent" means the father or mother to whom a child
174 has been born, or the father or mother by whom a child has been
175 legally adopted.

176 (b) "Guardian" means a guardian of the person of a
177 child, other than a parent, who is legally appointed by a court of
178 competent jurisdiction.

179 (c) "Custodian" means any person having the present

180 care or custody of a child, other than a parent or guardian of the
181 child.

182 (d) "School day" means not less than five (5) and not
183 more than eight (8) hours of actual teaching in which both
184 teachers and pupils are in regular attendance for scheduled
185 schoolwork.

186 (e) "School" means any public school in this state or
187 any nonpublic school in this state which is in session each school
188 year for at least one hundred eighty (180) school days, except
189 that the "nonpublic" school term shall be the number of days that
190 each school shall require for promotion from grade to grade.

191 (f) "Compulsory-school-age child" means a child who has
192 attained or will attain the age of six (6) years on or before
193 September 1 of the calendar year and who has not attained the age
194 of seventeen (17) years on or before September 1 of the calendar
195 year.

196 (g) "School attendance officer" means a person employed
197 by the State Department of Education pursuant to Section 37-13-89.

198 (h) "Appropriate school official" means the
199 superintendent of the school district or his designee or, in the
200 case of a nonpublic school, the principal or the headmaster.

201 (i) "Nonpublic school" means an institution for the
202 teaching of children, consisting of a physical plant, whether
203 owned or leased, including a home, instructional staff members and
204 students, and which is in session each school year. This
205 definition shall include, but not be limited to, private, church,
206 parochial and home instruction programs.

207 (3) A parent, guardian or custodian of a

208 compulsory-school-age child in this state shall cause the child to
209 enroll in and attend a public school or legitimate nonpublic
210 school for the period of time that the child is of compulsory
211 school age, except under the following circumstances:

212 (a) When a compulsory-school-age child is physically,
213 mentally or emotionally incapable of attending school as
214 determined by the appropriate school official based upon
215 sufficient medical documentation.

216 (b) When a compulsory-school-age child is enrolled in
217 and pursuing a course of special education, remedial education or
218 education for handicapped or physically or mentally disadvantaged
219 children.

220 (c) When a compulsory-school-age child is being
221 educated in a legitimate home instruction program.

222 The parent, guardian or custodian of a compulsory-school-age
223 child described in this subsection, or the parent, guardian or
224 custodian of a compulsory-school-age child attending any nonpublic
225 school, or the appropriate school official for any or all children
226 attending a nonpublic school shall complete a "certificate of
227 enrollment" in order to facilitate the administration of this
228 section.

229 The form of the certificate of enrollment shall be prepared
230 by the Office of Compulsory School Attendance Enforcement of the
231 State Department of Education and shall be designed to obtain the
232 following information only:

233 (i) The name, address, telephone number and date
234 of birth of the compulsory-school-age child;

235 (ii) The name, address and telephone number of the

236 parent, guardian or custodian of the compulsory-school-age child;

237 (iii) A simple description of the type of
238 education the compulsory-school-age child is receiving and, if the
239 child is enrolled in a nonpublic school, the name and address of
240 the school; and

241 (iv) The signature of the parent, guardian or
242 custodian of the compulsory-school-age child or, for any or all
243 compulsory-school-age child or children attending a nonpublic
244 school, the signature of the appropriate school official and the
245 date signed.

246 The certificate of enrollment shall be returned to the school
247 attendance officer where the child resides on or before September
248 15 of each year. Any parent, guardian or custodian found by the
249 school attendance officer to be in noncompliance with this section
250 shall comply, after written notice of the noncompliance by the
251 school attendance officer, with this subsection within ten (10)
252 days after the notice or be in violation of this section.

253 However, in the event the child has been enrolled in a public
254 school within fifteen (15) calendar days after the first day of
255 the school year as required in subsection (6), the parent or
256 custodian may at a later date enroll the child in a legitimate
257 nonpublic school or legitimate home instruction program and send
258 the certificate of enrollment to the school attendance officer and
259 be in compliance with this subsection.

260 For the purposes of this subsection, a legitimate nonpublic
261 school or legitimate home instruction program shall be those not
262 operated or instituted for the purpose of avoiding or
263 circumventing the compulsory attendance law.

264 (4) An "unlawful absence" is an absence during a school day
265 by a compulsory-school-age child, which absence is not due to a
266 valid excuse for temporary nonattendance. Days missed from school
267 due to disciplinary suspension shall not be considered an
268 "excused" absence under this section. This subsection shall not
269 apply to children enrolled in a nonpublic school.

270 Each of the following shall constitute a valid excuse for
271 temporary nonattendance of a compulsory-school-age child enrolled
272 in a public school, provided satisfactory evidence of the excuse
273 is provided to the superintendent of the school district or his
274 designee:

275 (a) An absence is excused when the absence results from
276 the compulsory-school-age child's attendance at an authorized
277 school activity with the prior approval of the superintendent of
278 the school district or his designee. These activities may include
279 field trips, athletic contests, student conventions, musical
280 festivals and any similar activity.

281 (b) An absence is excused when the absence results from
282 illness or injury which prevents the compulsory-school-age child
283 from being physically able to attend school.

284 (c) An absence is excused when isolation of a
285 compulsory-school-age child is ordered by the county health
286 officer, by the State Board of Health or appropriate school
287 official.

288 (d) An absence is excused when it results from the
289 death or serious illness of a member of the immediate family of a
290 compulsory-school-age child. The immediate family members of a
291 compulsory-school-age child shall include children, spouse,

292 grandparents, parents, brothers and sisters, including
293 stepbrothers and stepsisters.

294 (e) An absence is excused when it results from a
295 medical or dental appointment of a compulsory-school-age child
296 where an approval of the superintendent of the school district or
297 his designee is gained before the absence, except in the case of
298 emergency.

299 (f) An absence is excused when it results from the
300 attendance of a compulsory-school-age child at the proceedings of
301 a court or an administrative tribunal if the child is a party to
302 the action or under subpoena as a witness.

303 (g) An absence may be excused if the religion to which
304 the compulsory-school-age child or the child's parents adheres,
305 requires or suggests the observance of a religious event. The
306 approval of the absence is within the discretion of the
307 superintendent of the school district or his designee, but
308 approval should be granted unless the religion's observance is of
309 such duration as to interfere with the education of the child.

310 (h) An absence may be excused when it is demonstrated
311 to the satisfaction of the superintendent of the school district
312 or his designee that the purpose of the absence is to take
313 advantage of a valid educational opportunity such as travel
314 including vacations or other family travel. Approval of the
315 absence must be gained from the superintendent of the school
316 district or his designee before the absence, but the approval
317 shall not be unreasonably withheld.

318 (i) An absence may be excused when it is demonstrated
319 to the satisfaction of the superintendent of the school district

320 or his designee that conditions are sufficient to warrant the
321 compulsory-school-age child's nonattendance. However, no absences
322 shall be excused by the school district superintendent or his
323 designee when any student suspensions or expulsions circumvent the
324 intent and spirit of the compulsory attendance law.

325 (5) Any parent, guardian or custodian of a
326 compulsory-school-age child subject to this section who refuses or
327 willfully fails to perform any of the duties imposed upon him or
328 her under this section or who intentionally falsifies any
329 information required to be contained in a certificate of
330 enrollment, shall be guilty of contributing to the neglect of a
331 child and, upon conviction, shall be punished in accordance with
332 Section 97-5-39.

333 Upon prosecution of a parent, guardian or custodian of a
334 compulsory-school-age child for violation of this section, the
335 presentation of evidence by the prosecutor that shows that the
336 child has not been enrolled in school within eighteen (18)
337 calendar days after the first day of the school year of the public
338 school which the child is eligible to attend, or that the child
339 has accumulated twelve (12) unlawful absences during the school
340 year at the public school in which the child has been enrolled,
341 shall establish a prima facie case that the child's parent,
342 guardian or custodian is responsible for the absences and has
343 refused or willfully failed to perform the duties imposed upon him
344 or her under this section. However, no proceedings under this
345 section shall be brought against a parent, guardian or custodian
346 of a compulsory-school-age child unless the school attendance
347 officer has contacted promptly the home of the child and has

348 provided written notice to the parent, guardian or custodian of
349 the requirement for the child's enrollment or attendance.

350 (6) If a compulsory-school-age child has not been enrolled
351 in a school within fifteen (15) calendar days after the first day
352 of the school year of the school which the child is eligible to
353 attend or the child has accumulated five (5) unlawful absences
354 during the school year of the public school in which the child is
355 enrolled, the school district superintendent shall report, within
356 two (2) school days or within five (5) calendar days, whichever is
357 less, the absences to the school attendance officer. The State
358 Department of Education shall prescribe a uniform method for
359 schools to utilize in reporting the unlawful absences to the
360 school attendance officer. The superintendent, or his designee,
361 also shall report any student suspensions or student expulsions to
362 the school attendance officer when they occur.

363 (7) When a school attendance officer has made all attempts
364 to secure enrollment and/or attendance of a compulsory-school-age
365 child and is unable to effect the enrollment and/or attendance,
366 the attendance officer shall file a petition with the youth court
367 under Section 43-21-451 or shall file a petition in a court of
368 competent jurisdiction as it pertains to parent or child.
369 Sheriffs, deputy sheriffs and municipal law enforcement officers
370 shall be fully authorized to investigate all cases of
371 nonattendance and unlawful absences by compulsory-school-age
372 children, and shall be authorized to file a petition with the
373 youth court under Section 43-21-451 or file a petition or
374 information in the court of competent jurisdiction as it pertains
375 to a parent or child for violation of this section without the

376 necessity of first attempting to secure enrollment or attendance
377 of the child. Sheriffs, deputy sheriffs and municipal law
378 enforcement officers shall be fully authorized to deliver a child
379 to the school in which the child is enrolled without the necessity
380 of following the procedures set forth in this section. The youth
381 court shall expedite a hearing to make an appropriate adjudication
382 and a disposition to ensure compliance with the Compulsory School
383 Attendance Law, and may order the child to enroll or reenroll in
384 school. The superintendent of the school district to which the
385 child is ordered may assign, in his discretion, the child to the
386 alternative school program of the school established pursuant to
387 Section 37-13-92.

