

By: Representative Simpson

To: Judiciary B

HOUSE BILL NO. 989

1 AN ACT TO AMEND SECTION 9-11-15, MISSISSIPPI CODE OF 1972, TO
 2 AUTHORIZE JUSTICE COURT JUDGES TO ENTER ORDERS OF NONADJUDICATION
 3 AND EXPUNCTION; TO AMEND SECTIONS 21-23-7, 41-29-150, 43-21-159,
 4 63-11-30, 67-3-70, 99-15-26, 99-15-57, 99-15-59 AND 99-19-71,
 5 MISSISSIPPI CODE OF 1972, TO PROVIDE THAT OFFENSES ELIGIBLE FOR
 6 EXPUNCTION ARE ELIGIBLE FOR NONADJUDICATION AND THAT OFFENSES
 7 ELIGIBLE FOR NONADJUDICATION ARE ELIGIBLE FOR EXPUNCTION; AND FOR
 8 RELATED PURPOSES.

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

10 **SECTION 1.** Section 9-11-15, Mississippi Code of 1972, is
 11 amended as follows:

12 9-11-15. Justice court judges shall hold regular terms of
 13 their courts, at such times as they may appoint, not exceeding two
 14 (2) and not less than one (1) in every month, at the appropriate
 15 justice court courtroom established by the board of supervisors;
 16 and they may continue to hold their courts from day to day so long
 17 as business may require; and all process shall be returnable, and
 18 all trials shall take place at such regular terms, except where it
 19 is otherwise provided; but where the defendant is a nonresident or
 20 transient person, and it shall be shown by the oath of either
 21 party that a delay of the trial until the regular term will be of
 22 material injury to him, it shall be lawful for the judge to have
 23 the parties brought before him at any reasonable time and hear the
 24 evidence and give judgment or where the defendant is a nonresident
 25 or transient person and the judge and all parties agree, it shall
 26 be lawful for the judge to have the parties brought before him on
 27 the day a citation is made and hear the evidence and give
 28 judgment. Such court shall be a court of record, with all the
 29 power incident to a court of record, including power to fine in
 30 the amount of fine and length of imprisonment as is authorized for



31 a municipal court in Section 21-23-7(11) for contempt of court and
32 the power to expunge and the power to enter orders of
33 nonadjudication for offenses which are specified by law as
34 eligible for expunction or nonadjudication.

35 **SECTION 2.** Section 21-23-7, Mississippi Code of 1972, is
36 amended as follows:

37 21-23-7. (1) The municipal judge shall hold court in a
38 public building designated by the governing authorities of the
39 municipality and may hold court every day except Sundays and legal
40 holidays if the business of the municipality so requires;
41 provided, however, the municipal judge may hold court outside the
42 boundaries of the municipality but not more than within a
43 sixty-mile radius of the municipality to handle preliminary
44 matters and criminal matters such as initial appearances and
45 felony preliminary hearings. The municipal judge shall have the
46 jurisdiction to hear and determine, without a jury and without a
47 record of the testimony, all cases charging violations of the
48 municipal ordinances and state misdemeanor laws made offenses
49 against the municipality and to punish offenders therefor as may
50 be prescribed by law. All criminal proceedings shall be brought
51 by sworn complaint filed in the municipal court. Such complaint
52 shall state the essential elements of the offense charged and the
53 statute or ordinance relied upon. Such complaint shall not be
54 required to conclude with a general averment that the offense is
55 against the peace and dignity of the state or in violation of the
56 ordinances of the municipality. He may sit as a committing court
57 in all felonies committed within the municipality, and he shall
58 have the power to bind over the accused to the grand jury or to
59 appear before the proper court having jurisdiction to try the
60 same, and to set the amount of bail or refuse bail and commit the
61 accused to jail in cases not bailable. The municipal judge is a
62 conservator of the peace within his municipality. He may conduct
63 preliminary hearings in all violations of the criminal laws of



64 this state occurring within the municipality, and any person
65 arrested for a violation of law within the municipality may be
66 brought before him for initial appearance.

67 (2) In the discretion of the court, where the objects of
68 justice would be more likely met, as an alternative to imposition
69 or payment of fine and/or incarceration, the municipal judge shall
70 have the power to sentence convicted offenders to work on a public
71 service project where the court has established such a program of
72 public service by written guidelines filed with the clerk for
73 public record. Such programs shall provide for reasonable
74 supervision of the offender and the work shall be commensurate
75 with the fine and/or incarceration that would have ordinarily been
76 imposed. Such program of public service may be utilized in the
77 implementation of the provisions of Section 99-19-20, and public
78 service work thereunder may be supervised by persons other than
79 the sheriff.

80 (3) The municipal judge may solemnize marriages, take oaths,
81 affidavits and acknowledgments, and issue orders, subpoenas,
82 summonses, citations, warrants for search and arrest upon a
83 finding of probable cause, and other such process under seal of
84 the court to any county or municipality, in a criminal case, to be
85 executed by the lawful authority of the county or the municipality
86 of the respondent, and enforce obedience thereto. The absence of
87 a seal shall not invalidate the process.

88 (4) When a person shall be charged with an offense in
89 municipal court punishable by confinement, the municipal judge,
90 being satisfied that such person is an indigent person and is
91 unable to employ counsel, may, in the discretion of the court,
92 appoint counsel from the membership of The Mississippi Bar
93 residing in his county who shall represent him. Compensation for
94 appointed counsel in criminal cases shall be approved and allowed
95 by the municipal judge and shall be paid by the municipality. The
96 maximum compensation shall not exceed Two Hundred Dollars



97 (\$200.00) for any one (1) case. The governing authorities of a
98 municipality may, in their discretion, appoint a public
99 defender(s) who must be a licensed attorney and who shall receive
100 a salary to be fixed by the governing authorities.

