

By: Senator(s) Hyde-Smith

To: Judiciary;  
Appropriations

SENATE BILL NO. 2725

1 AN ACT TO PROVIDE FOR DRUG COURT TREATMENT PROGRAMS IN  
2 CIRCUIT COURT DISTRICTS; TO SPECIFY THE PURPOSE AND GOALS OF THIS  
3 ACT; TO DEFINE CERTAIN TERMS; TO PROVIDE FOR DRUG DIVISION  
4 PROBATION PROGRAMS; TO PROVIDE REQUIREMENTS FOR PARTICIPATION IN  
5 SUCH PROGRAMS; TO PROVIDE FOR THE ADMINISTRATION OF SUCH PROGRAMS;  
6 TO PROVIDE THAT SUCCESSFUL COMPLETION OF A DRUG DIVISION PROBATION  
7 PROGRAM MAY RESULT IN DISMISSAL OF CRIMINAL CONVICTION; TO PROVIDE  
8 FOR THE PAYMENT FOR PARTICIPATION IN A PROGRAM; TO AMEND SECTIONS  
9 41-29-149 AND 41-29-150, MISSISSIPPI CODE OF 1972, IN CONFORMITY  
10 THERETO; AND FOR RELATED PURPOSES.

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

12 **SECTION 1.** The Legislature of Mississippi recognizes the  
13 critical need for criminal justice system programs to reduce the  
14 incidence of alcohol and drug use, alcohol and drug addiction, and  
15 crimes committed as a result of alcohol and drug use and alcohol  
16 and drug addiction. The Legislature also recognizes that the  
17 problem of alcohol and drug abuse among the citizens of  
18 Mississippi is excessive and needs to be addressed and corrected  
19 not only for the health and welfare of the citizens of this state,  
20 but also because alcohol and drug abuse or dependency has been  
21 identified as a contributing factor in the commission of many  
22 crimes. It is the intent of the Legislature by this act to create  
23 a program to facilitate the creation of alcohol and drug treatment  
24 divisions in the various district courts of this state.

25 **SECTION 2.** The goals of the alcohol and drug treatment  
26 divisions created under this act include the following:

- 27 (a) To reduce alcoholism and drug abuse and dependency  
28 among offenders.
- 29 (b) To reduce criminal recidivism.
- 30 (c) To reduce the alcohol- and drug-related workload of  
31 the courts.



32 (d) To increase the personal, familial and societal  
33 accountability of offenders.

34 (e) To promote effective interaction and use of  
35 resources among criminal justice personnel and community agencies.

36 (f) To reduce the overcrowding of prisons.

37 **SECTION 3.** The following words and phrases shall have the  
38 meanings ascribed herein unless the context clearly indicates  
39 otherwise:

40 (a) "Alcohol and drug abuse program" means a program  
41 licensed by the State of Mississippi to provide education,  
42 prevention and treatment directed toward achieving the mental and  
43 physical restoration of alcohol and drug abusers or addicts.

44 (b) "Alcohol and drug abuser" means a person whose  
45 consumption of alcohol or other drugs, or any combination thereof,  
46 interferes with or adversely affects his ability to function  
47 socially or economically and endangers the health, safety and  
48 welfare of the abuser and others.

49 (c) "Alcohol- or drug-related offense" means an  
50 alcohol- or drug-related offense and also an offense in which  
51 alcohol or drug abuse or addiction is determined from the evidence  
52 to have been a factor in the commission of the offense.

53 (d) "Alcoholic or drug addict" means any person who  
54 habitually uses alcohol or other drugs to the extent that the  
55 person endangers the health, safety or welfare of that person or  
56 any other person or group of persons.

57 (e) "Conditions of probation" means the specification  
58 of formal terms and conditions which a defendant must fulfill in  
59 order to have the charges against that person dismissed.

60 (f) "Drug division" means the division or divisions of  
61 the court to which alcohol- or drug-related offenses are assigned  
62 or the employee of the court designated to administer the  
63 probation program.



64 (g) "Probation" means referral of a defendant who has  
65 entered a plea of guilty in a criminal case charging an alcohol or  
66 controlled dangerous substance related offense to a supervised  
67 probation program.

68 (h) "Probationer" means a person who has been accepted  
69 into a drug division probation program.