388 (8) The State Board of Education shall adopt rules and
389 regulations for the purpose of reprimanding any school
390 superintendents who fail to timely report unexcused absences under
391 the provisions of this section.

392 (9) Notwithstanding any provision or implication herein to
393 the contrary, it is not the intention of this section to impair
394 the primary right and the obligation of the parent or parents, or
395 person or persons in loco parentis to a child, to choose the
396 proper education and training for such child, and nothing in this
397 section shall ever be construed to grant, by implication or
398 otherwise, to the State of Mississippi, any of its officers,
399 agencies or subdivisions any right or authority to control,
400 manage, supervise or make any suggestion as to the control,
401 management or supervision of any private or parochial school or
402 institution for the education or training of children, of any kind
403 whatsoever that is not a public school according to the laws of

404 this state; and this section shall never be construed so as to
405 grant, by implication or otherwise, any right or authority to any
406 state agency or other entity to control, manage, supervise,
407 provide for or affect the operation, management, program,
408 curriculum, admissions policy or discipline of any such school or
409 home instruction program.

410 SECTION 9. (1) There is created in the First, Second,
411 Tenth, Fifteenth, Sixteenth, Seventeenth, Nineteenth, Twenty-first
412 and Twenty-second Circuit Court Districts a pilot project to
413 provide a drug court in such circuit court districts for a
414 three-year period after the effective date of this act. The
415 jurisdiction of the drug court shall be limited to offenses
416 involving any and all conduct made unlawful by the Mississippi
417 Uniform Controlled Substances Law or any other provision of law
418 involving narcotics, dangerous drugs, controlled substances or any
419 nonviolent crime in which the underlying causes can be directly
420 traced to drug addiction and cases under the jurisdiction of the
421 drug court shall be tried in a drug court if one exists in the
422 circuit court district where the alleged offense occurred. Cases
423 involving nonviolent offenses in which the underlying cause can be
424 directly traced to drug addiction shall be transferred to the drug
425 court only upon approval by the district attorney.

426 (2) The Administrative Office of Courts shall apply for and
427 make available any funds from federal grants, state appropriations
428 or any other source whether private or public for the purposes
429 prescribed by this act.

430 SECTION 10. (1) There is created the Drug Court Nomination
431 Commission which shall be comprised of one (1) person appointed by

432 The Mississippi Bar, one (1) person appointed by the Mississippi
433 Trial Lawyers Association, one (1) person appointed by the
434 Magnolia Bar, one (1) person appointed by the Supreme Court and
435 one (1) person appointed by the Court of Appeals.

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

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

443 (4) Drug courts may use alternative methods of sentencing
444 such as rehabilitation for cases involving first-time offenders,
445 third or subsequent DUI offenders and cases involving possession
446 of controlled substances for personal use only. The court shall
447 determine the conditions of any sentence imposed under this
448 subsection. If an offender violates the conditions of a sentence
449 imposed under this subsection, the court shall impose the
450 penalties provided by law for the offense. Public and private
451 resources may be used to carry out the provisions of this
452 subsection. An offender shall not be refused the sentencing
453 alternatives provided in this subsection if such offender is
454 indigent. The social worker for a drug court shall monitor the
455 use of such sentences in the social worker's district and report
456 quarterly to the judge as to how such sentencing is having an
457 effect on the offender and on the drug court pilot project created
458 by this act. Such monitoring shall include periodic drug and
459 alcohol testing.

460 SECTION 11. (1) Each circuit court district with a drug
461 court shall be provided a public defender for the drug court who
462 shall be appointed by the Governor from a list of three (3)
463 nominees submitted by the Drug Court Nomination Commission created
464 in Section 10 of this act. The term of the public defenders so
465 appointed shall terminate on July 1, 2003. The public defender
466 for a drug court shall receive a salary equal to the salary of the
467 legal assistant to the district attorney in the district in which
468 the public defender serves who is assigned to that drug court and
469 such salary shall be paid from the same source as salaries for
470 legal assistants provided in subsection (1) of Section 25-31-5.
471 The public defender shall defend indigent defendants in drug court
472 cases.

473 (2) Each drug court shall be provided a court administrator
474 who shall be hired by the judges of the courts. The court
475 administrator shall receive a salary of Thirty Thousand Dollars
476 (\$30,000.00) per year and shall perform such duties as prescribed
477 by law for court administrators. The salary of the court
478 administrators shall be paid out of the State General Fund as
479 appropriated by the Legislature.

480 (3) The judge of the drug court shall be appointed by the
481 Governor from a list of three (3) nominees submitted by the Drug
482 Court Nomination Commission created in Section 10 of this act.
483 The judges of the drug court shall receive a salary of Eighty-five
484 Thousand Dollars (\$85,000.00) per year, to be paid from the State
485 General Fund. The term of the drug court judges shall end June
486 30, 2003. Drug court judges shall be provided office space in the
487 same manner as is afforded circuit judges and chancellors.

488 (4) The circuit clerk shall be the clerk of the drug court.

489 SECTION 12. Each circuit court district which has a drug
490 court shall be provided a social worker who shall be appointed by
491 the drug court judge. The social worker shall meet the same
492 qualifications required of a social worker employed by the
493 Department of Human Services. The salary of the social worker
494 provided for herein shall be Thirty Thousand Dollars (\$30,000.00)
495 per year to be paid out of the State General Fund as appropriated
496 by the Legislature. The Department of Human Services may provide
497 additional social workers to assist the social workers provided by
498 this section.

499 SECTION 13. The Administrative Office of Courts shall
500 monitor all cases in drug courts and report annually to the
501 Supreme Court and the Legislature regarding the effectiveness of
502 the drug courts along with any recommendations to the Legislature
503 regarding the operation of the drug courts. The drug courts shall
504 provide the Administrative Office of Courts with any necessary
505 nonconfidential information so that the Administrative Office of
506 Courts may accurately monitor the drug courts.

507 SECTION 14. Section 9-1-36, Mississippi Code of 1972, is
508 amended as follows:[MS2]

509 9-1-36. (1) Each circuit judge, chancellor and drug court
510 judge shall receive an office operating allowance for the expenses
511 of operating the office of such judge, including retaining a law
512 clerk, legal research, stenographic help, stationery, stamps,
513 furniture, office equipment, telephone, office rent and other
514 items and expenditures necessary and incident to maintaining the
515 office of judge. Such allowance shall be paid only to the extent

516 of actual expenses incurred by any such judge as itemized and
517 certified by such judge to the Supreme Court and then in an amount
518 of Four Thousand Dollars (\$4,000.00) per annum; however, such
519 judge may expend sums in excess thereof from the compensation
520 otherwise provided for his office. No part of this expense or
521 allowance shall be used to pay an official court reporter for
522 services rendered to said court.

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

527 (3) Each judge who desires to employ support staff after
528 July 1, 1994, shall make application to the Administrative Office
529 of Courts by submitting to the Administrative Office of Courts a
530 proposed personnel plan setting forth what support staff is deemed
531 necessary. Such plan may be submitted by a single judge or by any
532 combination of judges desiring to share support staff. In the
533 process of the preparation of the plan, the judges, at their
534 request, may receive advice, suggestions, recommendations and
535 other assistance from the Administrative Office of Courts. The
536 Administrative Office of Courts must approve the positions, job
537 descriptions and salaries before the positions may be filled. The
538 Administrative Office of Courts shall not approve any plan which
539 does not first require the expenditure of the funds in the support
540 staff fund for compensation of any of the support staff before
541 expenditure is authorized of county funds for that purpose. Upon
542 approval by the Administrative Office of Courts, the judge or
543 judges may appoint the employees to the position or positions, and

544 each employee so appointed will work at the will and pleasure of
545 the judge or judges who appointed him but will be employees of the
546 Administrative Office of Courts. Upon approval by the
547 Administrative Office of Courts, the appointment of any support
548 staff shall be evidenced by the entry of an order on the minutes
549 of the court. When support staff is appointed jointly by two (2)
550 or more judges, the order setting forth any appointment shall be
551 entered on the minutes of each participating court.

552 (4) The Administrative Office of Courts shall develop and
553 promulgate minimum qualifications for the certification of court
554 administrators. Any court administrator appointed on or after
555 October 1, 1996, shall be required to be certified by the
556 Administrative Office of Courts.

557 (5) Support staff shall receive compensation pursuant to
558 personnel policies established by the Administrative Office of
559 Courts; however, from and after July 1, 1994, the Administrative
560 Office of Courts shall allocate from the support staff fund an
561 amount of Forty Thousand Dollars (\$40,000.00) per fiscal year
562 (July 1 through June 30) per judge for whom support staff is
563 approved for the funding of support staff assigned to a judge or
564 judges. Any employment pursuant to this subsection shall be
565 subject to the provisions of Section 25-1-53.

566 The Administrative Office of Courts may approve expenditure
567 from the fund for additional equipment for support staff appointed
568 pursuant to this section in any year in which the allocation per
569 judge is sufficient to meet the equipment expense after provision
570 for the compensation of the support staff.