101 (5) The municipal judge of any municipality is hereby
102 authorized to suspend the sentence and to suspend the execution of
103 the sentence, or any part thereof, on such terms as may be imposed
104 by the municipal judge. However, the suspension of imposition or
105 execution of a sentence hereunder may not be revoked after a
106 period of two (2) years. The municipal judge shall have the power
107 to establish and operate a probation program, dispute resolution
108 program and other practices or procedures appropriate to the
109 judiciary and designed to aid in the administration of justice.
110 Any such program shall be established by the court with written
111 policies and procedures filed with the clerk of the court for
112 public record.

113 (6) Upon prior notice to the municipal prosecuting attorney
114 and upon a showing in open court of rehabilitation, good conduct
115 for a period of two (2) years since the last conviction in any
116 court and that the best interest of society would be served, the
117 court may, in its discretion, order the record of conviction of a
118 person of any or all misdemeanors in that court expunged, and upon
119 so doing the said person thereafter legally stands as though he
120 had never been convicted of the said misdemeanor(s) and may
121 lawfully so respond to any query of prior convictions. This order
122 of expunction does not apply to the confidential records of law
123 enforcement agencies and has no effect on the driving record of a
124 person maintained under Title 63, Mississippi Code of 1972, or any
125 other provision of said Title 63.

126 (7) Notwithstanding the provisions of subsection (6) of this
127 section, a person who was convicted in municipal court of a
128 misdemeanor before reaching his twenty-third birthday, excluding
129 conviction for a traffic violation, and who is a first offender,



130 may utilize the provisions of Section 99-19-71, to expunge such
131 misdemeanor conviction.

132 (8) In the discretion of the court, a plea of nolo
133 contendere may be entered to any charge in municipal court. Upon
134 the entry of a plea of nolo contendere the court shall convict the
135 defendant of the offense charged and shall proceed to sentence the
136 defendant according to law. The judgment of the court shall
137 reflect that the conviction was on a plea of nolo contendere. An
138 appeal may be made from a conviction on a plea of nolo contendere
139 as in other cases.

140 (9) Upon execution of a sworn complaint charging a
141 misdemeanor, the municipal court may, in its discretion and in
142 lieu of an arrest warrant, issue a citation requiring the
143 appearance of the defendant to answer the charge made against him.
144 On default of appearance, an arrest warrant may be issued for the
145 defendant. The clerk of the court or deputy clerk may issue such
146 citations.

147 (10) The municipal court shall have the power to make rules
148 for the administration of the court's business, which rules, if
149 any, shall be in writing filed with the clerk of the court.

150 (11) The municipal court shall have the power to impose
151 punishment of a fine of not more than One Thousand Dollars
152 (\$1,000.00) or six (6) months' imprisonment, or both, for contempt
153 of court. The municipal court may have the power to impose
154 reasonable costs of court, not in excess of the following:

155	Dismissal of any affidavit, complaint or charge	
156	in municipal court.....	\$ 50.00
157	Suspension of a minor's driver's license in lieu of	
158	conviction.....	\$ 50.00
159	Service of scire facias or return "not found".....	\$ 20.00
160	Causing search warrant to issue or causing prosecution	
161	without reasonable cause or refusing to cooperate	
162	after initiating action.....	\$ 100.00



163 Certified copy of the court record..... \$ 5.00
164 Service of arrest warrant for failure to answer
165 citation or traffic summons..... \$ 25.00
166 Jail cost per day..... \$ 10.00
167 Any other item of court cost..... \$ 50.00
168 No filing fee or such cost shall be imposed for the bringing
169 of an action in municipal court.

170 (12) A municipal court judge shall not dismiss a criminal
171 case but may transfer the case to the justice court of the county
172 if the municipal court judge is prohibited from presiding over the
173 case by the Canons of Judicial Conduct and provided that venue and
174 jurisdiction are proper in the justice court. Upon transfer of
175 any such case, the municipal court judge shall give the municipal
176 court clerk a written order to transmit the affidavit or complaint
177 and all other records and evidence in the court's possession to
178 the justice court by certified mail or to instruct the arresting
179 officer to deliver such documents and records to the justice
180 court. There shall be no court costs charged for the transfer of
181 the case to the justice court.

182 (13) A municipal court judge shall expunge the record of any
183 case in which an arrest was made, the person arrested was released
184 and the case was dismissed or the charges were dropped or there
185 was no disposition of such case.

186 (14) A municipal court judge is authorized to issue orders
187 of nonadjudication for offenses which are specified as eligible
188 for nonadjudication.

189 **SECTION 3.** Section 41-29-150, Mississippi Code of 1972, is
190 amended as follows:

191 41-29-150. (a) Any person convicted under Section 41-29-139
192 may be required, in the discretion of the court, as a part of the
193 sentence otherwise imposed, or in lieu of imprisonment in cases of
194 probation or suspension of sentence, to attend a course of
195 instruction conducted by the bureau, the State Board of Health, or



196 any similar agency, on the effects, medically, psychologically and
197 socially, of the misuse of controlled substances. Said course may
198 be conducted at any correctional institution, detention center or
199 hospital, or at any center or treatment facility established for
200 the purpose of education and rehabilitation of those persons
201 committed because of abuse of controlled substances.