70 (i) "Treatment program" means any governmental agency  
71 or other entity which is licensed by the State of Mississippi to  
72 provide substance abuse or addiction treatment on a residential or  
73 outpatient basis.

74 **SECTION 4.** (1) Each circuit court district by rule may  
75 designate as a drug division one or more divisions to which  
76 alcohol- or drug-related offenses are assigned and may establish a  
77 probation program to be administered by the senior judge or judges  
78 thereof or by an employee designated by the court.

79 (2) Participation in probation programs shall be subject to  
80 the following provisions:

81 (a) The district attorney may propose to the court that  
82 an individual defendant be screened for eligibility as a  
83 participant in the drug division probation program if all of the  
84 following criteria are satisfied:

85 (i) The individual is charged with a violation of  
86 a statute of this state relating to the use and possession of any  
87 narcotic drugs, coca leaves, marijuana, stimulants, depressants,  
88 or hallucinogenic drugs, or where there is a significant  
89 relationship between the use of alcohol or drugs, or both, and the  
90 crime before the court.

91 (ii) The district attorney has reason to believe  
92 that the individual who is charged suffers from alcohol or drug  
93 addiction.

94 (iii) It is in the best interest of the community  
95 and in the interest of justice to provide the defendant with  
96 treatment as opposed to incarceration or other sanctions.



97           (b) Upon receipt of the proposal provided for in  
98 paragraph (a) of this subsection, the court shall advise the  
99 defendant that he or she may be eligible for enrollment in a  
100 court-authorized treatment program through the drug division  
101 probation program.

102           (c) In offering a defendant the opportunity to request  
103 treatment, the court shall advise the defendant of the following:

104                   (i) If the defendant is accepted into the drug  
105 division probation program, then the defendant must waive the  
106 right to a trial. The defendant must enter a plea of guilty to  
107 the charge, with the stipulation that sentencing be deferred or  
108 that sentence be imposed, but suspended, and the defendant placed  
109 on supervised probation under the usual conditions of probation  
110 and under certain special conditions of probation related to the  
111 completion of such substance abuse treatment programs as are  
112 ordered by the court.

113                   (ii) If the defendant requests to undergo  
114 treatment and is accepted, the defendant will be placed under the  
115 supervision of the drug division probation program for a period of  
116 not less than twelve (12) months.

117                   (iii) During treatment the defendant may be  
118 confined in a treatment facility or, at the discretion of the  
119 court, the defendant may be released on a probationary basis for  
120 treatment or supervised aftercare in the community.

121                   (iv) The court may impose any conditions  
122 reasonably related to the complete rehabilitation of the  
123 defendant.

124                   (v) The defendant shall be required to participate  
125 in an alcohol and drug testing program at his own expense, unless  
126 the court determines that he is indigent.

127                   (vi) If the defendant completes the drug division  
128 probation program, and successfully completes all other  
129 requirements of his court-ordered probation, the conviction may be



130 set aside and the prosecution dismissed. If the defendant was  
131 sentenced at the time of the entry of the plea of guilty, the  
132 successful completion of the drug division probation program and  
133 the other requirements of probation will result in his discharge  
134 from supervision. If the defendant does not successfully complete  
135 the drug division probation program, the judge may revoke the  
136 probation and impose sentence, or the judge may revoke the  
137 probation and order the defendant to serve the sentence previously  
138 imposed and suspended, or the court may impose any sanction  
139 provided by law, and extend probation and order that the defendant  
140 continue treatment for an additional period, or both.

141 (d) The defendant has the right to be represented by  
142 counsel at all stages of a criminal prosecution and in any court  
143 hearing relating to the drug division probation program. The  
144 defendant shall be represented by counsel during the negotiations  
145 to determine eligibility to participate in the drug division  
146 probation program and shall be represented by counsel at the time  
147 of the execution of the probation agreement, and at any hearing to  
148 revoke the defendant's probation and discharge him from the  
149 program, unless the court finds and the record shows that the  
150 defendant has knowingly and intelligently waived his right to  
151 counsel.

