MISSISSIPPI LEGISLATURE
By: Representative Watson

REGULAR SESSION 2003
To: Judiciary A

HOUSE BILL NO. 1058

AN ACT TO AMEND SECTIONS 41-29-139, 41-29-150, 47-7-33 AND
99-19-25, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT CERTAIN
NONVIOLENT FIRST-TIME OFFENDERS SHALL BE SENTENCED TO
REHABILITATION FOR DRUG AND ALCOHOL OFFENSES; TO BRING FORWARD
SECTION 63-11-30, MISSISSIPPI CODE OF 1972, FOR PURPOSES OF
AMENDMENT; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 41-29-139, Mississippi Code of 1972, is
amended as follows:

41-29-139. (a) Except as authorized by this article, it is
unlawful for any person knowingly or intentionally:

(1) To sell, barter, transfer, manufacture, distribute,
dispense or possess with intent to sell, barter, transfer,
manufacture, distribute or dispense, a controlled substance; or

(2) To create, sell, barter, transfer, distribute,
dispense or possess with intent to create, sell, barter, transfer,
distribute or dispense, a counterfeit substance.

(b) Except as otherwise provided in subsections (f), (g) and
(h) of this section or in Section 41-29-142, any person who
violates subsection (a) of this section shall be sentenced as
follows:

(1) In the case of controlled substances classified in
Schedule I or II, as set out in Sections 41-29-113 and 41-29-115,
except one (1) ounce or less of marihuana, and except a first
offender as defined in Section 41-29-149(e) who violates
subsection (a) of this section with respect to less than one (1)
kilogram but more than one (1) ounce of marihuana, such person
may, upon conviction, be imprisoned for not more than thirty (30)
years and shall be fined not less than Five Thousand Dollars.

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($5,000.00) nor more than One Million Dollars ($1,000,000.00), or both;

(2) In the case of a first offender who violates subsection (a) of this section with an amount less than one (1) kilogram but more than one (1) ounce of marihuana as classified in Schedule I, as set out in Section 41-29-113, such person is guilty of a felony and upon conviction may be imprisoned for not more than twenty (20) years or fined not more than Thirty Thousand Dollars ($30,000.00), or both;

(3) In the case of one (1) ounce or less of marihuana, such person may, upon conviction, be imprisoned for not more than three (3) years or fined not more than Three Thousand Dollars ($3,000.00), or both;

(4) In the case of controlled substances classified in Schedules III and IV, as set out in Sections 41-29-117 and 41-29-119, such person may, upon conviction, be imprisoned for not more than twenty (20) years and shall be fined not less than One Thousand Dollars ($1,000.00) nor more than Two Hundred Fifty Thousand Dollars ($250,000.00), or both; and

(5) In the case of controlled substances classified in Schedule V, as set out in Section 41-29-121, such person may, upon conviction, be imprisoned for not more than ten (10) years and shall be fined not less than One Thousand Dollars ($1,000.00) nor more than Fifty Thousand Dollars ($50,000.00), or both.

(c) It is unlawful for any person knowingly or intentionally to possess any controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his professional practice, or except as otherwise authorized by this article. The penalties for any violation of this subsection (c) with respect to a controlled substance classified in Schedules I, II, III, IV or V, as set out in Sections 41-29-113, 41-29-115, 41-29-117, 41-29-119 or 41-29-121, including marihuana, shall be...
based on dosage unit as defined herein or the weight of the
controlled substance as set forth herein as appropriate:

"Dosage unit (d.u.)" means a tablet or capsule, or in the
case of a liquid solution, one (1) milliliter. In the case of
lysergic acid diethylamide (LSD) the term, "dosage unit" means a
stamp, square, dot, microdot, tablet or capsule of a controlled
substance.

For any controlled substance that does not fall within the
definition of the term "dosage unit," the penalties shall be based
upon the weight of the controlled substance.

The weight set forth refers to the entire weight of any
mixture or substance containing a detectable amount of the
controlled substance.

If a mixture or substance contains more than one (1)
controlled substance, the weight of the mixture or substance is
assigned to the controlled substance that results in the greater
punishment.