202 (b) Any person convicted under Section 41-29-139 who is
203 found to be dependent upon or addicted to any controlled substance
204 shall be required, as a part of the sentence otherwise imposed, or
205 in lieu of imprisonment in cases of parole, probation or
206 suspension of sentence, to receive medical treatment for such
207 dependency or addiction. The regimen of medical treatment may
208 include confinement in a medical facility of any correctional
209 institution, detention center or hospital, or at any center or
210 facility established for treatment of those persons committed
211 because of a dependence or addiction to controlled substances.

212 (c) Those persons previously convicted of a felony under
213 Section 41-29-139 and who are now confined at the Mississippi
214 State Hospital at Whitfield, Mississippi, or at the East
215 Mississippi State Hospital at Meridian, Mississippi, for the term
216 of their sentence shall remain under the jurisdiction of the
217 Mississippi Department of Corrections and shall be required to
218 abide by all reasonable rules and regulations promulgated by the
219 director and staff of said institutions and of the Department of
220 Corrections. Any persons so confined who shall refuse to abide by
221 said rules or who attempt an escape or who shall escape shall be
222 transferred to the State Penitentiary or to a county jail, where
223 appropriate, to serve the remainder of the term of imprisonment;
224 this provision shall not preclude prosecution and conviction for
225 escape from said institutions.

226 (d) (1) If any person who has not previously been convicted
227 of violating Section 41-29-139, or the laws of the United States
228 or of another state relating to narcotic drugs, stimulant or



229 depressant substances, other controlled substances or marihuana is
230 found to be guilty of a violation of subsection (c) or (d) of
231 Section 41-29-139, after trial or upon a plea of guilty, the court
232 may, without entering a judgment of guilty and with the consent of
233 such person, defer further proceedings and place him on probation
234 upon such reasonable conditions as it may require and for such
235 period, not to exceed three (3) years, as the court may prescribe.
236 Upon violation of a condition of the probation, the court may
237 enter an adjudication of guilt and proceed as otherwise provided.
238 The court may, in its discretion, dismiss the proceedings against
239 such person and discharge him from probation before the expiration
240 of the maximum period prescribed for such person's probation. If
241 during the period of his probation such person does not violate
242 any of the conditions of the probation, then upon expiration of
243 such period the court shall discharge such person and dismiss the
244 proceedings against him. Discharge and dismissal under this
245 subsection shall be without court adjudication of guilt, but a
246 nonpublic record thereof shall be retained by the bureau solely
247 for the purpose of use by the courts in determining whether or
248 not, in subsequent proceedings, such person qualifies under this
249 subsection. Such discharge or dismissal shall not be deemed a
250 conviction for purposes of disqualifications or disabilities
251 imposed by law upon conviction of a crime, including the penalties
252 prescribed under this article for second or subsequent conviction,
253 or for any other purpose. Discharge and dismissal under this
254 subsection may occur only once with respect to any person; and
255 (2) Upon the dismissal of such person and discharge of
256 proceedings against him under paragraph (1) of this subsection, or
257 with respect to a person who has been convicted and adjudged
258 guilty of an offense under subsection (c) or (d) of Section
259 41-29-139, or for possession of narcotics, stimulants,
260 depressants, hallucinogens, marihuana, other controlled substances
261 or paraphernalia under prior laws of this state, such person, if



262 he had not reached his twenty-sixth birthday at the time of the
263 offense, may apply to the court for an order to expunge or
264 nonadjudicate from all official records, other than the nonpublic
265 records to be retained by the bureau under paragraph (1) of this
266 subsection, all recordation relating to his arrest, indictment,
267 trial, finding of guilty, and dismissal and discharge pursuant to
268 this section. If the court determines, after hearing, that such
269 person was dismissed and the proceedings against him discharged
270 and that he had not reached his twenty-sixth birthday at the time
271 of the offense, or that such person had satisfactorily served his
272 sentence or period of probation and parole, and that he had not
273 reached his twenty-sixth birthday at the time of the offense, it
274 shall enter such order. The effect of such order shall be to
275 restore such person, in the contemplation of the law, to the
276 status he occupied before such arrest or indictment. No person as
277 to whom such order has been entered shall be held thereafter under
278 any provision of any law to be guilty of perjury or otherwise
279 giving a false statement by reason of his failures to recite or
280 acknowledge such arrest, or indictment or trial in response to any
281 inquiry made of him for any purpose.

282 (e) Every person who has been or may hereafter be convicted
283 of a felony offense under Section 41-29-139 and sentenced under
284 Section 41-29-150(c) shall be under the jurisdiction of the
285 Mississippi Department of Corrections.

286 (f) It shall be unlawful for any person confined under the
287 provisions of subsection (b) or (c) of this section to escape or
288 attempt to escape from said institution, and upon conviction said
289 person shall be guilty of a felony and shall be imprisoned for a
290 term not to exceed two (2) years.

291 (g) It is the intent and purpose of the Legislature to
292 promote the rehabilitation of persons convicted of offenses under
293 the Uniform Controlled Substances Law.