152 (e) The defendant must agree to the drug division  
153 probation program. If the defendant elects to undergo treatment  
154 and participate in the drug division probation program, the court  
155 shall order an examination of the defendant by one (1) of the  
156 court's designated licensed treatment programs. Treatment  
157 programs shall possess sufficient experience in working with  
158 criminal justice clients with alcohol or drug addictions, or both,  
159 and shall be certified and approved by the State of Mississippi.  
160 The designated treatment program shall utilize standardized  
161 testing and evaluation procedures to determine whether or not the



162 defendant is an appropriate candidate for a treatment program and  
163 shall report such findings to the court and the district attorney.

164 (f) The designated treatment program shall examine the  
165 defendant, using standardized testing and evaluation procedures,  
166 and shall report to the court and the district attorney the  
167 results of the examination and evaluation along with its  
168 recommendation as to whether or not the individual is a suitable  
169 candidate for the drug division probation program. Only those  
170 defendants who suffer from alcoholism or a drug addiction, or  
171 both, or who are in danger of becoming dependent on alcohol or  
172 drugs and who are likely to be rehabilitated through treatment  
173 shall be considered for treatment.

174 (g) The court shall inform the defendant that the  
175 treatment program examiner or district attorney may request that  
176 the defendant provide the following information to the court:

177 (i) Information regarding prior criminal charges.

178 (ii) Education, work experience and training.

179 (iii) Family history, including residence in the  
180 community.

181 (iv) Medical and mental history, including any  
182 psychiatric or psychological treatment or counseling.

183 (v) Any other information reasonably related to  
184 the success of the treatment program.

185 (h) The designated program shall recommend to the court  
186 a preliminary length of stay and level of care for the defendant.

187 (i) Besides the report submitted by the examiner, the  
188 judge and district attorney shall consider the following factors  
189 in determining whether drug court probation would be in the  
190 interests of justice and of benefit to the defendant and the  
191 community:

192 (i) The nature of the crime charged and the  
193 circumstances surrounding the crime.



194                   (ii) Any special characteristics or circumstances  
195 of the defendant.

196                   (iii) Whether the defendant is a first-time  
197 offender of an alcohol- or drug-related offense, and, if the  
198 defendant has previously participated in this or a similar  
199 program, the degree of success attained.

200                   (iv) Whether there is a probability that the  
201 defendant will cooperate with and benefit from probation and  
202 treatment through the drug division probation program.

203                   (v) Whether the available drug division probation  
204 program is appropriate to meet the needs of the defendant.

205                   (vi) The impact of the defendant's probation and  
206 treatment upon the community.

207                   (vii) Recommendations, if any, of the involved law  
208 enforcement agency.

209                   (viii) Recommendations, if any, of the victim.

210                   (ix) Provisions for and the likelihood of  
211 obtaining restitution from the defendant over the course of his  
212 probation.

213                   (x) Any mitigating circumstances.

214                   (xi) Any other circumstances reasonably related to  
215 the individual defendant's case.

216                   (j) In order to be eligible for the drug division  
217 probation program, the defendant must satisfy each of the  
218 following criteria:

219                   (i) The defendant cannot have any prior felony  
220 convictions for any offenses which are crimes of violence.

221                   (ii) The crime before the court cannot be a crime  
222 of violence, including domestic violence.

223                   (iii) Other criminal proceedings alleging  
224 commission of a crime of violence cannot be pending against the  
225 defendant.



226 (iv) The defendant cannot have been convicted of  
227 burglary of an inhabited dwelling if the defendant has a record of  
228 one or more prior felony convictions.

229 (v) The crime before the court cannot be a charge  
230 of driving under the influence of alcohol or any other drug or  
231 drugs that resulted in the death of a person.

232 (vi) The crime charged cannot be one of multiple  
233 counts of distribution, possession with intent to distribute,  
234 production, manufacture or cultivation of controlled dangerous  
235 substances.

236 (k) (i) The judge shall make the final determination  
237 of eligibility. If, based on the examiner's report and the  
238 recommendations of the district attorney and the defense counsel,  
239 the judge determines that the defendant should be enrolled in the  
240 drug division probation program, the court shall accept the  
241 defendant's guilty plea and suspend or defer the imposition of  
242 sentence and place the defendant on probation under the terms and  
243 conditions of the drug division probation program. The court also  
244 may impose sentence and suspend the execution thereof, placing the  
245 defendant on probation under the terms and conditions of the drug  
246 division probation program.