571 (6) For the purposes of this section, the following terms

572 shall have the meaning ascribed herein unless the context clearly
573 requires otherwise:

574 (a) "Judges" means circuit judges and chancellors, or
575 any combination thereof;

576 (b) "Support staff" means court administrators, law
577 clerks, legal research assistants or secretaries, or any
578 combination thereof, but shall not mean school attendance
579 officers;

580 (c) "Compensation" means the gross salary plus all
581 amounts paid for benefits or otherwise as a result of employment
582 or as required by employment; provided, however, that only salary
583 earned for services rendered shall be reported and credited for
584 Public Employees' Retirement System purposes. Amounts paid for
585 benefits or otherwise, including reimbursement for travel
586 expenses, shall not be reported or credited for retirement
587 purposes.

588 (7) Title to all tangible property, excepting stamps,
589 stationery and minor expendable office supplies, procured with
590 funds authorized by this section, shall be and forever remain in
591 the State of Mississippi to be used by the circuit judge or
592 chancellor during the term of his office and thereafter by his
593 successors.

594 (8) Any circuit judge or chancellor who did not have a
595 primary office provided by the county on March 1, 1988, shall be
596 allowed an additional Four Thousand Dollars (\$4,000.00) per annum
597 to defray the actual expenses incurred by such judge or chancellor
598 in maintaining an office; however, any circuit judge or chancellor
599 who had a primary office provided by the county on March 1, 1988,

600 and who vacated the office space after such date for a legitimate
601 reason, as determined by the Department of Finance and
602 Administration, shall be allowed the additional office expense
603 allowance provided under this subsection.

604 (9) The Supreme Court, through the Administrative Office of
605 Courts, shall submit to the Department of Finance and
606 Administration the itemized and certified expenses for office
607 operating allowances that are directed to the court pursuant to
608 this section.

609 (10) The Supreme Court, through the Administrative Office of
610 Courts, shall have the power to adopt rules and regulations
611 regarding the administration of the office operating allowance
612 authorized pursuant to this section.

613 SECTION 15. Section 9-7-3, Mississippi Code of 1972, is
614 amended as follows:[MS3]

615 9-7-3. (1) The state is divided into an appropriate number
616 of circuit court districts severally numbered and comprised of the
617 counties as set forth in the sections which follow. A court to be
618 styled "The Circuit Court of the County of ____" shall be held in
619 each county, and within each judicial district of a county having
620 two (2) judicial districts, at least twice a year. From and after
621 January 1, 1995, the dates upon which court shall be held in
622 circuit court districts consisting of a single county shall be the
623 same dates state agencies and political subdivisions are open for
624 business excluding legal holidays. The dates upon which terms
625 shall commence and the number of days for which such terms shall
626 continue in circuit court districts consisting of more than one
627 (1) county shall be set by order of the circuit court judge in

628 accordance with the provisions of subsection (2) of this section.

629 A matter in court may extend past such times if the interest of
630 justice so requires.

631 (2) An order establishing the commencement and continuation
632 of terms of court for each of the counties within a circuit court
633 district consisting of more than one (1) county shall be entered
634 annually and not later than October 1 of the year immediately
635 preceding the calendar year for which such terms of court are to
636 become effective. Notice of the dates upon which the terms of
637 court shall commence and the number of days for which such terms
638 shall continue in each of the counties within a circuit court
639 district shall be posted in the office of the circuit clerk of
640 each county within the district and mailed to the office of the
641 Secretary of State for publication and distribution to all members
642 of The Mississippi Bar. In the event that an order is not timely
643 entered as herein provided, the terms of court for each of the
644 counties within any such circuit court district shall remain
645 unchanged for the next calendar year. A certified copy of any
646 order entered under the provisions of this subsection shall,
647 immediately upon the entry thereof, be delivered to the clerk of
648 the board of supervisors in each of the counties within the
649 circuit court district.

650 (3) The number of judges in each circuit court district
651 shall be determined by the Legislature based upon the following
652 criteria:

- 653 (a) The population of the district;
- 654 (b) The number of cases filed in the district;
- 655 (c) The case load of each judge in the district;

- 656 (d) The geographic area of the district;
- 657 (e) An analysis of the needs of the district by the
- 658 court personnel of the district; and
- 659 (f) Any other appropriate criteria.

660 (4) The Judicial College of the University of Mississippi

661 Law Center and the Administrative Office of Courts shall determine

662 the appropriate:

663 (a) Specific data to be collected as a basis for

664 applying the above criteria;

665 (b) Method of collecting and maintaining the specified

666 data; and

667 (c) Method of assimilating the specified data.

668 (5) In a district having more than one (1) office of circuit

669 judge, there shall be no distinction whatsoever in the powers,

670 duties and emoluments of those offices except that the judge who

671 has been for the longest time continuously a judge of that court

672 or, should no judge have served longer in office than the others,

673 the judge who has been for the longest time a member of The

674 Mississippi Bar, shall be the senior judge. The senior judge

675 shall have the right to assign causes and dockets and to set terms

676 in districts consisting of more than one (1) county.

677 (6) There shall be a drug court judge appointed to the

678 First, Second, Tenth, Fifteenth, Sixteenth, Seventeenth,

679 Nineteenth, Twenty-first and Twenty-second Circuit Court Districts

680 as provided in Section 10 of Senate Bill No. 2411, 2000 Regular

681 Session, to hear drug cases pursuant to the drug court pilot

682 project as provided in Senate Bill No. 2411, 2000 Regular Session.

683 SECTION 16. Section 9-13-1, Mississippi Code of 1972, is

684 amended as follows:[MS4]

685 9-13-1. Each circuit judge, drug court judge and chancellor
686 shall appoint a competent person as shorthand reporter in his
687 district by an entry upon the minutes of the court of an order to
688 that effect, dated and signed by him. The said shorthand reporter
689 shall be known as the official court reporter of said district.

690 SECTION 17. Section 9-13-17, Mississippi Code of 1972, is
691 amended as follows:[MS5]

692 9-13-17. The circuit judge, chancellor, family court judge,
693 drug court judge or county judge may, by an order spread upon the
694 minutes and made a part of the records of the court, appoint an
695 additional court reporter for a term or part of a term whose
696 duties, qualifications and compensation shall be the same as is
697 now provided by law for official court reporters. The additional
698 court reporter shall be subject to the control of the judge or
699 chancellor, as is now provided by law for official court
700 reporters, and the judge or chancellor shall have the additional
701 power to terminate the appointment of such additional court
702 reporter, whenever in his opinion the necessity for such an
703 additional court reporter ceases to exist, by placing upon the
704 minutes of the court an order to that effect. The regular court
705 reporter shall not draw any compensation while the assistant court
706 reporter alone is serving; however, in the event the assistant
707 court reporter is serving because of the illness of the regular
708 court reporter, the court may authorize payment of said assistant
709 court reporter from the Administrative Office of Courts without
710 diminution of the salary of the regular court reporter, for a
711 period not to exceed forty-five (45) days in any one (1) calendar

712 year. However, in any circuit, chancery, county or family court
713 district within the State of Mississippi, if the judge or
714 chancellor shall determine that in order to relieve the
715 continuously crowded docket in such district, or for other good
716 cause shown, the appointment of an additional court reporter is
717 necessary for the proper administration of justice, he may, with
718 the advice and consent of the board of supervisors if the court
719 district is composed of a single county and with the advice and
720 consent of at least one-half (1/2) of the boards of supervisors if
721 the court district is composed of more than one (1) county, by an
722 order spread upon the minutes and made a part of the records of
723 the court, appoint an additional court reporter. The additional
724 court reporter shall serve at the will and pleasure of the judge
725 or chancellor, may be a resident of any county of the state, and
726 shall be paid a salary designated by the judge or chancellor not
727 to exceed the salary authorized by Section 9-13-19. The salary of
728 the additional court reporter shall be paid by the Administrative
729 Office of Courts, as provided in Section 9-13-19; and mileage
730 shall be paid to the additional court reporter by the county as
731 provided in the same section. The office of such additional court
732 reporter appointed under this section shall not be abolished or
733 compensation reduced during the term of office of the appointing
734 judge or chancellor without the consent and approval of the
735 appointing judge or chancellor.

736 SECTION 18. Section 9-13-19, Mississippi Code of 1972, is
737 amended as follows:[MS6]

738 9-13-19. (1) Court reporters for circuit and chancery
739 courts and drug courts shall be paid an annual salary of

740 Thirty-eight Thousand Dollars (\$38,000.00) payable by the
741 Administrative Office of Courts. In addition, any court reporter
742 performing the duties of a court administrator in the same
743 judicial district in which the person is employed as a court
744 reporter may be paid additional compensation for performing the
745 court administrator duties. The annual amount of the additional
746 compensation shall be set by vote of the judges and chancellors
747 for whom the court administrator duties are performed, with
748 consideration given to the number of hours per month devoted by
749 the court reporter to performing the duties of a court
750 administrator. The additional compensation shall be submitted to
751 the Administrative Office of Courts for approval.

752 (2) The several counties in each respective court district
753 shall transfer from the general funds of those county treasuries
754 to the Administrative Office of Courts a proportionate amount to
755 be paid toward the annual compensation of the court reporter,
756 including any additional compensation paid for the performance of
757 court administrator duties. The amount to be paid by each county
758 shall be determined by the number of weeks in which court is held
759 in each county in proportion to the total number of weeks court is
760 held in the district. For purposes of this section, the term
761 "compensation" means the gross salary plus all amounts paid for
762 benefits, or otherwise, as a result of employment or as required
763 by employment, but does not include transcript fees otherwise
764 authorized to be paid by or through the counties. However, only
765 salary earned for services rendered shall be reported and credited
766 for retirement purposes. Amounts paid for transcript fees,
767 benefits or otherwise, including reimbursement for travel

768 expenses, shall not be reported or credited for retirement
769 purposes.