294 **SECTION 4.** Section 43-21-159, Mississippi Code of 1972, is
295 amended as follows:

296 43-21-159. (1) When a person appears before a court other
297 than the youth court, and it is determined that the person is a
298 child under jurisdiction of the youth court, such court shall,
299 unless the jurisdiction of the offense has been transferred to
300 such court as provided in this chapter, or unless the child has
301 previously been the subject of a transfer from the youth court to
302 the circuit court for trial as an adult and was convicted,
303 immediately dismiss the proceeding without prejudice and forward
304 all documents pertaining to the cause to the youth court; and all
305 entries in permanent records shall be expunged. The youth court
306 shall have the power to order and supervise the expunction or the
307 destruction of such records in accordance with Section 43-21-265.
308 The youth court is authorized to expunge or nonadjudicate the
309 record of any case within its jurisdiction in which an arrest was
310 made, the person arrested was released and the case was dismissed
311 or the charges were dropped or there was no disposition of such
312 case. In cases where the child is charged with a hunting or
313 fishing violation or a traffic violation whether it be any state
314 or federal law, a violation of the Mississippi Implied Consent
315 Law, or municipal ordinance or county resolution or where the
316 child is charged with a violation of Section 67-3-70, the
317 appropriate criminal court shall proceed to dispose of the same in
318 the same manner as for other adult offenders and it shall not be
319 necessary to transfer the case to the youth court of the county.
320 Unless the cause has been transferred, or unless the child has
321 previously been the subject of a transfer from the youth court to
322 the circuit court for trial as an adult, except for violations
323 under the Implied Consent Law, and was convicted, the youth court
324 shall have power on its own motion to remove jurisdiction from any
325 criminal court of any offense including a hunting or fishing
326 violation, a traffic violation, or a violation of Section 67-3-70,



327 committed by a child in a matter under the jurisdiction of the
328 youth court and proceed therewith in accordance with the
329 provisions of this chapter.

330 (2) After conviction and sentence of any child by any other
331 court having original jurisdiction on a misdemeanor charge, and
332 within the time allowed for an appeal of such conviction and
333 sentence, the youth court of the county shall have the full power
334 to stay the execution of the sentence and to release the child on
335 good behavior or on other order as the youth court may see fit to
336 make unless the child has previously been the subject of a
337 transfer from the youth court to the circuit court for trial as an
338 adult and was convicted. When a child is convicted of a
339 misdemeanor and is committed to, incarcerated in or imprisoned in
340 a jail or other place of detention by a criminal court having
341 proper jurisdiction of such charge, such court shall notify the
342 youth court judge or the judge's designee of the conviction and
343 sentence prior to the commencement of such incarceration. The
344 youth court shall have the power to order and supervise the
345 destruction of any records involving children maintained by the
346 criminal court in accordance with Section 43-21-265. However, the
347 youth court shall have the power to set aside a judgment of any
348 other court rendered in any matter over which the youth court has
349 exclusive original jurisdiction, to expunge or destroy the records
350 thereof in accordance with Section 43-21-265, and to order a
351 refund of fines and costs.

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

355 (4) In any case wherein the defendant is a child as defined
356 in this chapter and of which the circuit court has original
357 jurisdiction, the circuit judge, upon a finding that it would be
358 in the best interest of such child and in the interest of justice,
359 may at any stage of the proceedings prior to the attachment of



360 jeopardy transfer such proceedings to the youth court for further
361 proceedings unless the child has previously been the subject of a
362 transfer from the youth court to the circuit court for trial as an
363 adult and was convicted or has previously been convicted of a
364 crime which was in original circuit court jurisdiction, and the
365 youth court shall, upon acquiring jurisdiction, proceed as
366 provided in this chapter for the adjudication and disposition of
367 delinquent child proceeding proceedings. If the case is not
368 transferred to the youth court and the youth is convicted of a
369 crime by any circuit court, the trial judge shall sentence the
370 youth as though such youth was an adult. The circuit court shall
371 not have the authority to commit such child to the custody of the
372 Department of Youth Services for placement in a state-supported
373 training school.

374 (5) In no event shall a court sentence an offender over the
375 age of eighteen (18) to the custody of the Division of Youth
376 Services for placement in a state-supported training school.

377 (6) When a child's driver's license is suspended by the
378 youth court for any reason, the clerk of the youth court shall
379 report the suspension, without a court order under Section
380 43-21-261, to the Commissioner of Public Safety in the same manner
381 as such suspensions are reported in cases involving adults.

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

386 **SECTION 5.** Section 63-11-30, Mississippi Code of 1972, is
387 amended as follows:

388 63-11-30. (1) It is unlawful for any person to drive or
389 otherwise operate a vehicle within this state who (a) is under the
390 influence of intoxicating liquor; (b) is under the influence of
391 any other substance which has impaired such person's ability to
392 operate a motor vehicle; (c) has an alcohol concentration of ten



393 one-hundredths percent (.10%) or more for persons who are above
394 the legal age to purchase alcoholic beverages under state law, or
395 two one-hundredths percent (.02%) or more for persons who are
396 below the legal age to purchase alcoholic beverages under state
397 law, in the person's blood based upon grams of alcohol per one
398 hundred (100) milliliters of blood or grams of alcohol per two
399 hundred ten (210) liters of breath as shown by a chemical analysis
400 of such person's breath, blood or urine administered as authorized
401 by this chapter; (d) is under the influence of any drug or
402 controlled substance, the possession of which is unlawful under
403 the Mississippi Controlled Substances Law; or (e) has an alcohol
404 concentration of four one-hundredths percent (.04%) or more in the
405 person's blood, based upon grams of alcohol per one hundred (100)
406 milliliters of blood or grams of alcohol per two hundred ten (210)
407 liters of breath as shown by a chemical analysis of such person's
408 blood, breath or urine, administered as authorized by this chapter
409 for persons operating a commercial motor vehicle.