Any person who violates this subsection with respect to:

(1) A controlled substance classified in Schedule I or
II, except marihuana, in the following amounts shall be charged
and sentenced as follows:

(A) Less than one-tenth (0.1) gram or one (1)
dosage unit or less may be charged as a misdemeanor or felony. If
charged by indictment as a felony: by imprisonment not less than
one (1) nor more than four (4) years and a fine not more than Ten
Thousand Dollars ($10,000.00). If charged as a misdemeanor: by
imprisonment for up to one (1) year and a fine not more than One
Thousand Dollars ($1,000.00).

(B) One-tenth (0.1) gram but less than two (2)
grams or two (2) dosage units but less than ten (10) dosage units,
by imprisonment for not less than two (2) years nor more than
eight (8) years and a fine of not more than Fifty Thousand Dollars
($50,000.00).
(C) Two (2) grams but less than ten (10) grams or ten (10) dosage units but less than twenty (20) dosage units, by imprisonment for not less than four (4) years nor more than sixteen (16) years and a fine of not more than Two Hundred Fifty Thousand Dollars ($250,000.00).

(D) Ten (10) grams but less than thirty (30) grams or twenty (20) dosage units but not more than forty (40) dosage units, by imprisonment for not less than six (6) years nor more than twenty-four (24) years and a fine of not more than Five Hundred Thousand Dollars ($500,000.00).

(E) Thirty (30) grams or more or forty (40) dosage units or more, by imprisonment for not less than ten (10) years nor more than thirty (30) years and a fine of not more than One Million Dollars ($1,000,000.00).

(2) Marihuana in the following amounts shall be charged and sentenced as follows:

(A) Thirty (30) grams or less by a fine of not less than One Hundred Dollars ($100.00) nor more than Two Hundred Fifty Dollars ($250.00). The provisions of this paragraph shall be enforceable by summons, provided the offender provides proof of identity satisfactory to the arresting officer and gives written promise to appear in court satisfactory to the arresting officer, as directed by the summons. A second conviction under this section within two (2) years shall be punished by a fine of Two Hundred Fifty Dollars ($250.00) and not less than five (5) days nor more than sixty (60) days in the county jail and mandatory participation in a drug education program, approved by the Division of Alcohol and Drug Abuse of the State Department of Mental Health, unless the court enters a written finding that such drug education program is inappropriate. A third or subsequent conviction under this section within two (2) years is a misdemeanor punishable by a fine of not less than Two Hundred Fifty Dollars ($250.00) nor more than Five Hundred Dollars...
($500.00) and confinement for not less than five (5) days nor more
than six (6) months in the county jail. Upon a first or second
conviction under this section the courts shall forward a report of
such conviction to the Mississippi Bureau of Narcotics which shall
make and maintain a private, nonpublic record for a period not to
exceed two (2) years from the date of conviction. The private,
nonpublic record shall be solely for the use of the courts in
determining the penalties which attach upon conviction under this
section and shall not constitute a criminal record for the purpose
of private or administrative inquiry and the record of each
conviction shall be expunged at the end of the period of two (2)
years following the date of such conviction;

(B) Additionally, a person who is the operator of
a motor vehicle, who possesses on his person or knowingly keeps or
allows to be kept in a motor vehicle within the area of the
vehicle normally occupied by the driver or passengers, more than
one (1) gram, but not more than thirty (30) grams, of marihuana is
guilty of a misdemeanor and upon conviction may be fined not more
than One Thousand Dollars ($1,000.00) and confined for not more
than ninety (90) days in the county jail. For the purposes of
this subsection, such area of the vehicle shall not include the
trunk of the motor vehicle or the areas not normally occupied by
the driver or passengers if the vehicle is not equipped with a
trunk. A utility or glove compartment shall be deemed to be
within the area occupied by the driver and passengers;

(C) More than thirty (30) grams but less than two
hundred fifty (250) grams may be fined not more than One Thousand
Dollars ($1,000.00), or confined in the county jail for not more
than one (1) year, or both; or fined not more than Three Thousand
Dollars ($3,000.00), or imprisoned in the State Penitentiary for
not more than three (3) years, or both;

(D) Two hundred fifty (250) grams but less than
five hundred (500) grams, by imprisonment for not less than two
(2) years nor more than eight (8) years and by a fine of not more than Fifty Thousand Dollars ($50,000.00);