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

774 (3) The salary and any additional compensation for the
775 performance of court administrator duties shall be paid in twelve
776 (12) installments on the last working day of each month after it
777 has been duly authorized by the appointing judge or chancellor and
778 an order duly placed on the minutes of the court. Each county
779 shall transfer to the Administrative Office of Courts one-twelfth
780 (1/12) of the amount required to be paid pursuant to subsection
781 (2) of this section by the twentieth day of each month for the
782 salary that is to be paid on the last working day of the month.
783 The Administrative Office of Courts shall pay to the court
784 reporter the total amount of salary due for that month. Any
785 county may pay, in the discretion of the board of supervisors, by
786 the twentieth day of January of any year, the amount due for a
787 full twelve (12) months.

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

791 (5) No circuit, drug or chancery court reporter shall be
792 entitled to any compensation for any special or extended term of
793 court * * *.

794 (6) No chancery, drug or circuit court reporter shall
795 practice law in the court within which he or she is the court

796 reporter.

797 (7) For all travel required in the performance of official
798 duties, the circuit or chancery court reporter shall be paid
799 mileage by the county in which the duties were performed at the
800 same rate as provided for state employees in Section 25-3-41. The
801 court reporter shall file in the office of the clerk of the court
802 which he serves a certificate of mileage expense incurred during
803 that term and payment of such expense to the court reporter shall
804 be paid on allowance by the judge of such court.

805 SECTION 19. Section 9-17-1, Mississippi Code of 1972, is
806 amended as follows:[MS7]

807 9-17-1. (1) The judges and chancellors of judicial
808 districts, including chancery, circuit, county and drug courts,
809 may, in their discretion, jointly or independently, establish the
810 office of court administrator in any county by an order entered on
811 the minutes of each participating court in the county.

812 The establishment of the office of court administrator shall
813 be accomplished by vote of a majority of the participating judges
814 and chancellors in the county, and such court administrator shall
815 be appointed by vote of a majority of the judges or chancellors
816 and may be removed by a majority vote of the judges or
817 chancellors. In case of a tie vote, the senior judge or senior
818 chancellor shall cast two (2) votes.

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

821 (3) The annual salary of each court administrator appointed
822 pursuant to this section shall be set by vote of the judges and
823 chancellors of each participating county and shall be submitted to

824 the Administrative Office of Courts for approval pursuant to
825 Section 9-1-36. The salary shall be paid in twelve (12)
826 installments on the last working day of the month by the
827 Administrative Office of Courts after it has been authorized by
828 the participating judges and chancellors and an order has been
829 duly placed on the minutes of each participating court.

830 Any county within a judicial district having a court
831 administrator shall transfer to the Administrative Office of
832 Courts one-twelfth (1/12) of its pro rata cost of authorized
833 compensation as defined in Section 9-1-36 for the court
834 administrator by the twentieth day of each month for the
835 compensation that is to be paid on the last day of that month.
836 The board of supervisors may transfer the pro rata cost of the
837 county from the funds of that county pursuant to Section
838 9-17-5(2)(b).

839 (4) For all travel required in the performance of official
840 duties, the court administrator shall be paid mileage by the
841 county in which the duties were performed at the same rate as
842 provided for state employees in Section 25-3-41, Mississippi Code
843 of 1972. The court administrator shall file a certificate of
844 mileage expense incurred during that term with the board of
845 supervisors of each participating county and payment of such
846 expense shall be paid proportionately out of the court
847 administration fund established pursuant to Section 9-17-5.

848 SECTION 20. Section 13-7-35, Mississippi Code of 1972, is
849 amended as follows:[MS8]

850 13-7-35. (1) In order to return a "True Bill" of
851 indictment, twelve (12) or more state grand jurors must find that

852 probable cause exists for the indictment and vote in favor of the
853 indictment. Upon indictment by a state grand jury, the indictment
854 shall be returned to the impaneling judge. If the impaneling
855 judge considers the indictment to be within the authority of the
856 state grand jury and otherwise in accordance with the provisions
857 of this chapter, he shall order the clerk of the state grand jury
858 to certify the indictment and return the indictment to the county
859 designated by the impaneling judge as the county in which the
860 indictment shall be tried.

861 (2) Indictments returned by a state grand jury are properly
862 triable in any county of the state where any of the alleged
863 conduct occurred and shall be triable in a drug court if one
864 exists in the circuit court district where the alleged conduct
865 occurred. The impaneling judge to whom the indictment is returned
866 shall designate the county in which the indictment shall be tried.

867 If a multicount indictment returned by a state grand jury is
868 properly triable in a single proceeding as otherwise provided by
869 law, all counts may be tried in the county designated by the
870 impaneling judge notwithstanding the fact that different counts
871 may have occurred in more than one county.

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

877 (4) When the indictment has been returned to the circuit
878 clerk of the county designated by the impaneling judge, the capias
879 shall be issued as otherwise provided by law. The indictment

880 shall be kept secret until the defendant is in custody or has been
881 released pending trial.

882 SECTION 21. Section 25-31-5, Mississippi Code of 1972, is
883 amended as follows:[MS9]

884 25-31-5. (1) The following number of full-time legal
885 assistants are authorized in the following circuit court
886 districts:

887 (a) First Circuit Court District..... eight (8)
888 legal assistants, one of whom shall primarily prosecute drug
889 offenses.

890 (b) Second Circuit Court District..... ten (10)
891 legal assistants, one of whom shall primarily prosecute drug
892 offenses.

893 (c) Third Circuit Court District..... four (4)
894 legal assistants.

895 (d) Fourth Circuit Court District..... five (5)
896 legal assistants.

897 (e) Fifth Circuit Court District..... four (4)
898 legal assistants.

899 (f) Sixth Circuit Court District..... two (2)
900 legal assistants.

901 (g) Seventh Circuit Court District..... nine (9)
902 legal assistants.

903 (h) Eighth Circuit Court District..... two (2)
904 legal assistants.

905 (i) Ninth Circuit Court District..... two (2)
906 legal assistants.

907 (j) Tenth Circuit Court District..... five (5)

908 legal assistants, one of whom shall primarily prosecute drug
909 offenses.

910 (k) Eleventh Circuit Court District..... five (5)
911 legal assistants.

912 (l) Twelfth Circuit Court District..... three (3)
913 legal assistants.

914 (m) Thirteenth Circuit Court District..... two (2)
915 legal assistants.

916 (n) Fourteenth Circuit Court District..... three (3)
917 legal assistants.

918 (o) Fifteenth Circuit Court District..... five (5)
919 legal assistants, one of whom shall primarily prosecute drug
920 offenses.

921 (p) Sixteenth Circuit Court District..... five (5)
922 legal assistants, one of whom shall primarily prosecute drug
923 offenses.

924 (q) Seventeenth Circuit Court District..... six (6)
925 legal assistants, one of whom shall primarily prosecute drug
926 offenses.

927 (r) Eighteenth Circuit Court District..... two (2)
928 legal assistants.

929 (s) Nineteenth Circuit Court District..... five (5)
930 legal assistants, one of whom shall primarily prosecute drug
931 offenses.

932 (t) Twentieth Circuit Court District..... four (4)
933 legal assistants.

934 (u) Twenty-first Circuit Court District..... three (3)
935 legal assistants, one of whom shall primarily prosecute drug

936 offenses.

937 (v) Twenty-second Circuit Court District..... three (3)
938 legal assistants, one of whom shall primarily prosecute drug
939 offenses.

940 The legal assistants provided by this subsection whose
941 primary duties are the prosecution of drug cases shall assist the
942 district attorney in other cases when not working on drug cases.

943 (2) In addition to any legal assistants authorized pursuant
944 to subsection (1) of this section, the following number of
945 full-time legal assistants are authorized (i) in the following
946 circuit court districts if funds are appropriated by the
947 Legislature to adequately fund the salaries, expenses and fringe
948 benefits of such legal assistants, or (ii) in any of the following
949 circuit court districts in which the board of supervisors of one
950 or more of the counties in a circuit court district adopts a
951 resolution to pay all of the salaries, supplemental pay, expenses
952 and fringe benefits of legal assistants authorized in such
953 district pursuant to this subsection:

954 (a) First Circuit Court District..... two (2)
955 legal assistants.

956 (b) Second Circuit Court District..... two (2)
957 legal assistants.

958 (c) Third Circuit Court District..... two (2)
959 legal assistants.

960 (d) Fourth Circuit Court District..... two (2)
961 legal assistants.

962 (e) Fifth Circuit Court District..... two (2)
963 legal assistants.

964 (f) Sixth Circuit Court District..... two (2)
965 legal assistants.
966 (g) Seventh Circuit Court District..... two (2)
967 legal assistants.
968 (h) Eighth Circuit Court District..... two (2)
969 legal assistants.
970 (i) Ninth Circuit Court District..... two (2)
971 legal assistants.
972 (j) Tenth Circuit Court District..... two (2)
973 legal assistants.
974 (k) Eleventh Circuit Court District..... two (2)
975 legal assistants.
976 (l) Twelfth Circuit Court District..... two (2)
977 legal assistants.
978 (m) Thirteenth Circuit Court District..... two (2)
979 legal assistants.
980 (n) Fourteenth Circuit Court District..... two (2)
981 legal assistants.
982 (o) Fifteenth Circuit Court District..... two (2)
983 legal assistants.
984 (p) Sixteenth Circuit Court District..... two (2)
985 legal assistants.
986 (q) Seventeenth Circuit Court District..... two (2)
987 legal assistants.
988 (r) Eighteenth Circuit Court District..... two (2)
989 legal assistants.
990 (s) Nineteenth Circuit Court District..... two (2)
991 legal assistants.

992 (t) Twentieth Circuit Court District..... two (2)

993 legal assistants.

994 (u) Twenty-first Circuit Court District..... two (2)

995 legal assistants.

996 (v) Twenty-second Circuit Court District..... two (2)

997 legal assistants.