410 (2) (a) Except as otherwise provided in subsection (3),
411 upon conviction of any person for the first offense of violating
412 subsection (1) of this section where chemical tests provided for
413 under Section 63-11-5 were given, or where chemical test results
414 are not available, such person shall be fined not less than Two
415 Hundred Fifty Dollars (\$250.00) nor more than One Thousand Dollars
416 (\$1,000.00), or imprisoned for not more than forty-eight (48)
417 hours in jail or both; and the court shall order such person to
418 attend and complete an alcohol safety education program as
419 provided in Section 63-11-32. The court may substitute attendance
420 at a victim impact panel instead of forty-eight (48) hours in
421 jail. In addition, the Department of Public Safety, the
422 Commissioner of Public Safety or his duly authorized agent shall,
423 after conviction and upon receipt of the court abstract, suspend
424 the driver's license and driving privileges of such person for a
425 period of not less than ninety (90) days and until such person



426 attends and successfully completes an alcohol safety education
427 program as herein provided; provided, however, in no event shall
428 such period of suspension exceed one (1) year. Commercial driving
429 privileges shall be suspended as provided in Section 63-1-83.

430 The circuit court having jurisdiction in the county in which
431 the conviction was had or the circuit court of the person's county
432 of residence may reduce the suspension of driving privileges under
433 Section 63-11-30(2)(a) if the denial of which would constitute a
434 hardship on the offender, except that no court may issue such an
435 order reducing the suspension of driving privileges under this
436 subsection until thirty (30) days have elapsed from the effective
437 date of the suspension. Hardships shall only apply to first
438 offenses under Section 63-11-30(1), and shall not apply to second,
439 third or subsequent convictions of any person violating subsection
440 (1) of this section. A reduction of suspension on the basis of
441 hardship shall not be available to any person who refused to
442 submit to a chemical test upon the request of a law enforcement
443 officer as provided in Section 63-11-5. When the petition is
444 filed, such person shall pay to the circuit clerk of the court
445 where the petition is filed a fee of Fifty Dollars (\$50.00), which
446 shall be deposited into the State General Fund to the credit of a
447 special fund hereby created in the State Treasury to be used for
448 alcohol or drug abuse treatment and education, upon appropriation
449 by the Legislature. This fee shall be in addition to any other
450 court costs or fees required for the filing of petitions.

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



459 The order entered under the provisions of this subsection
460 shall contain the specific grounds upon which hardship was
461 determined, and shall order the petitioner to attend and complete
462 an alcohol safety education program as provided in Section
463 63-11-32. A certified copy of such order shall be delivered to
464 the Commissioner of Public Safety by the clerk of the court within
465 five (5) days of the entry of the order. The certified copy of
466 such order shall contain information which will identify the
467 petitioner, including, but not limited to, the name, mailing
468 address, street address, social security number and driver's
469 license number of the petitioner.

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

- 475 (i) Continue his employment;
- 476 (ii) Continue attending school or an educational
477 institution; or
- 478 (iii) Obtain necessary medical care.

479 Proof of the hardship shall be established by clear and
480 convincing evidence which shall be supported by independent
481 documentation.

482 (b) Except as otherwise provided in subsection (3),
483 upon any second conviction of any person violating subsection (1)
484 of this section, the offenses being committed within a period of
485 five (5) years, such person shall be fined not less than Six
486 Hundred Dollars (\$600.00) nor more than One Thousand Five Hundred
487 Dollars (\$1,500.00), shall be imprisoned not less than five (5)
488 days nor more than one (1) year and sentenced to community service
489 work for not less than ten (10) days nor more than one (1) year.
490 The minimum penalties shall not be suspended or reduced by the
491 court and no prosecutor shall offer any suspension or sentence



492 reduction as part of a plea bargain. Except as may otherwise be
493 provided by paragraph (d) of this subsection, the Commissioner of
494 Public Safety shall suspend the driver's license of such person
495 for two (2) years. Suspension of a commercial driver's license
496 shall be governed by Section 63-1-83. Upon any second conviction
497 as described in this paragraph, the court shall ascertain whether
498 the defendant is married, and if the defendant is married shall
499 obtain the name and address of the defendant's spouse; the clerk
500 of the court shall submit this information to the Department of
501 Public Safety. Further, the commissioner shall notify in writing,
502 by certified mail, return receipt requested, the owner of the
503 vehicle and the spouse, if any, of the person convicted of the
504 second violation of the possibility of forfeiture of the vehicle
505 if such person is convicted of a third violation of subsection (1)
506 of this section. The owner of the vehicle and the spouse shall be
507 considered notified under this paragraph if the notice is
508 deposited in the United States mail and any claim that the notice
509 was not in fact received by the addressee shall not affect a
510 subsequent forfeiture proceeding.

511 For any second or subsequent conviction of any person under
512 this section, the person shall also be subject to the penalties
513 set forth in Section 63-11-31.

514 (c) Except as otherwise provided in subsection (3), for
515 any third or subsequent conviction of any person violating
516 subsection (1) of this section, the offenses being committed
517 within a period of five (5) years, such person shall be guilty of
518 a felony and fined not less than Two Thousand Dollars (\$2,000.00)
519 nor more than Five Thousand Dollars (\$5,000.00), shall be
520 imprisoned not less than one (1) year nor more than five (5) years
521 in the State Penitentiary. The minimum penalties shall not be
522 suspended or reduced by the court and no prosecutor shall offer
523 any suspension or sentence reduction as part of a plea bargain.
524 The law enforcement agency shall seize the vehicle operated by any



525 person charged with a third or subsequent violation of subsection
526 (1) of this section, if such convicted person was driving the
527 vehicle at the time the offense was committed. Such vehicle may
528 be forfeited in the manner provided by Sections 63-11-49 through
529 63-11-53. Except as may otherwise be provided by paragraph (e) of
530 this subsection, the Commissioner of Public Safety shall suspend
531 the driver's license of such person for five (5) years. The
532 suspension of a commercial driver's license shall be governed by
533 Section 63-1-83.

