

By: Mettetal

To: Juvenile Justice

SENATE BILL NO. 2659  
(As Passed the Senate)

1 AN ACT TO AMEND SECTION 41-21-105, MISSISSIPPI CODE OF 1972,  
2 TO REVISE THE DEFINITION OF DELINQUENT ACT TO INCLUDE DUI  
3 VIOLATIONS; TO AMEND SECTION 43-21-151, MISSISSIPPI CODE OF 1972,  
4 TO REVISE THE JURISDICTION OF THE YOUTH COURT TO INCLUDE DUI  
5 VIOLATIONS; TO AMEND SECTION 43-21-159, MISSISSIPPI CODE OF 1972,  
6 TO REVISE YOUTH COURT JURISDICTION OVER DUI VIOLATIONS; TO AMEND  
7 SECTION 43-21-261, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT THE  
8 NAME, ADDRESS, AND DISPOSITION IN YOUTH COURT FOR A DUI VIOLATION  
9 ARE NOT CONFIDENTIAL BUT SHALL BE OPEN TO THE PUBLIC; TO AMEND  
10 SECTION 43-21-605, MISSISSIPPI CODE OF 1972, TO REQUIRE THE YOUTH  
11 COURT TO STRICTLY FOLLOW ZERO TOLERANCE FOR MINORS IN DUI CASES;  
12 TO AMEND SECTION 63-11-30, MISSISSIPPI CODE OF 1972, TO CONFORM;  
13 AND FOR RELATED PURPOSES.

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

15 SECTION 1. Section 43-21-105, Mississippi Code of 1972, is  
16 amended as follows:

17 43-21-105. The following words and phrases, for purposes of  
18 this chapter, shall have the meanings ascribed herein unless the  
19 context clearly otherwise requires:

20 (a) "Youth court" means the Youth Court Division.

21 (b) "Judge" means the judge of the Youth Court  
22 Division.

23 (c) "Designee" means any person that the judge appoints  
24 to perform a duty which this chapter requires to be done by the  
25 judge or his designee. The judge may not appoint a person who is  
26 involved in law enforcement to be his designee.

27 (d) "Child" and "youth" are synonymous, and each means  
28 a person who has not reached his eighteenth birthday. A child who  
29 has not reached his eighteenth birthday and is on active duty for  
30 a branch of the armed services or is married is not considered a  
31 "child" or "youth" for the purposes of this chapter.

32 (e) "Parent" means the father or mother to whom the  
33 child has been born, or the father or mother by whom the child has  
34 been legally adopted.

35 (f) "Guardian" means a court-appointed guardian of the  
36 person of a child.

37 (g) "Custodian" means any person having the present  
38 care or custody of a child whether such person be a parent or  
39 otherwise.

40 (h) "Legal custodian" means a court-appointed custodian  
41 of the child.

42 (i) "Delinquent child" means a child who has reached  
43 his tenth birthday and who has committed a delinquent act or,  
44 while being required to attend an alternative school program  
45 provided under Section 37-13-92, willfully and habitually absents  
46 himself therefrom.

47 (j) "Delinquent act" is any act, which if committed by  
48 an adult, is designated as a crime under state or federal law, or  
49 municipal or county ordinance other than offenses punishable by  
50 life imprisonment or death. A delinquent act includes escape from  
51 lawful detention and violations of the Mississippi School  
52 Compulsory Attendance Law, violations of the Uniform Controlled  
53 Substances Law, violations of the Mississippi Implied Consent Law  
54 including Zero Tolerance of Minors, and violent behavior.

55 (k) "Child in need of supervision" means a child who  
56 has reached his seventh birthday and is in need of treatment or  
57 rehabilitation because the child:

58 (i) Is habitually disobedient of reasonable and  
59 lawful commands of his parent, guardian or custodian and is  
60 ungovernable; or

61 (ii) While being required to attend school,  
62 willfully and habitually violates the rules thereof or willfully  
63 and habitually absents himself therefrom; or

64 (iii) Runs away from home without good cause; or

65 (iv) Has committed a delinquent act or acts.

66 (1) "Neglected child" means a child:

67 (i) Whose parent, guardian or custodian or any  
68 person responsible for his care or support, neglects or refuses,  
69 when able so to do, to provide for him proper and necessary care  
70 or support, or education as required by law, or medical, surgical,  
71 or other care necessary for his well-being; provided, however, a  
72 parent who withholds medical treatment from any child who in good  
73 faith is under treatment by spiritual means alone through prayer  
74 in accordance with the tenets and practices of a recognized church  
75 or religious denomination by a duly accredited practitioner  
76 thereof shall not, for that reason alone, be considered to be  
77 neglectful under any provision of this chapter; or

78 (ii) Who is otherwise without proper care,  
79 custody, supervision or support; or

80 (iii) Who, for any reason, lacks the special care  
81 made necessary for him by reason of his mental condition, whether  
82 said mental condition be mentally retarded or mentally ill; or

83 (iv) Who, for any reason, lacks the care necessary  
84 for his health, morals or well-being.

85 (m) "Abused child" means a child whose parent,  
86 guardian or custodian or any person responsible for his care or  
87 support, whether legally obligated to do so or not, has caused or  
88 allowed to be caused upon said child sexual abuse, sexual  
89 exploitation, emotional abuse, mental injury, nonaccidental  
90 physical injury or other maltreatment. Provided, however, that  
91 physical discipline, including spanking, performed on a child by a  
92 parent, guardian or custodian in a reasonable manner shall not be  
93 deemed abuse under this section.

94 (n) "Sexual abuse" means obscene or pornographic  
95 photographing, filming or depiction of children for commercial  
96 purposes, or the rape, molestation, incest, prostitution or other  
97 such forms of sexual exploitation of children under circumstances

98 which indicate that the child's health or welfare is harmed or  
99 threatened.