998 (3) The board of supervisors of any county may pay all or a

999 part of the salary, supplemental pay, expenses and fringe benefits

1000 of any district attorney or legal assistant authorized in the

1001 circuit court district to which such county belongs pursuant to

1002 this section.

1003 SECTION 22. Section 63-11-30, Mississippi Code of 1972, is

1004 amended as follows:

1005 63-11-30. (1) It is unlawful for any person to drive or

1006 otherwise operate a vehicle within this state who (a) is under the

1007 influence of intoxicating liquor; (b) is under the influence of

1008 any other substance which has impaired such person's ability to

1009 operate a motor vehicle; (c) has an alcohol concentration of ten

1010 one-hundredths percent (.10%) or more for persons who are above

1011 the legal age to purchase alcoholic beverages under state law, or

1012 two one-hundredths percent (.02%) or more for persons who are

1013 below the legal age to purchase alcoholic beverages under state

1014 law, in the person's blood based upon grams of alcohol per one

1015 hundred (100) milliliters of blood or grams of alcohol per two

1016 hundred ten (210) liters of breath as shown by a chemical analysis

1017 of such person's breath, blood or urine administered as authorized

1018 by this chapter; (d) is under the influence of any drug or

1019 controlled substance, the possession of which is unlawful under

1020 the Mississippi Controlled Substances Law; or (e) has an alcohol
1021 concentration of four one-hundredths percent (.04%) or more in the
1022 person's blood, based upon grams of alcohol per one hundred (100)
1023 milliliters of blood or grams of alcohol per two hundred ten (210)
1024 liters of breath as shown by a chemical analysis of such person's
1025 blood, breath or urine, administered as authorized by this chapter
1026 for persons operating a commercial motor vehicle.

1027 (2) (a) Except as otherwise provided in subsection (3),
1028 upon conviction of any person for the first offense of violating
1029 subsection (1) of this section where chemical tests provided for
1030 under Section 63-11-5 were given, or where chemical test results
1031 are not available, such person shall be fined not less than Two
1032 Hundred Fifty Dollars (\$250.00) nor more than One Thousand Dollars
1033 (\$1,000.00), or imprisoned for not more than forty-eight (48)
1034 hours in jail or both; and the court shall order such person to
1035 attend and complete an alcohol safety education program as
1036 provided in Section 63-11-32. The court may substitute attendance
1037 at a victim impact panel instead of forty-eight (48) hours in
1038 jail. In addition, the Department of Public Safety, the
1039 Commissioner of Public Safety or his duly authorized agent shall,
1040 after conviction and upon receipt of the court abstract, suspend
1041 the driver's license and driving privileges of such person for a
1042 period of not less than ninety (90) days and until such person
1043 attends and successfully completes an alcohol safety education
1044 program as herein provided; provided, however, in no event shall
1045 such period of suspension exceed one (1) year. Commercial driving
1046 privileges shall be suspended as provided in Section 63-1-83.

1047 The circuit court having jurisdiction in the county in which

1048 the conviction was had or the circuit court of the person's county
1049 of residence may reduce the suspension of driving privileges under
1050 Section 63-11-30(2)(a) if the denial of which would constitute a
1051 hardship on the offender, except that no court may issue such an
1052 order reducing the suspension of driving privileges under this
1053 subsection until thirty (30) days have elapsed from the effective
1054 date of the suspension. Hardships shall only apply to first
1055 offenses under Section 63-11-30(1), and shall not apply to second,
1056 third or subsequent convictions of any person violating subsection
1057 (1) of this section. A reduction of suspension on the basis of
1058 hardship shall not be available to any person who refused to
1059 submit to a chemical test upon the request of a law enforcement
1060 officer as provided in Section 63-11-5. When the petition is
1061 filed, such person shall pay to the circuit clerk of the court
1062 where the petition is filed a fee of Fifty Dollars (\$50.00), which
1063 shall be deposited into the State General Fund to the credit of a
1064 special fund hereby created in the State Treasury to be used for
1065 alcohol or drug abuse treatment and education, upon appropriation
1066 by the Legislature. This fee shall be in addition to any other
1067 court costs or fees required for the filing of petitions.

1068 The petition filed under the provisions of this subsection
1069 shall contain the specific facts which the petitioner alleges to
1070 constitute a hardship and the driver's license number of the
1071 petitioner. A hearing may be held on any petition filed under
1072 this subsection only after ten (10) days' prior written notice to
1073 the Commissioner of Public Safety, or his designated agent, or the
1074 attorney designated to represent the state. At such hearing, the
1075 court may enter an order reducing the period of suspension.

1076 The order entered under the provisions of this subsection
1077 shall contain the specific grounds upon which hardship was
1078 determined, and shall order the petitioner to attend and complete
1079 an alcohol safety education program as provided in Section
1080 63-11-32. A certified copy of such order shall be delivered to
1081 the Commissioner of Public Safety by the clerk of the court within
1082 five (5) days of the entry of the order. The certified copy of
1083 such order shall contain information which will identify the
1084 petitioner, including, but not limited to, the name, mailing
1085 address, street address, social security number and driver's
1086 license number of the petitioner.

1087 At any time following at least thirty (30) days of suspension
1088 for a first offense violation of this section, the court may grant
1089 the person hardship driving privileges upon written petition of
1090 the defendant, if it finds reasonable cause to believe that
1091 revocation would hinder the person's ability to:

- 1092 (i) Continue his employment;
- 1093 (ii) Continue attending school or an educational
1094 institution; or
- 1095 (iii) Obtain necessary medical care.

1096 Proof of the hardship shall be established by clear and
1097 convincing evidence which shall be supported by independent
1098 documentation.

1099 (b) Except as otherwise provided in subsection (3),
1100 upon any second conviction of any person violating subsection (1)
1101 of this section, the offenses being committed within a period of
1102 five (5) years, such person shall be fined not less than Six
1103 Hundred Dollars (\$600.00) nor more than One Thousand Five Hundred

1104 Dollars (\$1,500.00) and shall be imprisoned not less than ten (10)
1105 days nor more than one (1) year and sentenced to community service
1106 work for not less than ten (10) days nor more than one (1) year.
1107 Except as may otherwise be provided by paragraph (e) of this
1108 subsection, the Commissioner of Public Safety shall suspend the
1109 driver's license of such person for two (2) years. Suspension of
1110 a commercial driver's license shall be governed by Section
1111 63-1-83. Upon any second conviction as described in this
1112 paragraph, the court shall ascertain whether the defendant is
1113 married, and if the defendant is married shall obtain the name and
1114 address of the defendant's spouse; the clerk of the court shall
1115 submit this information to the Department of Public Safety.
1116 Further, the commissioner shall notify in writing, by certified
1117 mail, return receipt requested, the owner of the vehicle and the
1118 spouse, if any, of the person convicted of the second violation of
1119 the possibility of forfeiture of the vehicle if such person is
1120 convicted of a third violation of subsection (1) of this section.
1121 The owner of the vehicle and the spouse shall be considered
1122 notified under this paragraph if the notice is deposited in the
1123 United States mail and any claim that the notice was not in fact
1124 received by the addressee shall not affect a subsequent forfeiture
1125 proceeding.

1126 (c) Except as otherwise provided in subsection (3), for
1127 any third or subsequent conviction of any person violating
1128 subsection (1) of this section, the offenses being committed
1129 within a period of five (5) years, such person shall be guilty of
1130 a felony and fined not less than Two Thousand Dollars (\$2,000.00)
1131 nor more than Five Thousand Dollars (\$5,000.00) and shall be

1132 imprisoned not less than one (1) year nor more than five (5) years
1133 in the State Penitentiary or may be sentenced as provided in
1134 Section 10 of Senate Bill No. 2411, 2000 Regular Session. The law
1135 enforcement agency shall seize the vehicle operated by any person
1136 charged with a third or subsequent violation of subsection (1) of
1137 this section, if such convicted person was driving the vehicle at
1138 the time the offense was committed. Such vehicle may be forfeited
1139 in the manner provided by Sections 63-11-49 through 63-11-53.
1140 Except as may otherwise be provided by paragraph (e) of this
1141 subsection, the Commissioner of Public Safety shall suspend the
1142 driver's license of such person for five (5) years. The
1143 suspension of a commercial driver's license shall be governed by
1144 Section 63-1-83.

1145 (d) Except as otherwise provided in subsection (3), any
1146 person convicted of a second violation of subsection (1) of this
1147 section, may have the period that his driver's license is
1148 suspended reduced if such person receives an in-depth diagnostic
1149 assessment, and as a result of such assessment is determined to be
1150 in need of treatment of his alcohol and/or drug abuse problem and
1151 successfully completes treatment of his alcohol and/or drug abuse
1152 problem at a program site certified by the Department of Mental
1153 Health. Such person shall be eligible for reinstatement of his
1154 driving privileges upon the successful completion of such
1155 treatment after a period of one (1) year after such person's
1156 driver's license is suspended. Each person who receives a
1157 diagnostic assessment shall pay a fee representing the cost of
1158 such assessment. Each person who participates in a treatment
1159 program shall pay a fee representing the cost of such treatment.

1160 (e) Except as otherwise provided in subsection (3), any
1161 person convicted of a third or subsequent violation of subsection
1162 (1) of this section may enter an alcohol and/or drug abuse program
1163 approved by the Department of Mental Health for treatment of such
1164 person's alcohol and/or drug abuse problem. If such person
1165 successfully completes such treatment, such person shall be
1166 eligible for reinstatement of his driving privileges after a
1167 period of three (3) years after such person's driver's license is
1168 suspended.

1169 (3) (a) This subsection shall be known and may be cited as
1170 Zero Tolerance for Minors. The provisions of this subsection
1171 shall apply only when a person under the age of twenty-one (21)
1172 years has a blood alcohol concentration two one-hundredths percent
1173 (.02%) or more, but lower than eight one-hundredths percent
1174 (.08%). If such person's blood alcohol concentration is eight
1175 one-hundredths percent (.08%) or more, the provisions of
1176 subsection (2) shall apply.