534 (d) Except as otherwise provided in subsection (3), any
535 person convicted of a second violation of subsection (1) of this
536 section shall receive an in-depth diagnostic assessment, and if as
537 a result of such assessment is determined to be in need of
538 treatment of his alcohol and/or drug abuse problem, such person
539 shall successfully complete treatment of his alcohol and/or drug
540 abuse problem at a program site certified by the Department of
541 Mental Health. Such person shall be eligible for reinstatement of
542 his driving privileges upon the successful completion of such
543 treatment after a period of one (1) year after such person's
544 driver's license is suspended. Each person who receives a
545 diagnostic assessment shall pay a fee representing the cost of
546 such assessment. Each person who participates in a treatment
547 program shall pay a fee representing the cost of such treatment.

548 (e) Except as otherwise provided in subsection (3), any
549 person convicted of a third or subsequent violation of subsection
550 (1) of this section shall receive an in-depth diagnostic
551 assessment, and if as a result of such assessment is determined to
552 be in need of treatment of his alcohol and/or drug abuse problem,
553 such person shall enter an alcohol and/or drug abuse program
554 approved by the Department of Mental Health for treatment of such
555 person's alcohol and/or drug abuse problem. If such person
556 successfully completes such treatment, such person shall be
557 eligible for reinstatement of his driving privileges after a



558 period of three (3) years after such person's driver's license is
559 suspended.

560 (f) The Department of Public Safety shall promulgate
561 rules and regulations for the use of interlock ignition devices as
562 provided in Section 63-11-31 and consistent with the provisions
563 therein. Such rules and regulations shall provide for the
564 calibration of such devices and shall provide that the cost of the
565 use of such systems shall be borne by the offender. The
566 Department of Public Safety shall approve which vendors of such
567 devices shall be used to furnish such systems.

568 (3) (a) This subsection shall be known and may be cited as
569 Zero Tolerance for Minors. The provisions of this subsection
570 shall apply only when a person under the age of twenty-one (21)
571 years has a blood alcohol concentration two one-hundredths percent
572 (.02%) or more, but lower than eight one-hundredths percent
573 (.08%). If such person's blood alcohol concentration is eight
574 one-hundredths percent (.08%) or more, the provisions of
575 subsection (2) shall apply.

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

586 The circuit court having jurisdiction in the county in which
587 the conviction was had or the circuit court of the person's county
588 of residence may reduce the suspension of driving privileges under
589 Section 63-11-30(2) (a) if the denial of which would constitute a
590 hardship on the offender, except that no court may issue such an



591 order reducing the suspension of driving privileges under this
592 subsection until thirty (30) days have elapsed from the effective
593 date of the suspension. Hardships shall only apply to first
594 offenses under Section 63-11-30(1), and shall not apply to second,
595 third or subsequent convictions of any person violating subsection
596 (1) of this section. A reduction of suspension on the basis of
597 hardship shall not be available to any person who refused to
598 submit to a chemical test upon the request of a law enforcement
599 officer as provided in Section 63-11-5. When the petition is
600 filed, such person shall pay to the circuit clerk of the court
601 where the petition is filed a fee of Fifty Dollars (\$50.00), which
602 shall be deposited into the State General Fund to the credit of a
603 special fund hereby created in the State Treasury to be used for
604 alcohol or drug abuse treatment and education, upon appropriation
605 by the Legislature. This fee shall be in addition to any other
606 court costs or fees required for the filing of petitions.

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

615 The order entered under the provisions of this subsection
616 shall contain the specific grounds upon which hardship was
617 determined, and shall order the petitioner to attend and complete
618 an alcohol safety education program as provided in Section
619 63-11-32. A certified copy of such order shall be delivered to
620 the Commissioner of Public Safety by the clerk of the court within
621 five (5) days of the entry of the order. The certified copy of
622 such order shall contain information which will identify the
623 petitioner, including, but not limited to, the name, mailing



624 address, street address, social security number and driver's
625 license number of the petitioner.

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

631 (i) Continue his employment;

632 (ii) Continue attending school or an educational
633 institution; or

634 (iii) Obtain necessary medical care.

635 Proof of the hardship shall be established by clear and
636 convincing evidence which shall be supported by independent
637 documentation.

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

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

651 (e) Any person under the age of twenty-one (21) years
652 convicted of a second violation of subsection (1) of this section,
653 may have the period that his driver's license is suspended reduced
654 if such person receives an in-depth diagnostic assessment, and as
655 a result of such assessment is determined to be in need of
656 treatment of his alcohol and/or drug abuse problem and



657 successfully completes treatment of his alcohol and/or drug abuse
658 problem at a program site certified by the Department of Mental
659 Health. Such person shall be eligible for reinstatement of his
660 driving privileges upon the successful completion of such
661 treatment after a period of six (6) months after such person's
662 driver's license is suspended. Each person who receives a
663 diagnostic assessment shall pay a fee representing the cost of
664 such assessment. Each person who participates in a treatment
665 program shall pay a fee representing the cost of such treatment.

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

671 (g) The court shall have the discretion to rule that a
672 first offense of this subsection by a person under the age of
673 twenty-one (21) years shall be nonadjudicated. Such person shall
674 be eligible for nonadjudication only once. The Department of
675 Public Safety shall maintain a confidential registry of all cases
676 which are nonadjudicated as provided in this paragraph. A judge
677 who rules that a case is nonadjudicated shall forward such ruling
678 to the Department of Public Safety. Judges and prosecutors
679 involved in implied consent violations shall have access to the
680 confidential registry for the purpose of determining
681 nonadjudication eligibility. A record of a person who has been
682 nonadjudicated shall be maintained for five (5) years or until
683 such person reaches the age of twenty-one (21) years at which time
684 the record shall be expunged. Any person whose confidential
685 record has been disclosed in violation of this paragraph shall
686 have a civil cause of action against the person and/or agency
687 responsible for such disclosure.