(E) Five hundred (500) grams but less than one (1) kilogram, by imprisonment for not less than four (4) years nor more than sixteen (16) years and a fine of less than Two Hundred Fifty Thousand Dollars ($250,000.00);

(F) One (1) kilogram but less than five (5) kilograms, by imprisonment for not less than six (6) years nor more than twenty-four (24) years and a fine of not more than Five Hundred Thousand Dollars ($500,000.00);

(G) Five (5) kilograms or more, by imprisonment for not less than ten (10) years nor more than thirty (30) years and a fine of not more than One Million Dollars ($1,000,000.00).

(3) A controlled substance classified in Schedule III, IV or V as set out in Sections 41-29-117 through 41-29-121, upon conviction, may be punished as follows:

(A) Less than fifty (50) grams or less than one hundred (100) dosage units is a misdemeanor and punishable by not more than one (1) year and a fine of not more than One Thousand Dollars ($1,000.00).

(B) Fifty (50) grams but less than one hundred fifty (150) grams or one hundred (100) dosage units but less than five hundred (500) dosage units, by imprisonment for not less than one (1) year nor more than four (4) years and a fine of not more than Ten Thousand Dollars ($10,000.00).

(C) One hundred fifty (150) grams but less than three hundred (300) grams or five hundred (500) dosage units but less than one thousand (1,000) dosage units, by imprisonment for not less than two (2) years nor more than eight (8) years and a fine of not more than Fifty Thousand Dollars ($50,000.00).

(D) Three hundred (300) grams but less than five hundred (500) grams or one thousand (1,000) dosage units but less than two thousand five hundred (2,500) dosage units, by punishment...
imprisonment for not less than four (4) years nor more than sixteen (16) years and a fine of not more than Two Hundred Fifty Thousand Dollars ($250,000.00).

(E) Five hundred (500) grams or more or two thousand five hundred (2,500) dosage units or more, by imprisonment for not less than six (6) years nor more than twenty-four (24) years and a fine of not more than Five Hundred Thousand Dollars ($500,000.00).

(d) (1) It is unlawful for a person who is not authorized by the State Board of Medical Licensure, State Board of Pharmacy, or other lawful authority to use, or to possess with intent to use, paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance in violation of the Uniform Controlled Substances Law. Any person who violates this subsection is guilty of a misdemeanor and upon conviction may be confined in the county jail for not more than six (6) months, or fined not more than Five Hundred Dollars ($500.00), or both; however, no person shall be charged with a violation of this subsection when such person is also charged with the possession of one (1) ounce or less of marihuana under subsection (c)(2)(A) of this section.

(2) It is unlawful for any person to deliver, sell, possess with intent to deliver or sell, or manufacture with intent to deliver or sell, paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of the Uniform Controlled Substances Law. Any person who violates this subsection is guilty of a misdemeanor and upon conviction may
be confined in the county jail for not more than six (6) months, or fined not more than Five Hundred Dollars ($500.00), or both.

(3) Any person eighteen (18) years of age or over who violates subsection (d)(2) of this section by delivering or selling paraphernalia to a person under eighteen (18) years of age who is at least three (3) years his junior is guilty of a misdemeanor and upon conviction may be confined in the county jail for not more than one (1) year, or fined not more than One Thousand Dollars ($1,000.00), or both.

(4) It is unlawful for any person to place in any newspaper, magazine, handbill, or other publication any advertisement, knowing, or under circumstances where one reasonably should know, that the purpose of the advertisement, in whole or in part, is to promote the sale of objects designed or intended for use as paraphernalia. Any person who violates this subsection is guilty of a misdemeanor and upon conviction may be confined in the county jail for not more than six (6) months, or fined not more than Five Hundred Dollars ($500.00), or both.

(e) It shall be unlawful for any physician practicing medicine in this state to prescribe, dispense or administer any amphetamine or amphetamine-like anorectics and/or central nervous system stimulants classified in Schedule II, pursuant to Section 41-29-115, for the exclusive treatment of obesity, weight control or weight loss. Any person who violates this subsection, upon conviction, is guilty of a misdemeanor and may be confined for a period not to exceed six (6) months, or fined not more than One Thousand Dollars ($1,000.00), or both.