247 (ii) If the judge determines that the defendant is  
248 not qualified for enrollment, the judge shall state for the record  
249 the reasons for that determination.

250 (iii) A treatment program may petition the court  
251 to reject a referral through the drug division probation program  
252 if the treatment program administrator deems the defendant to be  
253 inappropriate for admission to the treatment program.  
254 Additionally, a treatment program may petition the court for  
255 immediate discharge of any individual who fails to comply with  
256 treatment program rules and treatment expectations or who refuses  
257 to constructively engage in the treatment process.





258           (3) (a) The terms of each probation agreement shall be  
259 decided by the judge. The defendant must agree to enter the  
260 program and sign a probation agreement stating the terms and  
261 conditions of his program. The defendant must plead guilty to the  
262 charge in order to be eligible for the drug division probation  
263 program.

264                   (b) Any probation agreement entered into pursuant to  
265 this section shall include the following:

266                           (i) The terms of the agreement, which shall  
267 provide that if the defendant fulfills the obligations of the  
268 agreement, as determined by the court, then the criminal charges  
269 may be dismissed and the prosecution set aside, or, if the  
270 defendant has been sentenced following the plea of guilty, then  
271 the successful completion of the drug division probation program  
272 may result in the discharge of the defendant from continued  
273 supervision.

274                           (ii) A waiver by the defendant of the right to  
275 trial by jury under the laws and Constitution of Mississippi and  
276 the United States.

277                           (iii) The defendant's full name.

278                           (iv) The defendant's full name at the time the  
279 complaint was filed, if different from the defendant's current  
280 name.

281                           (v) The defendant's sex and date of birth.

282                           (vi) The crime before the court.

283                           (vii) The date the complaint was filed.

284                           (viii) The court in which the agreement was filed.

285                           (ix) A stipulation of the facts upon which the  
286 charge was based, as agreed to by the defendant and the district  
287 attorney.

288                           (x) A provision that the defendant will be  
289 required to pay a probation supervision fee.



290 (xi) A provision in cases where applicable that  
291 the defendant will be required to pay restitution to the victim.

292 (xii) A provision that once the defendant is  
293 receiving treatment as an outpatient or living in a halfway house  
294 he will participate in appropriate job training or schooling or  
295 seek gainful employment.

296 (xiii) A copy of the plea agreement.

297 (c) A defendant who is placed under the supervision of  
298 the drug division probation program shall pay the cost of the  
299 treatment program to which he is assigned and the cost of any  
300 additional supervision that may be required, to the extent of his  
301 financial resources, as determined by the drug division.

302 (d) If the probationer does not have the financial  
303 resources to pay all the related costs of the probation program:

304 (i) The court, to the extent practicable, shall  
305 arrange for the probationer to be assigned to a treatment program  
306 funded by the state or federal government.

307 (ii) The court, with the recommendation of the  
308 treatment program, may order the probationer to perform supervised  
309 work for the benefit of the community in lieu of paying all or a  
310 part of the costs relating to his treatment and supervision. The  
311 work must be performed for and under the supervising authority of  
312 a county, municipality, or other political subdivision or agency  
313 of the State of Mississippi or a charitable organization that  
314 renders service to the community or its residents.

315 (4) (a) When appropriate, the imposition or execution of a  
316 sentence shall be postponed while the defendant is enrolled in the  
317 treatment program. As long as the probationer follows the  
318 conditions of his agreement, he or she shall remain on probation.  
319 At the conclusion of the period of probation, the district  
320 attorney, on advice of the person providing the probationer's  
321 treatment and the probation officer, may recommend that the drug  
322 division take one (1) of the following courses of action:



323                   (i) That the probationer's probation be revoked  
324 and the probationer be sentenced because the probationer has not  
325 successfully completed the treatment and has violated one or more  
326 conditions of probation; or, if already sentenced, that the  
327 probation be revoked and the probationer be remanded to the  
328 appropriate custodian for service of that sentence.

329                   (ii) That the period of probation be extended so  
330 that the probationer may continue the program.

331                   (iii) That the probationer's conviction be set  
332 aside and the prosecution dismissed because the probationer has  
333 successfully completed all the conditions of his or her probation  
334 and treatment agreement.

335                   (b) The district attorney shall make the final  
336 determination on whether to request revocation, extension or  
337 dismissal.