688 (4) In addition to the other penalties provided in this
689 section, every person refusing a law enforcement officer's request



690 to submit to a chemical test of his breath as provided in this
691 chapter, or who was unconscious at the time of a chemical test and
692 refused to consent to the introduction of the results of such test
693 in any prosecution, shall suffer an additional suspension of
694 driving privileges as follows:

695 The Commissioner of Public Safety or his authorized agent
696 shall suspend the driver's license or permit to drive or deny the
697 issuance of a license or permit to such person as provided for
698 first, second and third or subsequent offenders in subsection (2)
699 of this section. Such suspension shall be in addition to any
700 suspension imposed pursuant to subsection (1) of Section 63-11-23.
701 The minimum suspension imposed under this subsection shall not be
702 reduced and no prosecutor is authorized to offer a reduction of
703 such suspension as part of a plea bargain.

704 (5) Every person who operates any motor vehicle in violation
705 of the provisions of subsection (1) of this section and who in a
706 negligent manner causes the death of another or mutilates,
707 disfigures, permanently disables or destroys the tongue, eye, lip,
708 nose or any other limb, organ or member of another shall, upon
709 conviction, be guilty of a felony and shall be committed to the
710 custody of the State Department of Corrections for a period of
711 time of not less than five (5) years and not to exceed twenty-five
712 (25) years.

713 (6) Upon conviction of any violation of subsection (1) of
714 this section, the trial judge shall sign in the place provided on
715 the traffic ticket, citation or affidavit stating that the person
716 arrested either employed an attorney or waived his right to an
717 attorney after having been properly advised. If the person
718 arrested employed an attorney, the name, address and telephone
719 number of the attorney shall be written on the ticket, citation or
720 affidavit. The judge shall cause a copy of the traffic ticket,
721 citation or affidavit, and any other pertinent documents
722 concerning the conviction, to be sent to the Commissioner of



723 Public Safety. A copy of the traffic ticket, citation or
724 affidavit and any other pertinent documents, having been attested
725 as true and correct by the Commissioner of Public Safety, or his
726 designee, shall be sufficient proof of the conviction for purposes
727 of determining the enhanced penalty for any subsequent convictions
728 of violations of subsection (1) of this section.

729 (7) Convictions in other states of violations for driving or
730 operating a vehicle while under the influence of an intoxicating
731 liquor or while under the influence of any other substance that
732 has impaired the person's ability to operate a motor vehicle
733 occurring after July 1, 1992, shall be counted for the purposes of
734 determining if a violation of subsection (1) of this section is a
735 first, second, third or subsequent offense and the penalty that
736 shall be imposed upon conviction for a violation of subsection (1)
737 of this section.

738 (8) For the purposes of determining how to impose the
739 sentence for a second, third or subsequent conviction under this
740 section, the indictment shall not be required to enumerate
741 previous convictions. It shall only be necessary that the
742 indictment state the number of times that the defendant has been
743 convicted and sentenced within the past five (5) years under this
744 section to determine if an enhanced penalty shall be imposed. The
745 amount of fine and imprisonment imposed in previous convictions
746 shall not be considered in calculating offenses to determine a
747 second, third or subsequent offense of this section.

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

752 (10) Suspension of driving privileges for any person
753 convicted of violations of Section 63-11-30(1) shall run
754 consecutively.



755 (11) The court may order the use of any ignition interlock
756 device as provided in Section 63-11-31.

757 **SECTION 6.** Section 67-3-70, Mississippi Code of 1972, is
758 amended as follows:

759 67-3-70. (1) Except as otherwise provided by Section
760 67-3-54, any person under the age of twenty-one (21) years who
761 purchases or possesses any light wine or beer shall be guilty of a
762 misdemeanor, and upon conviction shall be punished by a fine of
763 not less than Twenty-five Dollars (\$25.00) nor more than Five
764 Hundred Dollars (\$500.00) and/or a sentence to not more than
765 thirty (30) days community service.

766 (2) Any person under the age of twenty-one (21) years who
767 falsely states he is twenty-one (21) years of age or older or
768 presents any document that indicates he is twenty-one (21) years
769 of age or older for the purpose of purchasing or possessing any
770 light wine or beer shall be guilty of a misdemeanor, and upon
771 conviction shall be punished by a fine of not less than
772 Twenty-five Dollars (\$25.00) nor more than Five Hundred Dollars
773 (\$500.00) and/or a sentence to not more than thirty (30) days
774 community service.

775 (3) Except as otherwise provided by Section 67-3-54, any
776 person who knowingly purchases light wine or beer for, or gives or
777 makes available light wine or beer to a person under the age of
778 twenty-one (21) years, shall be guilty of a misdemeanor and upon
779 conviction shall be punished by a fine of not less than One
780 Hundred Dollars (\$100.00) nor more than Five Hundred Dollars
781 (\$500.00) and/or a sentence to not more than thirty (30) days
782 community service.

783 (4) The term "community service" as used in this section
784 shall mean work, projects or services for the benefit of the
785 community assigned, supervised and recorded by appropriate public
786 officials.



787 (5) Any person who has been charged with a violation of
788 subsections (1) or (2) of this section may, not sooner than one
789 (1) year after the dismissal and discharge or completion of any
790 sentence and/or payment of any fine, apply to the court for an
791 order to expunge from all official records all recordation
792 relating to his arrest, trial, finding or plea of guilty, and
793 dismissal and discharge. If the court determines that such person
794 was dismissed and the proceedings against him discharged or that
795 such person had satisfactorily served his sentence and/or paid his
796 fine, it shall enter such order.