100 (o) "A child in need of special care" means a child  
101 with any mental or physical illness that cannot be treated with  
102 the dispositional alternatives ordinarily available to the youth  
103 court.

104 (p) A "dependent child" means any child who is not a  
105 child in need of supervision, a delinquent child, an abused child  
106 or a neglected child, and which child has been voluntarily placed  
107 in the custody of the Department of Human Services by his parent,  
108 guardian or custodian.

109 (q) "Custody" means the physical possession of the  
110 child by any person.

111 (r) "Legal custody" means the legal status created by a  
112 court order which gives the legal custodian the responsibilities  
113 of physical possession of the child and the duty to provide him  
114 with food, shelter, education and reasonable medical care, all  
115 subject to residual rights and responsibilities of the parent or  
116 guardian of the person.

117 (s) "Detention" means the care of children in  
118 physically restrictive facilities.

119 (t) "Shelter" means care of children in physically  
120 nonrestrictive facilities.

121 (u) "Records involving children" means any of the  
122 following from which the child can be identified:

123 (i) All youth court records as defined in Section  
124 43-21-251;

125 (ii) All social records as defined in Section  
126 43-21-253;

127 (iii) All law enforcement records as defined in  
128 Section 43-21-255;

129 (iv) All agency records as defined in Section  
130 43-21-257; and

131 (v) All other documents maintained by any  
132 representative of the state, county, municipality or other public  
133 agency insofar as they relate to the apprehension, custody,  
134 adjudication or disposition of a child who is the subject of a  
135 youth court cause.

136 (v) "Any person responsible for care or support" means  
137 the person who is providing for the child at a given time. This  
138 term shall include, but is not limited to, stepparents, foster  
139 parents, relatives, nonlicensed babysitters or other similar  
140 persons responsible for a child and staff of residential care  
141 facilities and group homes that are licensed by the Department of  
142 Human Services.

143 (w) The singular includes the plural, the plural the  
144 singular and the masculine the feminine when consistent with the  
145 intent of this chapter.

146 (x) "Out-of-home" setting means the temporary  
147 supervision or care of children by the staff of licensed day care  
148 centers, the staff of public, private and state schools, the staff  
149 of juvenile detention facilities, the staff of unlicensed  
150 residential care facilities and group homes and the staff of, or  
151 individuals representing, churches, civic or social organizations.

152 (y) "Durable legal custody" means the legal status  
153 created by a court order which gives the durable legal custodian  
154 the responsibilities of physical possession of the child and the  
155 duty to provide him with care, nurture, welfare, food, shelter,  
156 education and reasonable medical care. All these duties as  
157 enumerated are subject to the residual rights and responsibilities  
158 of the natural parent(s) or guardian(s) of the child or children.

159 SECTION 2. Section 43-21-151, Mississippi Code of 1972, is  
160 amended as follows:[CSQ1]

161 43-21-151. (1) The youth court shall have exclusive  
162 original jurisdiction in all proceedings concerning a delinquent  
163 child, a child in need of supervision, a neglected child, an

164 abused child or a dependent child except in the following  
165 circumstances:

166           (a) Any act attempted or committed by a child, which if  
167 committed by an adult would be punishable under state or federal  
168 law by life imprisonment or death, will be in the original  
169 jurisdiction of the circuit court;

170           (b) Any act attempted or committed by a child with the  
171 use of a deadly weapon, the carrying of which concealed is  
172 prohibited by Section 97-37-1, or a shotgun or a rifle, which  
173 would be a felony if committed by an adult, will be in the  
174 original jurisdiction of the circuit court; and

175           (c) When a charge of abuse of a child first arises in  
176 the course of a custody action between the parents of the child  
177 already pending in the chancery court and no notice of such abuse  
178 was provided prior to such chancery proceedings, the chancery  
179 court may proceed with the investigation, hearing and  
180 determination of such abuse charge as a part of its hearing and  
181 determination of the custody issue as between the parents,  
182 notwithstanding the other provisions of the Youth Court Law. The  
183 proceedings in chancery court on the abuse charge shall be  
184 confidential in the same manner as provided in youth court  
185 proceedings.

186           When a child is expelled from the public schools, the youth  
187 court shall be notified of the act of expulsion and the act or  
188 acts constituting the basis for expulsion.

189           (2) Jurisdiction of the child in the cause shall attach at  
190 the time of the offense and shall continue thereafter for that  
191 offense until the child's twentieth birthday, unless sooner  
192 terminated by order of the youth court. The youth court shall not  
193 have jurisdiction over offenses committed by a child on or after  
194 his eighteenth birthday, or over offenses committed by a child on  
195 or after his seventeenth birthday where such offenses would be a  
196 felony if committed by an adult.

197 (3) No child who has not reached his thirteenth birthday  
198 shall be held criminally responsible or criminally prosecuted for  
199 a misdemeanor or felony; however, the parent, guardian or  
200 custodian of such child may be civilly liable for any criminal  
201 acts of such child. No child under the jurisdiction of the youth  
202 court shall be held criminally responsible or criminally  
203 prosecuted by any court for any act designated as a delinquent  
204 act, unless jurisdiction is transferred to another court under  
205 Section 43-21-157.

206 (4) The youth court shall also have jurisdiction of offenses  
207 committed by a child which have been transferred to the youth  
208 court by an order of a circuit court of this state having original  
209 jurisdiction of the offense, as provided by Section 43-21-159.

210 (5) The youth court shall have jurisdiction over offenses  
211 committed by a child under the Mississippi Implied Consent Law,  
212 including Zero Tolerance for Minors.

213 (6) The youth court shall regulate and approve the use of  
214 teen court as provided in Section 43-21-753.