1177 (b) Upon conviction of any person under the age of
1178 twenty-one (21) years for the first offense of violating
1179 subsection (1) of this section where chemical tests provided for
1180 under Section 63-11-5 were given, or where chemical test results
1181 are not available, such person shall have his driver's license
1182 suspended for ninety (90) days and shall be fined Two Hundred
1183 Fifty Dollars (\$250.00); and the court shall order such person to
1184 attend and complete an alcohol safety education program as
1185 provided in Section 63-11-32. The court may also require
1186 attendance at a victim impact panel.

1187 The circuit court having jurisdiction in the county in which

1188 the conviction was had or the circuit court of the person's county
1189 of residence may reduce the suspension of driving privileges under
1190 Section 63-11-30(2)(a) if the denial of which would constitute a
1191 hardship on the offender, except that no court may issue such an
1192 order reducing the suspension of driving privileges under this
1193 subsection until thirty (30) days have elapsed from the effective
1194 date of the suspension. Hardships shall only apply to first
1195 offenses under Section 63-11-30(1), and shall not apply to second,
1196 third or subsequent convictions of any person violating subsection
1197 (1) of this section. A reduction of suspension on the basis of
1198 hardship shall not be available to any person who refused to
1199 submit to a chemical test upon the request of a law enforcement
1200 officer as provided in Section 63-11-5. When the petition is
1201 filed, such person shall pay to the circuit clerk of the court
1202 where the petition is filed a fee of Fifty Dollars (\$50.00), which
1203 shall be deposited into the State General Fund to the credit of a
1204 special fund hereby created in the State Treasury to be used for
1205 alcohol or drug abuse treatment and education, upon appropriation
1206 by the Legislature. This fee shall be in addition to any other
1207 court costs or fees required for the filing of petitions.

1208 The petition filed under the provisions of this subsection
1209 shall contain the specific facts which the petitioner alleges to
1210 constitute a hardship and the driver's license number of the
1211 petitioner. A hearing may be held on any petition filed under
1212 this subsection only after ten (10) days' prior written notice to
1213 the Commissioner of Public Safety, or his designated agent, or the
1214 attorney designated to represent the state. At such hearing, the
1215 court may enter an order reducing the period of suspension.

1216 The order entered under the provisions of this subsection
1217 shall contain the specific grounds upon which hardship was
1218 determined, and shall order the petitioner to attend and complete
1219 an alcohol safety education program as provided in Section
1220 63-11-32. A certified copy of such order shall be delivered to
1221 the Commissioner of Public Safety by the clerk of the court within
1222 five (5) days of the entry of the order. The certified copy of
1223 such order shall contain information which will identify the
1224 petitioner, including, but not limited to, the name, mailing
1225 address, street address, social security number and driver's
1226 license number of the petitioner.

1227 At any time following at least thirty (30) days of suspension
1228 for a first offense violation of this section, the court may grant
1229 the person hardship driving privileges upon written petition of
1230 the defendant, if it finds reasonable cause to believe that
1231 revocation would hinder the person's ability to:

1232 (i) Continue his employment;

1233 (ii) Continue attending school or an educational
1234 institution; or

1235 (iii) Obtain necessary medical care.

1236 Proof of the hardship shall be established by clear and
1237 convincing evidence which shall be supported by independent
1238 documentation.

1239 (c) Upon any second conviction of any person under the
1240 age of twenty-one (21) years violating subsection (1) of this
1241 section, the offenses being committed within a period of five (5)
1242 years, such person shall be fined not more than Five Hundred
1243 Dollars (\$500.00) and shall have his driver's license suspended

1244 for one (1) year.

1245 (d) For any third or subsequent conviction of any
1246 person under the age of twenty-one (21) years violating subsection
1247 (1) of this section, the offenses being committed within a period
1248 of five (5) years, such person shall be fined not more than One
1249 Thousand Dollars (\$1,000.00) and shall have his driver's license
1250 suspended until he reaches the age of twenty-one (21) or for two
1251 (2) years, whichever is longer.

1252 (e) Any person under the age of twenty-one (21) years
1253 convicted of a second violation of subsection (1) of this section,
1254 may have the period that his driver's license is suspended reduced
1255 if such person receives an in-depth diagnostic assessment, and as
1256 a result of such assessment is determined to be in need of
1257 treatment of his alcohol and/or drug abuse problem and
1258 successfully completes treatment of his alcohol and/or drug abuse
1259 problem at a program site certified by the Department of Mental
1260 Health. Such person shall be eligible for reinstatement of his
1261 driving privileges upon the successful completion of such
1262 treatment after a period of six (6) months after such person's
1263 driver's license is suspended. Each person who receives a
1264 diagnostic assessment shall pay a fee representing the cost of
1265 such assessment. Each person who participates in a treatment
1266 program shall pay a fee representing the cost of such treatment.

1267 (f) Any person under the age of twenty-one (21) years
1268 convicted of a third or subsequent violation of subsection (1) of
1269 this section shall complete treatment of an alcohol and/or drug
1270 abuse program at a site certified by the Department of Mental
1271 Health.

1272 (g) The court shall have the discretion to rule that a
1273 first offense of this subsection by a person under the age of
1274 twenty-one (21) years shall be nonadjudicated. Such person shall
1275 be eligible for nonadjudication only once. The Department of
1276 Public Safety shall maintain a confidential registry of all cases
1277 which are nonadjudicated as provided in this paragraph. A judge
1278 who rules that a case is nonadjudicated shall forward such ruling
1279 to the Department of Public Safety. Judges and prosecutors
1280 involved in implied consent violations shall have access to the
1281 confidential registry for the purpose of determining
1282 nonadjudication eligibility. A record of a person who has been
1283 nonadjudicated shall be maintained for five (5) years or until
1284 such person reaches the age of twenty-one (21) years. Any person
1285 whose confidential record has been disclosed in violation of this
1286 paragraph shall have a civil cause of action against the person
1287 and/or agency responsible for such disclosure.

1288 (4) Every person convicted of operating a vehicle while
1289 under the influence of intoxicating liquor or any other substance
1290 which has impaired such person's ability to operate a motor
1291 vehicle where the person (a) refused a law enforcement officer's
1292 request to submit to a chemical test of his breath as provided in
1293 this chapter, or (b) was unconscious at the time of a chemical
1294 test and refused to consent to the introduction of the results of
1295 such test in any prosecution, shall be punished consistent with
1296 the penalties prescribed herein for persons submitting to the
1297 test, except that there shall be an additional suspension of
1298 driving privileges as follows:

1299 The Commissioner of Public Safety or his authorized agent

1300 shall suspend the driver's license or permit to drive or deny the
1301 issuance of a license or permit to such person as provided for
1302 first, second and third or subsequent offenders in subsection (2)
1303 of this section. Such suspension shall be in addition to any
1304 suspension imposed pursuant to subsection (1) of Section 63-11-23.

1305 (5) Every person who operates any motor vehicle in violation
1306 of the provisions of subsection (1) of this section and who in a
1307 negligent manner causes the death of another or mutilates,
1308 disfigures, permanently disables or destroys the tongue, eye, lip,
1309 nose or any other limb, organ or member of another shall, upon
1310 conviction, be guilty of a felony and shall be committed to the
1311 custody of the State Department of Corrections for a period of
1312 time not to exceed twenty-five (25) years.

1313 (6) Upon conviction of any violation of subsection (1) of
1314 this section, the trial judge shall sign in the place provided on
1315 the traffic ticket, citation or affidavit stating that the person
1316 arrested either employed an attorney or waived his right to an
1317 attorney after having been properly advised. If the person
1318 arrested employed an attorney, the name, address and telephone
1319 number of the attorney shall be written on the ticket, citation or
1320 affidavit. The judge shall cause a copy of the traffic ticket,
1321 citation or affidavit, and any other pertinent documents
1322 concerning the conviction, to be sent to the Commissioner of
1323 Public Safety. A copy of the traffic ticket, citation or
1324 affidavit and any other pertinent documents, having been attested
1325 as true and correct by the Commissioner of Public Safety, or his
1326 designee, shall be sufficient proof of the conviction for purposes
1327 of determining the enhanced penalty for any subsequent convictions

1328 of violations of subsection (1) of this section.

1329 (7) Convictions in other states of violations for driving or
1330 operating a vehicle while under the influence of an intoxicating
1331 liquor or while under the influence of any other substance that
1332 has impaired the person's ability to operate a motor vehicle
1333 occurring after July 1, 1992, shall be counted for the purposes of
1334 determining if a violation of subsection (1) of this section is a
1335 first, second, third or subsequent offense and the penalty that
1336 shall be imposed upon conviction for a violation of subsection (1)
1337 of this section.

1338 (8) For the purposes of determining how to impose the
1339 sentence for a second, third or subsequent conviction under this
1340 section, the indictment shall not be required to enumerate
1341 previous convictions. It shall only be necessary that the
1342 indictment state the number of times that the defendant has been
1343 convicted and sentenced within the past five (5) years under this
1344 section to determine if an enhanced penalty shall be imposed. The
1345 amount of fine and imprisonment imposed in previous convictions
1346 shall not be considered in calculating offenses to determine a
1347 second, third or subsequent offense of this section.

1348 (9) Any person under the legal age to obtain a license to
1349 operate a motor vehicle convicted under this section shall not be
1350 eligible to receive such license until the person reaches the age
1351 of eighteen (18) years.

1352 (10) Suspension of driving privileges for any person
1353 convicted of violations of Section 63-11-30(1) shall run
1354 consecutively.