338                   (c) (i) If an individual who has enrolled in a program  
339 violates any of the conditions of his probation or his treatment  
340 agreement or appears to be performing unsatisfactorily in the  
341 assigned program, or if it appears that the probationer is not  
342 benefiting from education, treatment or rehabilitation, the  
343 treatment supervisor, probation officer or the district attorney  
344 may move the court for a hearing to determine if the probationer  
345 should remain in the program or whether the probation should be  
346 revoked and the probationer removed from the program and sentenced  
347 or ordered to serve any sentence previously imposed. If at the  
348 hearing the moving party can show sufficient proof that the  
349 probationer has violated his probation or his treatment agreement  
350 and has not shown a willingness to submit to rehabilitation, the  
351 probationer may be removed from the program or his treatment  
352 agreement may be changed to meet the probationer's specific needs.

353                   (ii) If the court finds that the probationer has  
354 violated a condition of his or her probation or a provision of his  
355 or her probation agreement and that the probationer should be



356 removed from the probation program, then the court may revoke the  
357 probation and sentence the individual in accordance with his or  
358 her guilty plea or, if the individual has been sentenced and the  
359 sentence suspended, order the individual to begin serving the  
360 sentence.

361 (iii) If a defendant who has been admitted to the  
362 probation program fails to complete the program and is thereafter  
363 sentenced to jail time for the offense, he shall be entitled to  
364 credit for the time served in any correctional facility in  
365 connection with the charge before the court.

366 (iv) At any time and for any appropriate reason,  
367 the probationer, his probation officer, the district attorney or  
368 his treatment provider may petition the court to reconsider,  
369 suspend or modify its order for rehabilitation or treatment  
370 concerning that probationer.

371 (v) The burden of proof at all such hearings shall  
372 be the burden of proof required to revoke probation as provided by  
373 law.

374 (5) The appropriate alcohol and drug treatment program shall  
375 report the following changes or conditions to the district  
376 attorney at any periodic reporting period specified by the court:

377 (a) The probationer is changed from an inpatient to an  
378 outpatient.

379 (b) The probationer is transferred to another treatment  
380 center or program.

381 (c) The probationer fails to comply with program rules  
382 and treatment expectations.

383 (d) The probationer refuses to engage constructively in  
384 the treatment process.

385 (e) The probationer terminates his or her participation  
386 in the treatment program.

387 (f) The probationer is rehabilitated or obtains the  
388 maximum benefits of rehabilitation or treatment.



389           (6) Upon successful completion of the drug division  
390 probation program and its terms and conditions, the judge, after  
391 receiving the recommendation from the district attorney, may  
392 vacate the judgment of conviction and dismiss the criminal  
393 proceedings against the probationer or may discharge the defendant  
394 from probation.

395           (7) Discharge and dismissal under this act shall have the  
396 same effect as acquittal, except that the conviction may be  
397 considered in order to provide the basis for subsequent  
398 prosecution of the party as a multiple offender and shall be  
399 considered as an offense for the purposes of any other law or laws  
400 relating to cumulation of offenses. Dismissal under this act  
401 shall occur only once with respect to any person. Nothing herein  
402 shall be construed as a basis for the destruction of records of  
403 the arrest and prosecution of the person.

404           (8) Nothing contained in this act shall confer a right or an  
405 expectation of a right to treatment for a defendant or offender  
406 within the criminal justice system.

407           (9) Each defendant shall contribute to the cost of substance  
408 abuse treatment received in the drug treatment program based upon  
409 guidelines developed by the drug division.

410           (10) Each circuit court district that establishes a drug  
411 division shall adopt written policies and guidelines for the  
412 implementation of a probation program in accordance with this act.  
413 The policies and guidelines shall include provisions concerning  
414 the following:

415                   (a) How to examine the defendant initially to determine  
416 if he or she is qualified for enrollment.

417                   (b) How to advise the defendant of the program if the  
418 court has reason to believe the defendant may suffer from alcohol  
419 or drug addiction.

420                   (c) What licensed treatment programs are certified by  
421 the court.



422 (11) Each drug division shall develop a method of evaluation  
423 so that its effectiveness can be measured. These evaluations  
424 shall be compiled annually and transmitted to the Administrative  
425 Office of Courts.