215 SECTION 3. Section 43-21-159, Mississippi Code of 1972, is  
216 amended as follows:

217 43-21-159. (1) When a person appears before a court other  
218 than the youth court, and it is determined that the person is a  
219 child under jurisdiction of the youth court, such court shall,  
220 unless the jurisdiction of the offense has been transferred to  
221 such court as provided in this chapter, or unless the child has  
222 previously been the subject of a transfer from the youth court to  
223 the circuit court for trial as an adult and was convicted,  
224 immediately dismiss the proceeding without prejudice and forward  
225 all documents pertaining to the cause to the youth court; and all  
226 entries in permanent records shall be expunged. The youth court  
227 shall have the power to order and supervise the expunction or the  
228 destruction of such records in accordance with Section 43-21-265.

229 The youth court is authorized to expunge the record of any case

230 within its jurisdiction in which an arrest was made, the person  
231 arrested was released and the case was dismissed or the charges  
232 were dropped or there was no disposition of such case. In cases  
233 where the child is charged with a hunting or fishing violation or  
234 a traffic violation, except for offenses under the Mississippi  
235 Implied Consent Law, whether it be any state or federal law \* \* \*  
236 or municipal ordinance or county resolution, or where the child is  
237 charged with a violation of Section 67-3-70, the appropriate  
238 criminal court may proceed to dispose of the same in the same  
239 manner as for other \* \* \* offenders and it shall not be necessary  
240 to transfer the case to the youth court of the county. Unless the  
241 cause has been transferred, or unless the child has previously  
242 been the subject of a transfer from the youth court to the circuit  
243 court for trial as an adult \* \* \* and was convicted, the youth  
244 court shall have power on its own motion to remove jurisdiction  
245 from any criminal court of any offense including a hunting or  
246 fishing violation, a traffic violation, or a violation of Section  
247 67-3-70, committed by a child in a matter under the jurisdiction  
248 of the youth court and proceed therewith in accordance with the  
249 provisions of this chapter.

250 (2) After conviction and sentence of any child by any other  
251 court having original jurisdiction on a misdemeanor charge, and  
252 within the time allowed for an appeal of such conviction and  
253 sentence, the youth court of the county shall have the full power  
254 to stay the execution of the sentence and to release the child on  
255 good behavior or on other order as the youth court may see fit to  
256 make unless the child has previously been the subject of a  
257 transfer from the youth court to the circuit court for trial as an  
258 adult and was convicted. When a child is convicted of a  
259 misdemeanor and is committed to, incarcerated in or imprisoned in  
260 a jail or other place of detention by a criminal court having  
261 proper jurisdiction of such charge, such court shall notify the  
262 youth court judge or the judge's designee of the conviction and



263 sentence prior to the commencement of such incarceration. The  
264 youth court shall have the power to order and supervise the  
265 destruction of any records involving children maintained by the  
266 criminal court in accordance with Section 43-21-265. However, the  
267 youth court shall have the power to set aside a judgment of any  
268 other court rendered in any matter over which the youth court has  
269 exclusive original jurisdiction, to expunge or destroy the records  
270 thereof in accordance with Section 43-21-265, and to order a  
271 refund of fines and costs.

272 (3) Nothing in subsection (1) or (2) shall apply to a youth  
273 who has a pending charge or a conviction for any crime over which  
274 circuit court has original jurisdiction.

275 (4) In any case wherein the defendant is a child as defined  
276 in this chapter and of which the circuit court has original  
277 jurisdiction, the circuit judge, upon a finding that it would be  
278 in the best interest of such child and in the interest of justice,  
279 may at any stage of the proceedings prior to the attachment of  
280 jeopardy transfer such proceedings to the youth court for further  
281 proceedings unless the child has previously been the subject of a  
282 transfer from the youth court to the circuit court for trial as an  
283 adult and was convicted or has previously been convicted of a  
284 crime which was in original circuit court jurisdiction, and the  
285 youth court shall, upon acquiring jurisdiction, proceed as  
286 provided in this chapter for the adjudication and disposition of  
287 delinquent child proceeding proceedings. If the case is not  
288 transferred to the youth court and the youth is convicted of a  
289 crime by any circuit court, the trial judge shall sentence the  
290 youth as though such youth was an adult. The circuit court shall  
291 not have the authority to commit such child to the custody of the  
292 Department of Youth Services for placement in a state-supported  
293 training school.

294 (5) In no event shall a court sentence an offender over the  
295 age of eighteen (18) to the custody of the Division of Youth

296 Services for placement in a state-supported training school.

297 (6) When a child's driver's license is suspended by the  
298 youth court for any reason, the clerk of the youth court shall  
299 report the suspension, without a court order under Section  
300 43-21-261, to the Commissioner of Public Safety in the same manner  
301 as such suspensions are reported in cases involving adults.

302 (7) No offense involving the use or possession of a firearm  
303 by a child who has reached his fifteenth birthday and which, if  
304 committed by an adult would be a felony, shall be transferred to  
305 the youth court.

306 SECTION 4. Section 43-21-261, Mississippi Code of 1972, is  
307 amended as follows:[RDD2]

308 43-21-261. (1) Except as otherwise provided in this  
309 section, records involving children shall not be disclosed, other  
310 than to necessary staff of the youth court, except pursuant to an  
311 order of the youth court specifying the person or persons to whom  
312 the records may be disclosed, the extent of the records which may  
313 be disclosed and the purpose of the disclosure. Such court orders  
314 for disclosure shall be limited to those instances in which the  
315 youth court concludes, in its discretion, that disclosure is  
316 required for the best interests of the child, the public safety or  
317 the functioning of the youth court and then only to the following  
318 persons:

319 (a) The judge of another youth court or member of  
320 another youth court staff;

321 (b) The court of the parties in a child custody or  
322 adoption cause in another court;

323 (c) A judge of any other court or members of another  
324 court staff;

325 (d) Representatives of a public or private agency  
326 providing supervision or having custody of the child under order  
327 of the youth court;

328 (e) Any person engaged in a bona fide research purpose,

329 provided that no information identifying the subject of the  
330 records shall be made available to the researcher unless it is  
331 absolutely essential to the research purpose and the judge gives  
332 prior written approval, and the child, through his or her  
333 representative, gives permission to release the information;

334 (f) The Mississippi Employment Security Commission, or  
335 its duly authorized representatives, for the purpose of a child's  
336 enrollment into the Job Corps Training Program as authorized by  
337 Title IV of the Comprehensive Employment Training Act of 1973 (29  
338 USCS Section 923 et seq.). However, no records, reports,  
339 investigations or information derived therefrom pertaining to  
340 child abuse or neglect shall be disclosed; and

341 (g) To any person pursuant to a finding by a judge of  
342 the youth court of compelling circumstances affecting the health  
343 or safety of a child and that such disclosure is in the best  
344 interests of the child.