(f) Except as otherwise authorized in this article, any person twenty-one (21) years of age or older who knowingly sells, barters, transfers, manufactures, distributes or dispenses during any twelve (12) consecutive month period: (i) ten (10) pounds or more of marihuana; (ii) two (2) ounces or more of heroin; (iii) two (2) or more ounces of cocaine or of any mixture containing...
cocaine as described in Section 41-29-105(s), Mississippi Code of 1972; or (iv) one hundred (100) or more dosage units of morphine, Demerol or Dilaudid, shall be guilty of a felony and, upon conviction thereof, shall be sentenced to life imprisonment and such sentence shall not be reduced or suspended nor shall such person be eligible for probation or parole, the provisions of Sections 41-29-149, 47-5-139, 47-7-3 and 47-7-33, Mississippi Code of 1972, to the contrary notwithstanding. The provisions of this subsection shall not apply to any person who furnishes information and assistance to the bureau or its designee which, in the opinion of the trial judge objectively should or would have aided in the arrest or prosecution of others who violate this subsection. The accused shall have adequate opportunity to develop and make a record of all information and assistance so furnished.

(g) (1) Any person trafficking in controlled substances shall be guilty of a felony and upon conviction shall be imprisoned for a term of thirty (30) years and such sentence shall not be reduced or suspended nor shall such person be eligible for probation or parole, the provisions of Sections 41-29-149, 47-5-139, 47-7-3 and 47-7-33, Mississippi Code of 1972, to the contrary notwithstanding and shall be fined not less than Five Thousand Dollars ($5,000.00) nor more than One Million Dollars ($1,000,000.00).

(2) "Trafficking in controlled substances" as used herein means to engage in three (3) or more component offenses within any twelve (12) consecutive month period where at least two (2) of the component offenses occurred in different counties. A component offense is any act which would constitute a violation of subsection (a) of this section. Prior convictions shall not be used as component offenses to establish the charge of trafficking in controlled substances.

(3) The charge of trafficking in controlled substances shall be set forth in one (1) count of an indictment with each of
the component offenses alleged therein and it may be charged and tried in any county where a component offense occurred. An indictment for trafficking in controlled substances may also be returned by the State Grand Jury of Mississippi provided at least two (2) of the component offenses occurred in different circuit court districts.

(h) Any person who is a first offender of subsection (a) of this section which does not involve the sale, distribution, manufacture or other nonpossession offense of controlled substances shall be sentenced to rehabilitation if the court determines that such rehabilitation is in the best interest of the offender.

SECTION 2. Section 41-29-150, Mississippi Code of 1972, is amended as follows:

41-29-150. (a) Except as otherwise provided for first-time nonviolent offenders in Section 41-29-139(h), any person convicted under Section 41-29-139 may be required, in the discretion of the court, as a part of the sentence otherwise imposed, or in lieu of imprisonment in cases of probation or suspension of sentence, to attend a course of instruction conducted by the bureau, the State Board of Health, or any similar agency, on the effects, medically, psychologically and socially, of the misuse of controlled substances. Said course may be conducted at any correctional institution, detention center or hospital, or at any center or treatment facility established for the purpose of education and rehabilitation of those persons committed because of abuse of controlled substances.

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

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

(d) (1) If any person who has not previously been convicted
of violating Section 41-29-139, or the laws of the United States
or of another state relating to narcotic drugs, stimulant or
depressant substances, other controlled substances or marihuana is
found to be guilty of a violation of subsection (c) or (d) of
Section 41-29-139, after trial or upon a plea of guilty, the court
may, without entering a judgment of guilty and with the consent of
such person, defer further proceedings and place him on probation
upon such reasonable conditions as it may require and for such
period, not to exceed three (3) years, as the court may prescribe.
Upon violation of a condition of the probation, the court may
enter an adjudication of guilt and proceed as otherwise provided.
The court may, in its discretion, dismiss the proceedings against
such person and discharge him from probation before the expiration
of the maximum period prescribed for such person's probation. If
during the period of his probation such person does not violate any of the conditions of the probation, then upon expiration of such period the court shall discharge such person and dismiss the proceedings against him. Discharge and dismissal under this subsection shall be without court adjudication of guilt, but a nonpublic record thereof shall be retained by the bureau solely for the purpose of use by the courts in determining whether or not, in subsequent proceedings, such person qualifies under this subsection. Such discharge or dismissal shall not be deemed a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime, including the penalties prescribed under this article for second or subsequent conviction, or for any other purpose. Discharge and dismissal under this subsection may occur only once with respect to any person; and