426 (12) (a) Except as otherwise provided for by law, the  
427 registration and other records of a treatment facility are  
428 confidential and shall not be disclosed to any person not  
429 connected with the treatment facility or the drug division and  
430 district attorney without the consent of the patient.

431 (b) The provisions of paragraph (a) of this subsection  
432 shall not restrict the use of patients' records for the purpose of  
433 research into the cause and treatment of alcoholism and drug  
434 addiction, provided that such information shall not be published  
435 in a way that discloses the patient's name and identifying  
436 information.

437 (13) No statement, or any information procured therefrom,  
438 with respect to the specific offenses with which the defendant is  
439 charged, which is made to any probation officer or alcohol and  
440 drug treatment worker subsequent to the granting of probation,  
441 shall be admissible in any civil or criminal action or proceeding,  
442 except a drug division probation revocation proceeding.

443 (14) A record of the fact that an individual has  
444 participated in a drug division probation program shall be sent to  
445 the Office of the Attorney General and shall be made available  
446 upon request to any district attorney for the purpose of  
447 determining if an individual has previously participated in a drug  
448 division probation program.

449 **SECTION 5.** Section 41-29-149, Mississippi Code of 1972, is  
450 amended as follows:

451 41-29-149. (a) Regardless of the penalties provided  
452 heretofore for the violation of any section or portion of this  
453 article, the judge of the court of jurisdiction of any defendant  
454 may, in his discretion, suspend such penalty, penalties, or



455 portions thereof, or place such defendant in a program as provided  
456 in Sections 1 through 4 of Senate Bill No. \_\_\_\_\_, 2002 Regular  
457 Session, for any person charged with a first offense.

458 (b) A person convicted under this article or under any prior  
459 law superseded by this article for a violation of the law  
460 regarding controlled substances shall be eligible for parole just  
461 as in any other criminal conviction as provided by Section 47-7-3.

462 (c) Any person who was convicted and/or who is still serving  
463 a sentence in the Mississippi State Penitentiary for a first  
464 offense under any prior law superseded by this article may  
465 petition the court of original jurisdiction for resentencing under  
466 the provisions of this article.

467 (d) Any person previously indicted under a prior law for  
468 violation of any law regarding controlled substances but not yet  
469 sentenced shall be sentenced under the provisions of this article  
470 provided that the sentence imposed is not greater than that  
471 provided under said prior law.

472 (e) For the purposes of the sentencing provisions of this  
473 article, a first offense shall be deemed to be and include any  
474 offense, offenses, act or acts prohibited by said law, or any  
475 prior law superseded by said law, committed prior to a first  
476 indictment under said law or under prior law superseded by said  
477 law.

478 **SECTION 6.** Section 41-29-150, Mississippi Code of 1972, is  
479 amended as follows:

480 41-29-150. (a) Any person convicted under Section 41-29-139  
481 may be required, in the discretion of the court, as a part of the  
482 sentence otherwise imposed, or in lieu of imprisonment in cases of  
483 probation or suspension of sentence, to attend a course of  
484 instruction conducted by the bureau, the State Board of Health, or  
485 any similar agency, on the effects, medically, psychologically and  
486 socially, of the misuse of controlled substances or successfully  
487 complete a treatment program as provided in Sections 1 through 4



488 of Senate Bill No. \_\_\_\_\_, 2002 Regular Session. Said course may be  
489 conducted at any correctional institution, detention center or  
490 hospital, or at any center or treatment facility established for  
491 the purpose of education and rehabilitation of those persons  
492 committed because of abuse of controlled substances.

493 (b) Any person convicted under Section 41-29-139 who is  
494 found to be dependent upon or addicted to any controlled substance  
495 shall be required, as a part of the sentence otherwise imposed, or  
496 in lieu of imprisonment in cases of parole, probation or  
497 suspension of sentence, to receive medical treatment for such  
498 dependency or addiction or successfully complete a treatment  
499 program as provided in Sections 1 through 4 of Senate Bill No.

500 \_\_\_\_\_ , 2002 Regular Session. The regimen of medical treatment may  
501 include confinement in a medical facility of any correctional  
502 institution, detention center or hospital, or at any center or  
503 facility established for treatment of those persons committed  
504 because of a dependence or addiction to controlled substances.