345 Law enforcement agencies may disclose information to the  
346 public concerning the taking of a child into custody for the  
347 commission of a delinquent act without the necessity of an order  
348 from the youth court. The information released shall not identify  
349 the child or his address unless the information involves a child  
350 convicted as an adult.

351 (2) Any records involving children which are disclosed under  
352 an order of the youth court and the contents thereof shall be kept  
353 confidential by the person or agency to whom the record is  
354 disclosed except as provided in the order. Any further disclosure  
355 of any records involving children shall be made only under an  
356 order of the youth court as provided in this section.

357 (3) Upon request, the parent, guardian or custodian of the  
358 child who is the subject of a youth court cause or any attorney  
359 for such parent, guardian or custodian, shall have the right to  
360 inspect any record, report or investigation which is to be  
361 considered by the youth court at a hearing, except that the

362 identity of the reporter shall not be released, nor the name of  
363 any other person where the person or agency making the information  
364 available finds that disclosure of the information would be likely  
365 to endanger the life or safety of such person.

366 (4) Upon request, the child who is the subject of a youth  
367 court cause shall have the right to have his counsel inspect and  
368 copy any record, report or investigation which is filed with the  
369 youth court.

370 (5) (a) The youth court prosecutor or prosecutors, the  
371 county attorney, the district attorney, the youth court defender  
372 or defenders, or any attorney representing a child shall have the  
373 right to inspect any law enforcement record involving children.

374 (b) The Department of Human Services shall disclose to  
375 a county prosecuting attorney or district attorney any and all  
376 records resulting from an investigation into suspected child abuse  
377 or neglect when the case has been referred by the Department of  
378 Human Services to the county prosecuting attorney or district  
379 attorney for criminal prosecution.

380 (c) Agency records made confidential under the  
381 provisions of this section may be disclosed to a court of  
382 competent jurisdiction.

383 (6) Information concerning an investigation into a report of  
384 child abuse or child neglect may be disclosed by the Department of  
385 Human Services without order of the youth court to any attorney,  
386 physician, dentist, intern, resident, nurse, psychologist, social  
387 worker, child care giver, minister, law enforcement officer,  
388 public or private school employee making that report pursuant to  
389 Section 43-21-353(1) if the reporter has a continuing professional  
390 relationship with the child and a need for such information in  
391 order to protect or treat the child.

392 (7) Information concerning an investigation into a report of  
393 child abuse or child neglect may be disclosed without further  
394 order of the youth court to any interagency child abuse task force

395 established in any county or municipality by order of the youth  
396 court of that county or municipality.

397 (8) Names and addresses of juveniles twice adjudicated as  
398 delinquent for an act which would be a felony if committed by an  
399 adult or for the unlawful possession of a firearm shall not be  
400 held confidential and shall be made available to the public.

401 (9) Names and addresses of juveniles adjudicated as  
402 delinquent for murder, manslaughter, burglary, arson, armed  
403 robbery, aggravated assault, any sex offense as defined in Section  
404 45-33-23, or for any violation of Section 41-29-139(a)(1) \* \* \*  
405 shall not be held confidential and shall be made available to the  
406 public.

407 (10) The adjudication hearing for any juvenile alleged  
408 delinquent for any violation of Section 63-11-30 shall be open.  
409 The name, address and an abstract of the disposition order  
410 demonstrating compliance with Section 63-11-30 of any juvenile  
411 adjudicated delinquent for a violation of Section 63-11-30 shall  
412 not be held confidential and shall be made available to the  
413 public.

414 (11) The judges of the circuit and county courts, and  
415 presentence investigators for the circuit courts, as provided in  
416 Section 47-7-9, shall have the right to inspect any youth court  
417 records of a person convicted of a crime for sentencing purposes  
418 only.

419 (12) The victim of an offense committed by a child who is  
420 the subject of a youth court cause shall have the right to be  
421 informed of the child's disposition by the youth court.

422 (13) The Classification Committee of the State Department of  
423 Corrections, as provided in Section 47-5-103, shall have the right  
424 to inspect any youth court records, excluding abuse and neglect  
425 records, of any offender in the custody of the department who as a  
426 child or minor was a juvenile offender or was the subject of a  
427 youth court cause of action, and the State Parole Board, as

428 provided in Section 47-7-17, shall have the right to inspect such  
429 records when said offender becomes eligible for parole.

430 (14) The youth court shall notify the Department of Public  
431 Safety of the name, and any other identifying information such  
432 department may require, of any child who is adjudicated delinquent  
433 as a result of a violation of the Uniform Controlled Substances  
434 Law.

435 (15) The Administrative Office of Courts shall have the  
436 right to inspect any youth court records in order that the number  
437 of youthful offenders, abused, neglected, truant and dependent  
438 children, as well as children in need of special care and children  
439 in need of supervision, may be tracked with specificity through  
440 the youth court and adult justice system, and to utilize tracking  
441 forms for such purpose.

442 (16) Upon a request by a youth court, the Administrative  
443 Office of Courts shall disclose all information at its disposal  
444 concerning any previous youth court intakes alleging that a child  
445 was a delinquent child, child in need of supervision, child in  
446 need of special care, truant child, abused child or neglected  
447 child, as well as any previous youth court adjudications for the  
448 same and all dispositional information concerning a child who at  
449 the time of such request comes under the jurisdiction of the youth  
450 court making such request.