1355 SECTION 23. Section 41-29-187, Mississippi Code of 1972, is

1356 amended as follows:[MS10]

1357 41-29-187. (1) Attorneys for the Mississippi Bureau of
1358 Narcotics, by and through the Director of the Mississippi Bureau
1359 of Narcotics, are authorized to seek judicial subpoenas to require
1360 any person, firm or corporation in the State of Mississippi to
1361 produce for inspection and copying business records and other
1362 documents which are relevant to the investigation of any felony
1363 violation of the Uniform Controlled Substances Law of the State of
1364 Mississippi. The production of the designated documents shall be
1365 at the location of the named person's, firm's or corporation's
1366 principal place of business, residence or other place at which the
1367 person, firm or corporation agrees to produce the documents. The
1368 cost of reproducing the documents shall be borne by the bureau at
1369 prevailing rates. At the conclusion of the investigation and any
1370 related judicial proceedings, the person, firm or corporation from
1371 whom the records or documents were subpoenaed shall, upon written
1372 request, be entitled to the return or destruction of all copies
1373 remaining in the possession of the bureau.

1374 (2) The bureau is authorized to make an ex parte and in
1375 camera application to the county, drug or circuit court of the
1376 county in which such person, firm or corporation resides or has
1377 his principal place of business, or if the person, firm or
1378 corporation is absent or a nonresident of the State of
1379 Mississippi, to the County, Drug or Circuit Court of Hinds County.

1380 On application of the county, drug or circuit court, a subpoena
1381 duces tecum shall be issued only upon a showing of probable cause
1382 that the documents sought are relevant to the investigation of a
1383 felony violation of the Uniform Controlled Substances Law or may

1384 reasonably lead to the discovery of such relevant evidence.
1385 Nothing contained in this section shall affect the right of a
1386 person to assert a claim that the information sought is privileged
1387 by law. Such application to the court shall be in writing and
1388 accompanied by a sworn affidavit from an agent of the Bureau of
1389 Narcotics which sets forth facts which the court shall consider in
1390 determining that probable cause exists.

1391 (3) Any person, firm or corporation complying in good faith
1392 with a judicial subpoena issued pursuant to this section shall not
1393 be liable to any other person, firm or corporation for damages
1394 caused in whole or in part by such compliance.

1395 (4) Documents in the possession of the Mississippi Bureau of
1396 Narcotics gathered pursuant to the provisions of this section and
1397 subpoenas issued by the court shall be maintained in confidential
1398 files with access limited to prosecutorial and other law
1399 enforcement investigative personnel on a "need to know" basis and
1400 shall be exempt from the provisions of the Mississippi Public
1401 Records Act of 1983, except that upon the filing of an indictment
1402 or information, or upon the filing of an action for forfeiture or
1403 recovery of property, funds or fines, such documents shall be
1404 subject to such disclosure as may be required pursuant to the
1405 applicable statutes or court rules governing the trial of any such
1406 judicial proceeding.

1407 (5) The circuit, drug or county judge shall seal each
1408 application and affidavit filed and each subpoena issued after
1409 service of said subpoena. The application, affidavit and subpoena
1410 may not be disclosed except in the course of a judicial
1411 proceeding. Any unauthorized disclosure of a sealed subpoena,

1412 application or affidavit shall be punishable as contempt of court.

1413 (6) No person, including the Director of the Mississippi
1414 Bureau of Narcotics, an agent or member of his staff, prosecuting
1415 attorney, law enforcement officer, witness, court reporter,
1416 attorney or other person, shall disclose to an unauthorized person
1417 documents gathered by the bureau pursuant to the provisions of
1418 this section, nor investigative demands and subpoenas issued and
1419 served, except that upon the filing of an indictment or
1420 information, or upon the filing of an action for forfeiture or
1421 recovery of property, funds or fines, or in other legal
1422 proceedings, the documents shall be subject to such disclosure as
1423 may be required pursuant to applicable statutes and court rules
1424 governing the trial of any such judicial proceeding. In the event
1425 of an unauthorized disclosure of any such documents gathered by
1426 the Mississippi Bureau of Narcotics pursuant to the provisions of
1427 this section, the person making any such unauthorized disclosure
1428 shall be guilty of a misdemeanor, and upon conviction thereof
1429 shall be punished by a fine of not more than One Thousand Dollars
1430 (\$1,000.00), or imprisonment of not more than six (6) months, or
1431 by both such fine and imprisonment.

1432 (7) No person, agent or employee upon whom a subpoena is
1433 served pursuant to this section shall disclose the existence of
1434 said subpoena or the existence of the investigation to any person
1435 unless such disclosure is necessary for compliance with the
1436 subpoena. Any person who willfully violates this subsection shall
1437 be guilty of a misdemeanor and may be confined in the county jail,
1438 for a period not to exceed one (1) year, or fined not more than
1439 Ten Thousand Dollars (\$10,000.00), or both.

1440 SECTION 24. Section 41-29-501, Mississippi Code of 1972, is
1441 amended as follows:[MS11]

1442 41-29-501. As used in this article, the following terms
1443 shall have the meaning ascribed to them herein unless the context
1444 requires otherwise:

1445 (a) "Aggrieved person" means a person who was a party
1446 to an intercepted wire, oral or other communication or a person
1447 against whom the interception was directed.

1448 (b) "Communication common carrier" has the meaning
1449 given the term "common carrier" by 47 USCS 153(h) and shall also
1450 mean a provider of communication services.

1451 (c) "Contents," when used with respect to a wire, oral
1452 or other communication, includes any information concerning the
1453 identity of the parties to the communication or the existence,
1454 substance, purport or meaning of that communication.

1455 (d) "Covert entry" means any entry into or onto
1456 premises which if made without a court order allowing such an
1457 entry under this article would be a violation of criminal law.

1458 (e) "Director" means the Director of the Bureau of
1459 Narcotics or, if the director is absent or unable to serve, the
1460 Assistant Director of the Bureau of Narcotics.

1461 (f) "Electronic, mechanical or other device" means a
1462 device or apparatus primarily designed or used for the
1463 nonconsensual interception of wire, oral or other communications.

1464 (g) "Intercept" means the aural or other acquisition of
1465 the contents of a wire, oral or other communication through the
1466 use of an electronic, mechanical or other device.

1467 (h) "Investigative or law enforcement officer" means an

1468 officer of this state or of a political subdivision of this state
1469 who is empowered by law to conduct investigations of, or to make
1470 arrests for, offenses enumerated in Section 41-29-505, or an
1471 attorney authorized by law to prosecute or participate in the
1472 prosecution of such offenses.

1473 (i) "Judge of competent jurisdiction" means a justice
1474 of the Supreme Court or a circuit or drug court judge.

1475 (j) "Oral communication" means an oral communication
1476 uttered by a person exhibiting an expectation that the
1477 communication is not subject to interception under circumstances
1478 justifying that expectation.

1479 (k) "Other communication" means any transfer of an
1480 electronic or other signal, including fax signals, computer
1481 generated signals, other similar signals, or any scrambled or
1482 encrypted signal transferred via wire, radio, electromagnetic,
1483 photoelectric or photooptical system from one party to another in
1484 which the involved parties may reasonably expect the communication
1485 to be private.

1486 (l) "Prosecutor" means a district attorney with
1487 jurisdiction in the county in which the facility or place where
1488 the communication to be intercepted is located or a legal
1489 assistant to the district attorney if designated in writing by the
1490 district attorney on a case by case basis.

1491 (m) "Residence" means a structure or the portion of a
1492 structure used as a person's home or fixed place of habitation to
1493 which the person indicates an intent to return after any temporary
1494 absence.

1495 (n) "Wire communication" means a communication made in

1496 whole or in part through the use of facilities for the
1497 transmission of communications by the aid of wire, cable or other
1498 like connection between the point of origin and the point of
1499 reception furnished or operated by a person engaged as a common
1500 carrier in providing or operating the facilities for the
1501 transmission of communications and includes cordless telephones,
1502 voice pagers, cellular telephones, any mobile telephone, or any
1503 communication conducted through the facilities of a provider of
1504 communication services.

1505 SECTION 25. Section 41-29-505, Mississippi Code of 1972, is
1506 amended as follows:[MS12]

1507 41-29-505. A judge of competent jurisdiction in the circuit
1508 or drug court district of the location where the interception of
1509 wire, oral or other communications is sought, or a circuit or drug
1510 court district contiguous to such circuit or drug court district,
1511 may issue an order authorizing interception of wire, oral or other
1512 communications only if the prosecutor applying for the order shows
1513 probable cause to believe that the interception will provide
1514 evidence of the commission of a felony under the Uniform
1515 Controlled Substances Law.