505 (c) Those persons previously convicted of a felony under  
506 Section 41-29-139 and who are now confined at the Mississippi  
507 State Hospital at Whitfield, Mississippi, or at the East  
508 Mississippi State Hospital at Meridian, Mississippi, for the term  
509 of their sentence shall remain under the jurisdiction of the  
510 Mississippi Department of Corrections and shall be required to  
511 abide by all reasonable rules and regulations promulgated by the  
512 director and staff of said institutions and of the Department of  
513 Corrections. Any persons so confined who shall refuse to abide by  
514 said rules or who attempt an escape or who shall escape shall be  
515 transferred to the State Penitentiary or to a county jail, where  
516 appropriate, to serve the remainder of the term of imprisonment;  
517 this provision shall not preclude prosecution and conviction for  
518 escape from said institutions.

519 (d) (1) If any person who has not previously been convicted  
520 of violating Section 41-29-139, or the laws of the United States





521 or of another state relating to narcotic drugs, stimulant or  
522 depressant substances, other controlled substances or marihuana is  
523 found to be guilty of a violation of subsection (c) or (d) of  
524 Section 41-29-139, after trial or upon a plea of guilty, the court  
525 may, without entering a judgment of guilty and with the consent of  
526 such person, defer further proceedings and place him on probation  
527 upon such reasonable conditions as it may require and for such  
528 period, not to exceed three (3) years, as the court may prescribe.  
529 Upon violation of a condition of the probation, the court may  
530 enter an adjudication of guilt and proceed as otherwise provided.  
531 The court may, in its discretion, dismiss the proceedings against  
532 such person and discharge him from probation before the expiration  
533 of the maximum period prescribed for such person's probation. If  
534 during the period of his probation such person does not violate  
535 any of the conditions of the probation, then upon expiration of  
536 such period the court shall discharge such person and dismiss the  
537 proceedings against him. Discharge and dismissal under this  
538 subsection shall be without court adjudication of guilt, but a  
539 nonpublic record thereof shall be retained by the bureau solely  
540 for the purpose of use by the courts in determining whether or  
541 not, in subsequent proceedings, such person qualifies under this  
542 subsection. Such discharge or dismissal shall not be deemed a  
543 conviction for purposes of disqualifications or disabilities  
544 imposed by law upon conviction of a crime, including the penalties  
545 prescribed under this article for second or subsequent conviction,  
546 or for any other purpose. Discharge and dismissal under this  
547 subsection may occur only once with respect to any person; and

548           (2) Upon the dismissal of such person and discharge of  
549 proceedings against him under paragraph (1) of this subsection, or  
550 with respect to a person who has been convicted and adjudged  
551 guilty of an offense under subsection (c) or (d) of Section  
552 41-29-139, or for possession of narcotics, stimulants,  
553 depressants, hallucinogens, marihuana, other controlled substances



554 or paraphernalia under prior laws of this state, such person, if  
555 he had not reached his twenty-sixth birthday at the time of the  
556 offense, may apply to the court for an order to expunge from all  
557 official records, other than the nonpublic records to be retained  
558 by the bureau under paragraph (1) of this subsection, all  
559 recordation relating to his arrest, indictment, trial, finding of  
560 guilty, and dismissal and discharge pursuant to this section. If  
561 the court determines, after hearing, that such person was  
562 dismissed and the proceedings against him discharged and that he  
563 had not reached his twenty-sixth birthday at the time of the  
564 offense, or that such person had satisfactorily served his  
565 sentence or period of probation and parole, and that he had not  
566 reached his twenty-sixth birthday at the time of the offense, it  
567 shall enter such order. The effect of such order shall be to  
568 restore such person, in the contemplation of the law, to the  
569 status he occupied before such arrest or indictment. No person as  
570 to whom such order has been entered shall be held thereafter under  
571 any provision of any law to be guilty of perjury or otherwise  
572 giving a false statement by reason of his failures to recite or  
573 acknowledge such arrest, or indictment or trial in response to any  
574 inquiry made of him for any purpose.

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

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

584 (g) It is the intent and purpose of the Legislature to  
585 promote the rehabilitation of persons convicted of offenses under  
586 the Uniform Controlled Substances Law.



587           **SECTION 7.** This act shall take effect and be in force from  
588 and after July 1, 2002.