451 (17) In every case where an abuse or neglect allegation has  
452 been made, the confidentiality provisions of this section shall  
453 not apply to prohibit access to a child's records by any state  
454 regulatory agency, any state or local prosecutorial agency or law  
455 enforcement agency; provided, however, that no identifying  
456 information concerning the child in question may be released to  
457 the public by such agency except as otherwise provided herein.

458 (18) In every case where there is any indication or  
459 suggestion of either abuse or neglect and a child's physical  
460 condition is medically labeled as medically "serious" or

461 "critical" or a child dies, the confidentiality provisions of this  
462 section shall not apply.

463 (19) Any member of a foster care review board designated by  
464 the Department of Human Services shall have the right to inspect  
465 youth court records relating to the abuse, neglect or child in  
466 need of supervision cases assigned to such member for review.

467 SECTION 5. Section 43-21-605, Mississippi Code of 1972, is  
468 amended as follows:

469 43-21-605. (1) In delinquency cases, except as otherwise  
470 required by law, the disposition order may include any of the  
471 following alternatives:

472 (a) Release the child without further action;

473 (b) Place the child in the custody of the parents, a  
474 relative or other persons subject to any conditions and  
475 limitations, including restitution, as the youth court may  
476 prescribe;

477 (c) Place the child on probation subject to any  
478 reasonable and appropriate conditions and limitations, including  
479 restitution, as the youth court may prescribe;

480 (d) Order terms of treatment calculated to assist the  
481 child and the child's parents or guardian which are within the  
482 ability of the parent or guardian to perform;

483 (e) Order terms of supervision which may include  
484 participation in a constructive program of service or education or  
485 civil fines not in excess of Five Hundred Dollars (\$500.00), or  
486 restitution not in excess of actual damages caused by the child to  
487 be paid out of his own assets or by performance of services  
488 acceptable to the victims and approved by the youth court and  
489 reasonably capable of performance within one (1) year;

490 (f) Suspend the child's driver's license by taking and  
491 keeping it in custody of the court for not more than one (1) year  
492 unless a longer period of suspension is required by law;

493 (g) Give legal custody of the child to any of the

494 following:

495 (i) The Department of Human Services for  
496 appropriate placement; or

497 (ii) Any public or private organization,  
498 preferably community-based, able to assume the education, care and  
499 maintenance of the child, which has been found suitable by the  
500 court; or

501 (iii) The Department of Human Services for  
502 placement in a wilderness training program or a state-supported  
503 training school, except that no child under the age of ten (10)  
504 years shall be committed to a state training school. The training  
505 school may retain custody of the child until the child's twentieth  
506 birthday but for no longer. The superintendent of a state  
507 training school may parole a child at any time he may deem it in  
508 the best interest and welfare of such child. Twenty (20) days  
509 prior to such parole, the training school shall notify the  
510 committing court of the pending release. The youth court may then  
511 arrange subsequent placement after a reconvened disposition  
512 hearing except that the youth court may not recommit the child to  
513 the training school or any other secure facility without an  
514 adjudication of a new offense or probation or parole violation.  
515 Prior to assigning the custody of any child to any private  
516 institution or agency, the youth court through its designee shall  
517 first inspect the physical facilities to determine that they  
518 provide a reasonable standard of health and safety for the child.  
519 The youth court shall not place a child in the custody of a state  
520 training school for truancy, unless such child has been  
521 adjudicated to have committed an act of delinquency in addition to  
522 truancy;

523 (h) Recommend to the child and the child's parents or  
524 guardian that the child attend and participate in the Youth  
525 Challenge Program under the Mississippi National Guard, as created  
526 in Section 43-27-203, subject to the selection of the child for



527 the program by the National Guard; however, the child must  
528 volunteer to participate in the program. The youth court may not  
529 order any child to apply or attend the program;

530 (i) (i) Adjudicate the juvenile to the Statewide  
531 Juvenile Work Program if the program is established in the court's  
532 jurisdiction. The juvenile and his parents or guardians must sign  
533 a waiver of liability in order to participate in the work program.  
534 The judge will coordinate with the youth services counselors as to  
535 placing participants in the work program;

536 (ii) The severity of the crime, whether or not the  
537 juvenile is a repeat offender or is a felony offender will be  
538 taken into consideration by the judge when adjudicating a juvenile  
539 to the work program. The juveniles adjudicated to the work  
540 program will be supervised by police officers or reserve officers.  
541 The term of service will be from twenty-four (24) to one hundred  
542 twenty (120) hours of community service. A juvenile will work the  
543 hours to which he was adjudicated on the weekends during school  
544 and week days during the summer. Parents are responsible for a  
545 juvenile reporting for work. Noncompliance with an order to  
546 perform community service will result in a heavier adjudication.  
547 A juvenile may be adjudicated to the community service program  
548 only two (2) times;

549 (iii) The judge shall assess an additional fine on  
550 the juvenile which will be used to pay the costs of implementation  
551 of the program and to pay for supervision by police officers and  
552 reserve officers. The amount of the fine will be based on the  
553 number of hours to which the juvenile has been adjudicated;

554 (j) Order the child to participate in a youth court  
555 work program as provided in Section 43-21-627; or

556 (k) Order the child into a juvenile detention center  
557 operated by the county or into a juvenile detention center  
558 operated by any county with which the county in which the court is  
559 located has entered into a contract for the purpose of housing

560 delinquents. The time period for such detention cannot exceed  
561 ninety (90) days. The youth court judge may order that the number  
562 of days specified in the detention order be served either  
563 throughout the week or on weekends only.