(2) Upon the dismissal of such person and discharge of proceedings against him under paragraph (1) of this subsection, or with respect to a person who has been convicted and adjudged guilty of an offense under subsection (c) or (d) of Section 41-29-139, or for possession of narcotics, stimulants, depressants, hallucinogens, marihuana, other controlled substances or paraphernalia under prior laws of this state, such person, if he had not reached his twenty-sixth birthday at the time of the offense, may apply to the court for an order to expunge from all official records, other than the nonpublic records to be retained by the bureau under paragraph (1) of this subsection, all recordation relating to his arrest, indictment, trial, finding of guilty, and dismissal and discharge pursuant to this section. If the court determines, after hearing, that such person was dismissed and the proceedings against him discharged and that he had not reached his twenty-sixth birthday at the time of the offense, or that such person had satisfactorily served his sentence or period of probation and parole, and that he had not reached his twenty-sixth birthday at the time of the offense, it
shall enter such order. The effect of such order shall be to restore such person, in the contemplation of the law, to the status he occupied before such arrest or indictment. No person as to whom such order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or trial in response to any inquiry made of him for any purpose.

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

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

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

SECTION 3. Section 47-7-33, Mississippi Code of 1972, is amended as follows:

47-7-33. (1) When it appears to the satisfaction of any circuit court or county court in the State of Mississippi, having original jurisdiction over criminal actions, or to the judge thereof, that the ends of justice and the best interest of the public, as well as the defendant, will be served thereby, such court, in termtime or in vacation, shall have the power, after conviction or a plea of guilty, except in a case where a death sentence or life imprisonment is the maximum penalty which may be imposed or where the defendant has been convicted of a felony on a previous occasion in any court or courts of the United States and of any state or territories thereof, to suspend the imposition or
execution of sentence, and place the defendant on probation as herein provided or require rehabilitation for first-time nonviolent offenders of the Implied Consent Law or first-time offenders of violations of the Controlled Substances Law not involving sale, distribution or manufacture, except that the court shall not suspend the execution of a sentence of imprisonment after the defendant shall have begun to serve such sentence. In placing any defendant on probation, the court, or judge, shall direct that such defendant be under the supervision of the Department of Corrections.

(2) When any circuit or county court places an offender on probation, the court shall give notice to the Mississippi Department of Corrections within fifteen (15) days of the court's decision to place the offender on probation. Notice shall be delivered to the central office of the Mississippi Department of Corrections and to the regional office of the department which will be providing supervision to the offender on probation.

(3) When any circuit court or county court places a person on probation in accordance with the provisions of this section and that person is ordered to make any payments to his family, if any member of his family whom he is ordered to support is receiving public assistance through the State Department of Public Welfare, the court shall order him to make such payments to the county welfare officer of the county rendering public assistance to his family, for the sole use and benefit of said family.

SECTION 4. Section 99-19-25, Mississippi Code of 1972, is amended as follows:

99-19-25. The circuit courts and the county courts, in misdemeanor cases, are hereby authorized to suspend a sentence and to suspend the execution of a sentence, or any part thereof, on such terms as may be imposed by the judge of the court. The court shall sentence first-time nonviolent offenders of the Implied Consent Law or first-time nonviolent offenders of the Controlled
Substances Law not involving sale, distribution or manufacture to rehabilitation. Provided, the suspension of imposition or execution of a sentence hereunder may not be revoked after a period of five (5) years.

The justice courts, in misdemeanor cases, are hereby authorized to suspend sentence and to suspend the execution of a sentence, or any part thereof, on such terms as may be imposed by the judge of the court. Provided, the suspension of imposition or execution of a sentence hereunder may not be revoked after a period of two (2) years. Provided, however, the justice courts in cases arising under Sections 49-7-81, 49-7-95 and the Implied Consent Law shall not suspend any fine.