797 (6) The court is authorized to issue an order of
798 nonadjudication for a first violation of this section.

799 **SECTION 7.** Section 99-15-26, Mississippi Code of 1972, is
800 amended as follows:

801 99-15-26. (1) In all criminal cases, felony and
802 misdemeanor, other than crimes against the person, the circuit or
803 county court shall be empowered, upon the entry of a plea of
804 guilty by a criminal defendant, to withhold acceptance of the plea
805 and sentence thereon pending successful completion of such
806 conditions as may be imposed by the court pursuant to subdivision
807 (2) of this section. No person having previously qualified under
808 the provisions of this section or having ever been convicted of a
809 felony shall be eligible to qualify for release in accordance with
810 this section. A person shall not be eligible to qualify for
811 release in accordance with this section if such person has been
812 charged (a) with an offense pertaining to the sale, barter,
813 transfer, manufacture, distribution or dispensing of a controlled
814 substance, or the possession with intent to sell, barter,
815 transfer, manufacture, distribute or dispense a controlled
816 substance, as provided in Section 41-29-139(a)(1), Mississippi
817 Code of 1972, except for a charge under said provision when the
818 controlled substance involved is one (1) ounce or less of
819 marihuana; (b) with an offense pertaining to the possession of one



820 (1) kilogram or more of marihuana as provided in Section
821 41-29-139(c)(2)(D), Mississippi Code of 1972; or (c) with an
822 offense under the Mississippi Implied Consent Law.

823 (2) Conditions which the circuit or county court may impose
824 under subdivision (1) of this section shall consist of:

825 (a) Reasonable restitution to the victim of the crime.

826 (b) Performance of not more than nine hundred sixty
827 (960) hours of public service work approved by the court.

828 (c) Payment of a fine not to exceed the statutory
829 limit.

830 (d) The court may, in its discretion, require the
831 defendant to remain in the program subject to good behavior for a
832 period of time not to exceed five (5) years.

833 (3) Upon successful completion of the court-imposed
834 conditions permitted by subdivision (2) of this section, the court
835 shall direct that the cause be dismissed, nonadjudicated and the
836 case be closed.

837 (4) The court may expunge the record of any case in which an
838 arrest was made, the person arrested was released and the case was
839 dismissed or the charges were dropped or there was no disposition
840 of such case.

841 (5) This section shall take effect and be in force from and
842 after March 31, 1983.

843 **SECTION 8.** Section 99-15-57, Mississippi Code of 1972, is
844 amended as follows:

845 99-15-57. Any person who pled guilty within six (6) months
846 prior to the effective date of Section 99-15-26, Mississippi Code
847 of 1972, and who would have otherwise been eligible for the relief
848 allowed in such section, may apply to the court in which such
849 person was sentenced for an order to nonadjudicate or to expunge
850 from all official public records all recordation relating to his
851 arrest, indictment, trial, finding of guilty, and sentence. If
852 the court determines, after hearing, that such person has



853 satisfactorily served his sentence or period of probation and
854 parole, pled guilty within six (6) months prior to the effective
855 date of Section 99-15-26 and would have otherwise been eligible
856 for the relief allowed in such section, it may enter such order.
857 The effect of such order shall be to restore such person, in the
858 contemplation of the law, to the status he occupied before such
859 arrest or indictment. No person as to whom such order has been
860 entered shall be held thereafter under any provision of any law to
861 be guilty of perjury or otherwise giving a false statement by
862 reason of his failures to recite or acknowledge such arrest, or
863 indictment or trial in response to any inquiry made of him for any
864 purpose. The court may expunge the record of any case in which an
865 arrest was made, the person arrested was released and the case was
866 dismissed or the charges were dropped or there was no disposition
867 of such case.

868 **SECTION 9.** Section 99-15-59, Mississippi Code of 1972, is
869 amended as follows:

870 99-15-59. Any person who is arrested, issued a citation, or
871 held for any misdemeanor and not formally charged or prosecuted
872 with an offense within twelve (12) months of arrest, or upon
873 dismissal of the charge, may apply to the court with jurisdiction
874 over the matter for the charges to be expunged or nonadjudicated.

875 **SECTION 10.** Section 99-19-71, Mississippi Code of 1972, is
876 amended as follows:

877 99-19-71. Any person who has been convicted of a misdemeanor
878 before reaching his twenty-third birthday, excluding a conviction
879 for a traffic violation, and who is a first offender, may petition
880 the justice, county, circuit or municipal court, as may be
881 applicable, for an order to nonadjudicate or to expunge any such
882 conviction from all public records. Upon entering such order, a
883 nonpublic record thereof shall be retained by the court solely for
884 the purpose of use by the court in determining whether or not in
885 subsequent proceedings such person is a first offender. The



886 effect of such order shall be to restore such person, in the
887 contemplation of the law, to the status he occupied before such
888 arrest. No person as to whom such order has been entered shall be
889 held thereafter under any provision of law to be guilty of perjury
890 or to have otherwise given a false statement by reason of his
891 failure to recite or acknowledge such arrest or conviction in
892 response to any inquiry made of him for any purpose, except for
893 the purpose of determining in any subsequent proceedings under
894 this section, whether such person is a first offender. A justice,
895 county, circuit or municipal court may expunge the record of any
896 case in which an arrest was made, the person arrested was released
897 and the case was dismissed or the charges were dropped or there
898 was no disposition of such case.

899 **SECTION 11.** This act shall take effect and be in force from
900 and after July 1, 2002.