564 (2) In addition to any of the disposition alternatives  
565 authorized under subsection (1) of this section, the disposition  
566 order in any case in which the child is adjudicated delinquent for  
567 an offense under Section 63-11-30 shall include an order denying  
568 the driver's license and driving privileges of the child as  
569 required under subsection (9) of Section 63-11-30, and the youth  
570 court shall follow without exception all applicable provisions of  
571 Section 63-11-30 in making its disposition.

572 (3) Fines levied under this chapter shall be paid into the  
573 general fund of the county but, in those counties wherein the  
574 youth court is a branch of the municipal government, it shall be  
575 paid into the municipal treasury.

576 (4) Any institution or agency to which a child has been  
577 committed shall give to the youth court any information concerning  
578 the child as the youth court may at any time require.

579 (5) The youth court shall not place a child in another  
580 school district who has been expelled from a school district for  
581 the commission of a violent act. For the purpose of this  
582 subsection, "violent act" means any action which results in death  
583 or physical harm to another or an attempt to cause death or  
584 physical harm to another.

585 SECTION 6. Section 63-11-30, Mississippi Code of 1972, is  
586 amended as follows:

587 63-11-30. (1) It is unlawful for any person to drive or  
588 otherwise operate a vehicle within this state who (a) is under the  
589 influence of intoxicating liquor; (b) is under the influence of  
590 any other substance which has impaired such person's ability to  
591 operate a motor vehicle; (c) has an alcohol concentration of ten  
592 one-hundredths percent (.10%) or more for persons who are above

593 the legal age to purchase alcoholic beverages under state law, or  
594 two one-hundredths percent (.02%) or more for persons who are  
595 below the legal age to purchase alcoholic beverages under state  
596 law, in the person's blood based upon grams of alcohol per one  
597 hundred (100) milliliters of blood or grams of alcohol per two  
598 hundred ten (210) liters of breath as shown by a chemical analysis  
599 of such person's breath, blood or urine administered as authorized  
600 by this chapter; (d) is under the influence of any drug or  
601 controlled substance, the possession of which is unlawful under  
602 the Mississippi Controlled Substances Law; or (e) has an alcohol  
603 concentration of four one-hundredths percent (.04%) or more in the  
604 person's blood, based upon grams of alcohol per one hundred (100)  
605 milliliters of blood or grams of alcohol per two hundred ten (210)  
606 liters of breath as shown by a chemical analysis of such person's  
607 blood, breath or urine, administered as authorized by this chapter  
608 for persons operating a commercial motor vehicle.

609 (2) (a) Except as otherwise provided in subsection (3),  
610 upon conviction of any person for the first offense of violating  
611 subsection (1) of this section where chemical tests provided for  
612 under Section 63-11-5 were given, or where chemical test results  
613 are not available, such person shall be fined not less than Two  
614 Hundred Fifty Dollars (\$250.00) nor more than One Thousand Dollars  
615 (\$1,000.00), or imprisoned for not more than forty-eight (48)  
616 hours in jail or both; and the court shall order such person to  
617 attend and complete an alcohol safety education program as  
618 provided in Section 63-11-32. The court may substitute attendance  
619 at a victim impact panel instead of forty-eight (48) hours in  
620 jail. In addition, the Department of Public Safety, the  
621 Commissioner of Public Safety or his duly authorized agent shall,  
622 after conviction and upon receipt of the court abstract, suspend  
623 the driver's license and driving privileges of such person for a  
624 period of not less than ninety (90) days and until such person  
625 attends and successfully completes an alcohol safety education

626 program as herein provided; provided, however, in no event shall  
627 such period of suspension exceed one (1) year. Commercial driving  
628 privileges shall be suspended as provided in Section 63-1-83.

629         The circuit court having jurisdiction in the county in which  
630 the conviction was had or the circuit court of the person's county  
631 of residence may reduce the suspension of driving privileges under  
632 Section 63-11-30(2)(a) if the denial of which would constitute a  
633 hardship on the offender, except that no court may issue such an  
634 order reducing the suspension of driving privileges under this  
635 subsection until thirty (30) days have elapsed from the effective  
636 date of the suspension. Hardships shall only apply to first  
637 offenses under Section 63-11-30(1), and shall not apply to second,  
638 third or subsequent convictions of any person violating subsection  
639 (1) of this section. A reduction of suspension on the basis of  
640 hardship shall not be available to any person who refused to  
641 submit to a chemical test upon the request of a law enforcement  
642 officer as provided in Section 63-11-5. When the petition is  
643 filed, such person shall pay to the circuit clerk of the court  
644 where the petition is filed a fee of Fifty Dollars (\$50.00), which  
645 shall be deposited into the State General Fund to the credit of a  
646 special fund hereby created in the State Treasury to be used for  
647 alcohol or drug abuse treatment and education, upon appropriation  
648 by the Legislature. This fee shall be in addition to any other  
649 court costs or fees required for the filing of petitions.

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

658         The order entered under the provisions of this subsection

659 shall contain the specific grounds upon which hardship was  
660 determined, and shall order the petitioner to attend and complete  
661 an alcohol safety education program as provided in Section  
662 63-11-32. A certified copy of such order shall be delivered to  
663 the Commissioner of Public Safety by the clerk of the court within  
664 five (5) days of the entry of the order. The certified copy of  
665 such order shall contain information which will identify the  
666 petitioner, including, but not limited to, the name, mailing  
667 address, street address, Social Security number and driver's  
668 license number of the petitioner.

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

- 674 (i) Continue his employment;
- 675 (ii) Continue attending school or an educational  
676 institution; or
- 677 (iii) Obtain necessary medical care.

678 Proof of the hardship shall be established by clear and  
679 convincing evidence which shall be supported by independent  
680 documentation.