1516 SECTION 26. Section 41-29-513, Mississippi Code of 1972, is
1517 amended as follows:[MS13]

1518 41-29-513. (1) To be valid, an application for an order
1519 authorizing the interception of a wire, oral or other
1520 communication must be made in writing under oath to a judge of
1521 competent jurisdiction in the circuit or drug court district of
1522 the location where the interception of wire, oral or other
1523 communications is sought, or a circuit or drug court district

1524 contiguous to such circuit or drug court district, and must state
1525 the applicant's authority to make the application. An applicant
1526 must include the following information in the application:

1527 (a) A statement that the application has been requested
1528 by the director and the identity of the prosecutor making the
1529 application;

1530 (b) A full and complete statement of the facts and
1531 circumstances relied on by the applicant to justify his belief
1532 that an order should be issued including:

1533 (i) Details about the particular offense that has
1534 been, is being, or is about to be committed;

1535 (ii) A particular description of the nature and
1536 location of the facilities from which or the place where the
1537 communication is to be intercepted;

1538 (iii) A particular description of the type of
1539 communication sought to be intercepted; and

1540 (iv) The identity of the person, if known,
1541 committing the offense and whose communications are to be
1542 intercepted;

1543 (c) A full and complete statement as to whether or not
1544 other investigative procedures have been tried and failed or why
1545 they reasonably appear to be unlikely to succeed or to be too
1546 dangerous if tried;

1547 (d) A statement of the period of time for which the
1548 interception is required to be maintained and, if the nature of
1549 the investigation is such that the authorization for interception
1550 should not automatically terminate when the described type of
1551 communication is first obtained, a particular description of the

1552 facts establishing probable cause to believe that additional
1553 communications of the same type will occur after the described
1554 type of communication is obtained;

1555 (e) A statement whether a covert entry will be
1556 necessary to properly and safely install the wiretapping or
1557 electronic surveillance or eavesdropping equipment and, if a
1558 covert entry is requested, a statement as to why such an entry is
1559 necessary and proper under the facts of the particular
1560 investigation, including a full and complete statement as to
1561 whether other investigative techniques have been tried and have
1562 failed or why they reasonably appear to be unlikely to succeed or
1563 to be too dangerous if tried or are not feasible under the
1564 circumstances or exigencies of time;

1565 (f) A full and complete statement of the facts
1566 concerning all applications known to the prosecutor making the
1567 application that have been previously made to a judge for
1568 authorization to intercept wire, oral or other communications
1569 involving any of the persons, facilities or places specified in
1570 the application and of the action taken by the judge on each
1571 application; and

1572 (g) If the application is for the extension of an
1573 order, a statement setting forth the results already obtained from
1574 the interception or a reasonable explanation of the failure to
1575 obtain results.

1576 (2) The judge may, in an ex parte in camera hearing, require
1577 additional testimony or documentary evidence in support of the
1578 application, and such testimony or documentary evidence shall be
1579 preserved as part of the application.

1580 SECTION 27. Section 41-29-525, Mississippi Code of 1972, is
1581 amended as follows:[MS14]

1582 41-29-525. (1) The contents of an intercepted wire, oral or
1583 other communication or evidence derived from the communication may
1584 not be received in evidence or otherwise disclosed in a trial,
1585 hearing or other proceeding in a federal or state court unless
1586 each party has been furnished with a copy of the court order and
1587 application under which the interception was authorized or
1588 approved not less than ten (10) days before the date of the trial,
1589 hearing or other proceeding. The ten-day period may be waived by
1590 the judge if he finds that it is not possible to furnish the party
1591 with the information ten (10) days before the trial, hearing or
1592 proceeding and that the party will not be prejudiced by the delay
1593 in receiving the information.

1594 (2) An aggrieved person charged with an offense in a trial,
1595 hearing or proceeding in or before a court, department, officer,
1596 agency, regulatory body, or other authority of the United States
1597 or of this state or a political subdivision of this state, may
1598 move to suppress the contents of an intercepted wire, oral or
1599 other communication or evidence derived from the communication on
1600 the ground that:

1601 (a) The communication was unlawfully intercepted;

1602 (b) The order authorizing the interception is
1603 insufficient on its face; or

1604 (c) The interception was not made in conformity with
1605 the order.

1606 (3) The motion to suppress shall be made before the trial,
1607 hearing or proceeding unless there was no opportunity to make the

1608 motion before the trial, hearing or proceeding, or the person was
1609 not aware of the grounds of the motion before the trial, hearing
1610 or proceeding. The hearing on the motion shall be held in camera
1611 upon the written request of the aggrieved person. If the motion
1612 is granted, the contents of the intercepted wire, oral or other
1613 communication and evidence derived from the communication shall be
1614 treated as inadmissible evidence. The judge, on the filing of the
1615 motion by the aggrieved person, shall make available to the
1616 aggrieved person or his counsel for inspection any portion of the
1617 intercepted communication or evidence derived from the
1618 communication that the judge determines is in the interest of
1619 justice to make available.

1620 (4) Any circuit or drug court judge of this state, upon
1621 hearing a pretrial motion regarding conversations intercepted by
1622 wire pursuant to this article, or who otherwise becomes informed
1623 that there exists on such intercepted wire, oral or other
1624 communication identification of a specific individual who is not a
1625 party or suspect to the subject of interception:

1626 (a) Shall give notice and an opportunity to be heard on
1627 the matter of suppression of references to that person if
1628 identification is sufficient so as to give notice; or

1629 (b) Shall suppress references to that person if
1630 identification is sufficient to potentially cause embarrassment or
1631 harm which outweighs the probative value, if any, of the mention
1632 of such person, but insufficient to require the notice provided
1633 for in paragraph (a) of this subsection.

1634 SECTION 28. Section 41-29-536, Mississippi Code of 1972, is
1635 amended as follows:[MS15]

1636 41-29-536. (1) Attorneys for the Bureau of Narcotics may
1637 file a motion with a circuit or drug court judge of the circuit or
1638 drug court district in which the subscriber, instrument or other
1639 device exists, for communication records which will be material to
1640 an ongoing investigation of a felony violation of the Uniform
1641 Controlled Substances Law.

1642 (2) The motion shall be made in writing, under oath, and
1643 shall include the name of the subscriber, the number or numbers,
1644 and the location of the instrument or other device, if known and
1645 applicable. The motion shall be accompanied by an affidavit from
1646 an agent of the Bureau of Narcotics which sets forth facts which
1647 the court shall consider in determining that probable cause exists
1648 to believe that the information sought will be material to an
1649 ongoing felony violation of the Uniform Controlled Substances Law.

1650 (3) Upon consideration of the motion and the determination
1651 that probable cause exists, the circuit or drug court judge may
1652 order a communications common carrier as defined by 47 USCS 153(h)
1653 or a provider of communication services to provide the Bureau of
1654 Narcotics with communication billing records, call records,
1655 subscriber information, or other communication record information.
1656 The communications common carrier or the provider of communication
1657 services shall be entitled to compensation at the prevailing rates
1658 from the Bureau of Narcotics.

1659 (4) The circuit or drug court judge shall seal each order
1660 issued pursuant to this section. The contents of a motion,
1661 affidavit and order may not be disclosed except in the course of a
1662 judicial proceeding. Any unauthorized disclosure of a sealed
1663 order, motion or affidavit shall be punishable as contempt of

1664 court.

1665 SECTION 29. Section 41-29-701, Mississippi Code of 1972, is
1666 amended as follows:[MS16]

1667 41-29-701. (1) As used in this section, the following words
1668 and phrases shall have the meanings ascribed to them herein unless
1669 the context clearly requires otherwise:

1670 (a) "Pen register" means a mechanical or electronic
1671 device that attaches to a telephone line and is capable of
1672 recording outgoing numbers dialed from that line and date, time
1673 and duration of any incoming communication to that line.

1674 (b) "Trap and trace device" means a device which
1675 captures the incoming electronic or other signals which identifies
1676 the originating number of an instrument or device from which a
1677 wire or other communication was transmitted.

1678 (c) "Caller ID" means a service offered by a provider
1679 of communications services which identifies either or both of the
1680 originating number or the subscriber of such number of an
1681 instrument or device from which a wire or other communication was
1682 transmitted.

1683 (2) (a) Attorneys for the Bureau of Narcotics, upon their
1684 own motion, may file an application with a circuit or drug court
1685 judge of the circuit or drug court district in which the proposed
1686 installation will be made, for the installation and use of a pen
1687 register, trap and trace device or caller ID to obtain information
1688 material to an ongoing investigation of a felony violation of the
1689 Uniform Controlled Substances Law.

1690 (b) The application shall be made in writing under oath
1691 and shall include the name of the subscriber, the telephone number

1692 or numbers, and the location of the telephone instrument or
1693 instruments upon which the pen register will be utilized. The
1694 application shall also set forth facts which the court shall
1695 consider in determining that probable cause exists that the
1696 installation and utilization of the pen register, trap and trace
1697 device or caller ID will be material to an ongoing investigation
1698 of a felony violation of the Uniform Controlled Substances Law.

1699 (c) Upon consideration of the application and a
1700 determination that probable cause exists, the circuit or drug
1701 court judge may order the installation and utilization of the pen
1702 register, trap and trace device or caller ID, and in the order the
1703 circuit or drug court judge shall direct a communications common
1704 carrier, as defined by 47 USCS 153(h), to furnish all information,
1705 facilities and technical assistance necessary to facilitate the
1706 installation and utilization of the pen register, trap and trace
1707 device or caller ID unobtrusively and with a minimum of
1708 interference to the services provided by the carrier. The carrier
1709 is entitled to compensation at the prevailing rates for the
1710 facilities and assistance provided to the Bureau of Narcotics.

1711 (d) An order for the installation and utilization of a
1712 pen register, trap and trace device or caller ID is valid for not
1713 more than thirty (30) days from the date the order is granted
1714 unless, prior to the expiration of the order, an attorney for the
1715 Bureau of Narcotics applies for and obtains from the court an
1716 extension of the order. The period of extension may not exceed
1717 thirty (30) days for each extension granted.

1718 (e) The circuit or drug court shall seal an application
1719 and order for the installation and utilization of a pen register,

1720 trap and trace device or caller ID granted under this section.

1721 The contents of an application or order may not be disclosed
1722 except in the course of a judicial proceeding and an unauthorized
1723 disclosure is punishable as contempt of court.

1724 (3) On or before January 5 of each year, the Director of the
1725 Bureau of Narcotics shall submit a report to the Mississippi
1726 Administrative Office of Courts detailing the number of
1727 applications for pen registers sought and the number of orders for
1728 the installation and utilization of pen registers, trap and trace
1729 devices or caller ID granted during the preceding calendar year.

1730 SECTION 30. Sections 1 through 7 of this act shall take
1731 effect and be in force from and after July 1, 2001; Sections 9
1732 through 22 shall take effect and be in force from and after July
1733 1, 2000, and shall stand repealed on July 1, 2004; the remainder
1734 of this act shall take effect and be in force from and after July
1735 1, 2000.