681 (b) Except as otherwise provided in subsection (3),  
682 upon any second conviction of any person violating subsection (1)  
683 of this section, the offenses being committed within a period of  
684 five (5) years, such person shall be fined not less than Six  
685 Hundred Dollars (\$600.00) nor more than One Thousand Five Hundred  
686 Dollars (\$1,500.00) and shall be imprisoned not less than ten (10)  
687 days nor more than one (1) year and sentenced to community service  
688 work for not less than ten (10) days nor more than one (1) year.  
689 Except as may otherwise be provided by paragraph (e) of this  
690 subsection, the Commissioner of Public Safety shall suspend the  
691 driver's license of such person for two (2) years. Suspension of

692 a commercial driver's license shall be governed by Section  
693 63-1-83. Upon any second conviction as described in this  
694 paragraph, the court shall ascertain whether the defendant is  
695 married, and if the defendant is married shall obtain the name and  
696 address of the defendant's spouse; the clerk of the court shall  
697 submit this information to the Department of Public Safety.

698 Further, the commissioner shall notify in writing, by certified  
699 mail, return receipt requested, the owner of the vehicle and the  
700 spouse, if any, of the person convicted of the second violation of  
701 the possibility of forfeiture of the vehicle if such person is  
702 convicted of a third violation of subsection (1) of this section.

703 The owner of the vehicle and the spouse shall be considered  
704 notified under this paragraph if the notice is deposited in the  
705 United States mail and any claim that the notice was not in fact  
706 received by the addressee shall not affect a subsequent forfeiture  
707 proceeding.

708 (c) Except as otherwise provided in subsection (3), for  
709 any third or subsequent conviction of any person violating  
710 subsection (1) of this section, the offenses being committed  
711 within a period of five (5) years, such person shall be guilty of  
712 a felony and fined not less than Two Thousand Dollars (\$2,000.00)  
713 nor more than Five Thousand Dollars (\$5,000.00) and shall be  
714 imprisoned not less than one (1) year nor more than five (5) years  
715 in the State Penitentiary. The law enforcement agency shall seize  
716 the vehicle operated by any person charged with a third or  
717 subsequent violation of subsection (1) of this section, if such  
718 convicted person was driving the vehicle at the time the offense  
719 was committed. Such vehicle may be forfeited in the manner  
720 provided by Sections 63-11-49 through 63-11-53. Except as may  
721 otherwise be provided by paragraph (e) of this subsection, the  
722 Commissioner of Public Safety shall suspend the driver's license  
723 of such person for five (5) years. The suspension of a commercial  
724 driver's license shall be governed by Section 63-1-83.

725           (d) Except as otherwise provided in subsection (3), any  
726 person convicted of a second violation of subsection (1) of this  
727 section, may have the period that his driver's license is  
728 suspended reduced if such person receives an in-depth diagnostic  
729 assessment, and as a result of such assessment is determined to be  
730 in need of treatment of his alcohol and/or drug abuse problem and  
731 successfully completes treatment of his alcohol and/or drug abuse  
732 problem at a program site certified by the Department of Mental  
733 Health. Such person shall be eligible for reinstatement of his  
734 driving privileges upon the successful completion of such  
735 treatment after a period of one (1) year after such person's  
736 driver's license is suspended. Each person who receives a  
737 diagnostic assessment shall pay a fee representing the cost of  
738 such assessment. Each person who participates in a treatment  
739 program shall pay a fee representing the cost of such treatment.

740           (e) Except as otherwise provided in subsection (3), any  
741 person convicted of a third or subsequent violation of subsection  
742 (1) of this section may enter an alcohol and/or drug abuse program  
743 approved by the Department of Mental Health for treatment of such  
744 person's alcohol and/or drug abuse problem. If such person  
745 successfully completes such treatment, such person shall be  
746 eligible for reinstatement of his driving privileges after a  
747 period of three (3) years after such person's driver's license is  
748 suspended.

749           (3) (a) This subsection shall be known and may be cited as  
750 Zero Tolerance for Minors. The provisions of this subsection  
751 shall apply only when a person under the age of twenty-one (21)  
752 years has a blood alcohol concentration two one-hundredths percent  
753 (.02%) or more, but lower than eight one-hundredths percent  
754 (.08%). If such person's blood alcohol concentration is eight  
755 one-hundredths percent (.08%) or more, the provisions of  
756 subsection (2) shall apply. A youth court exercising jurisdiction  
757 over a child for a violation of this subsection (3) shall strictly

758 apply the provisions of Zero Tolerance for Minors and enforce the  
759 minimum penalties thereof in addition to all other dispositions  
760 available to the court.

761 (b) Upon conviction of any person under the age of  
762 twenty-one (21) years for the first offense of violating  
763 subsection (1) of this section where chemical tests provided for  
764 under Section 63-11-5 were given, or where chemical test results  
765 are not available, such person shall have his driver's license  
766 suspended for ninety (90) days and shall be fined Two Hundred  
767 Fifty Dollars (\$250.00); and the court shall order such person to  
768 attend and complete either an alcohol safety education program as  
769 provided in Section 63-11-32 or a court-sponsored or  
770 court-approved teen alcohol safety program. The court may also  
771 require attendance at a victim impact panel.

772 The circuit court having jurisdiction in the county in which  
773 the conviction was had or the circuit court of the person's county  
774 of residence may reduce the suspension of driving privileges under  
775 Section 63-11-30(2)(a) if the denial of which would constitute a  
776 hardship on the offender, except that no court may issue such an  
777 order reducing the suspension of driving privileges under this  
778 subsection until thirty (30) days have elapsed from the effective  
779 date of the suspension. Hardships shall only apply to first  
780 offenses under Section 63-11-30(1), and shall not apply to second,  
781 third or subsequent convictions of any person violating subsection  
782 (1) of this section. A reduction of suspension on the basis of  
783 hardship shall not be available to any person who refused to  
784 submit to a chemical test upon the request of a law enforcement  
785 officer as provided in Section 63-11-5. When the petition is  
786 filed, such person shall pay to the circuit clerk of the court  
787 where the petition is filed a fee of Fifty Dollars (\$50.00), which  
788 shall be deposited into the State General Fund to the credit of a  
789 special fund hereby created in the State Treasury to be used for  
790 alcohol or drug abuse treatment and education, upon appropriation



791 by the Legislature. This fee shall be in addition to any other  
792 court costs or fees required for the filing of petitions.

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

801 The order entered under the provisions of this subsection  
802 shall contain the specific grounds upon which hardship was  
803 determined, and shall order the petitioner to attend and complete  
804 an alcohol safety education program as provided in Section  
805 63-11-32. A certified copy of such order shall be delivered to  
806 the Commissioner of Public Safety by the clerk of the court within  
807 five (5) days of the entry of the order. The certified copy of  
808 such order shall contain information which will identify the  
809 petitioner, including, but not limited to, the name, mailing  
810 address, street address, Social Security number and driver's  
811 license number of the petitioner.

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

- 817 (i) Continue his employment;
- 818 (ii) Continue attending school or an educational  
819 institution; or
- 820 (iii) Obtain necessary medical care.

821 Proof of the hardship shall be established by clear and  
822 convincing evidence which shall be supported by independent  
823 documentation.

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

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

837           (e) Any person under the age of twenty-one (21) years  
838 convicted of a second violation of subsection (1) of this section,  
839 may have the period that his driver's license is suspended reduced  
840 if such person receives an in-depth diagnostic assessment, and as  
841 a result of such assessment is determined to be in need of  
842 treatment of his alcohol and/or drug abuse problem and  
843 successfully completes treatment of his alcohol and/or drug abuse  
844 problem at a program site certified by the Department of Mental  
845 Health. Such person shall be eligible for reinstatement of his  
846 driving privileges upon the successful completion of such  
847 treatment after a period of six (6) months after such person's  
848 driver's license is suspended. Each person who receives a  
849 diagnostic assessment shall pay a fee representing the cost of  
850 such assessment. Each person who participates in a treatment  
851 program shall pay a fee representing the cost of such treatment.

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

857           (g) The court shall have the discretion to rule that a  
858 first offense of this subsection by a person under the age of  
859 twenty-one (21) years shall be nonadjudicated. Such person shall  
860 be eligible for nonadjudication only once. The Department of  
861 Public Safety shall maintain a confidential registry of all cases  
862 which are nonadjudicated as provided in this paragraph. A judge  
863 who rules that a case is nonadjudicated shall forward such ruling  
864 to the Department of Public Safety. Judges and prosecutors  
865 involved in implied consent violations shall have access to the  
866 confidential registry for the purpose of determining  
867 nonadjudication eligibility. A record of a person who has been  
868 nonadjudicated shall be maintained for five (5) years or until  
869 such person reaches the age of twenty-one (21) years. Any person  
870 whose confidential record has been disclosed in violation of this  
871 paragraph shall have a civil cause of action against the person  
872 and/or agency responsible for such disclosure.

873           (4) Every person convicted of operating a vehicle while  
874 under the influence of intoxicating liquor or any other substance  
875 which has impaired such person's ability to operate a motor  
876 vehicle where the person (a) refused a law enforcement officer's  
877 request to submit to a chemical test of his breath as provided in  
878 this chapter, or (b) was unconscious at the time of a chemical  
879 test and refused to consent to the introduction of the results of  
880 such test in any prosecution, shall be punished consistent with  
881 the penalties prescribed herein for persons submitting to the  
882 test, except that there shall be an additional suspension of  
883 driving privileges as follows:

884           The Commissioner of Public Safety or his authorized agent  
885 shall suspend the driver's license or permit to drive or deny the  
886 issuance of a license or permit to such person as provided for  
887 first, second and third or subsequent offenders in subsection (2)  
888 of this section. Such suspension shall be in addition to any  
889 suspension imposed pursuant to subsection (1) of Section 63-11-23.

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

898 (6) Upon conviction of any violation of subsection (1) of  
899 this section, the trial judge shall sign in the place provided on  
900 the traffic ticket, citation or affidavit stating that the person  
901 arrested either employed an attorney or waived his right to an  
902 attorney after having been properly advised. If the person  
903 arrested employed an attorney, the name, address and telephone  
904 number of the attorney shall be written on the ticket, citation or  
905 affidavit. The judge shall cause a copy of the traffic ticket,  
906 citation or affidavit, and any other pertinent documents  
907 concerning the conviction, to be sent to the Commissioner of  
908 Public Safety. A copy of the traffic ticket, citation or  
909 affidavit and any other pertinent documents, having been attested  
910 as true and correct by the Commissioner of Public Safety, or his  
911 designee, shall be sufficient proof of the conviction for purposes  
912 of determining the enhanced penalty for any subsequent convictions  
913 of violations of subsection (1) of this section.

914 (7) Convictions in other states of violations for driving or  
915 operating a vehicle while under the influence of an intoxicating  
916 liquor or while under the influence of any other substance that  
917 has impaired the person's ability to operate a motor vehicle  
918 occurring after July 1, 1992, shall be counted for the purposes of  
919 determining if a violation of subsection (1) of this section is a  
920 first, second, third or subsequent offense and the penalty that  
921 shall be imposed upon conviction for a violation of subsection (1)  
922 of this section.

923           (8) For the purposes of determining how to impose the  
924 sentence for a second, third or subsequent conviction under this  
925 section, the indictment shall not be required to enumerate  
926 previous convictions. It shall only be necessary that the  
927 indictment state the number of times that the defendant has been  
928 convicted and sentenced within the past five (5) years under this  
929 section to determine if an enhanced penalty shall be imposed. The  
930 amount of fine and imprisonment imposed in previous convictions  
931 shall not be considered in calculating offenses to determine a  
932 second, third or subsequent offense of this section.

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

937           (10) Suspension of driving privileges for any person  
938 convicted of violations of Section 63-11-30(1) shall run  
939 consecutively.

940           SECTION 7. This act shall take effect and be in force from  
941 and after July 1, 2000.