SECTION 5. Section 63-11-30, Mississippi Code of 1972, is brought forward as follows:

63-11-30. (1) It is unlawful for any person to drive or otherwise operate a vehicle within this state who (a) is under the influence of intoxicating liquor; (b) is under the influence of any other substance which has impaired such person's ability to operate a motor vehicle; (c) has an alcohol concentration of eight one-hundredths percent (.08%) or more for persons who are above the legal age to purchase alcoholic beverages under state law, or two one-hundredths percent (.02%) or more for persons who are below the legal age to purchase alcoholic beverages under state law, in the person's blood based upon grams of alcohol per one hundred (100) milliliters of blood or grams of alcohol per two hundred ten (210) liters of breath as shown by a chemical analysis of such person's breath, blood or urine administered as authorized by this chapter; (d) is under the influence of any drug or controlled substance, the possession of which is unlawful under the Mississippi Controlled Substances Law; or (e) has an alcohol concentration of four one-hundredths percent (.04%) or more in the person's blood, based upon grams of alcohol per one hundred (100) milliliters of blood or grams of alcohol per two hundred ten (210)
liters of breath as shown by a chemical analysis of such person's
blood, breath or urine, administered as authorized by this chapter
for persons operating a commercial motor vehicle.

(2) (a) Except as otherwise provided in subsection (3), upon
conviction of any person for the first offense of violating
subsection (1) of this section where chemical tests provided for
under Section 63-11-5 were given, or where chemical test results
are not available, such person shall be fined not less than Two
Hundred Fifty Dollars ($250.00) nor more than One Thousand Dollars
($1,000.00), or imprisoned for not more than forty-eight (48) hours in
jail or both; and the court shall order such person to
attend and complete an alcohol safety education program as
provided in Section 63-11-32. The court may substitute attendance
at a victim impact panel instead of forty-eight (48) hours in
jail. In addition, the Department of Public Safety, the
Commissioner of Public Safety or his duly authorized agent shall,
after conviction and upon receipt of the court abstract, suspend
the driver's license and driving privileges of such person for a
period of not less than ninety (90) days and until such person
attends and successfully completes an alcohol safety education
program as herein provided; provided, however, in no event shall
such period of suspension exceed one (1) year. Commercial driving
privileges shall be suspended as provided in Section 63-1-83.
The circuit court having jurisdiction in the county in which
the conviction was had or the circuit court of the person's county
of residence may reduce the suspension of driving privileges under
Section 63-11-30(2)(a) if the denial of which would constitute a
hardship on the offender, except that no court may issue such an
order reducing the suspension of driving privileges under this
subsection until thirty (30) days have elapsed from the effective
date of the suspension. Hardships shall only apply to first
offenses under Section 63-11-30(1), and shall not apply to second,
third or subsequent convictions of any person violating subsection
(1) of this section. A reduction of suspension on the basis of hardship shall not be available to any person who refused to submit to a chemical test upon the request of a law enforcement officer as provided in Section 63-11-5. When the petition is filed, such person shall pay to the circuit clerk of the court where the petition is filed a fee of Fifty Dollars ($50.00), which shall be deposited into the State General Fund to the credit of a special fund hereby created in the State Treasury to be used for alcohol or drug abuse treatment and education, upon appropriation by the Legislature. This fee shall be in addition to any other court costs or fees required for the filing of petitions.

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

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

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

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

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

(b) Except as otherwise provided in subsection (3),
upon any second conviction of any person violating subsection (1)
of this section, the offenses being committed within a period of
five (5) years, such person shall be fined not less than Six
Hundred Dollars ($600.00) nor more than One Thousand Five Hundred
Dollars ($1,500.00), shall be imprisoned not less than five (5)
days nor more than one (1) year and sentenced to community service
work for not less than ten (10) days nor more than one (1) year.
The minimum penalties shall not be suspended or reduced by the
court and no prosecutor shall offer any suspension or sentence
reduction as part of a plea bargain. Except as may otherwise be
provided by paragraph (d) of this subsection, the Commissioner of
Public Safety shall suspend the driver's license of such person
for two (2) years. Suspension of a commercial driver's license
shall be governed by Section 63-1-83. Upon any second conviction
as described in this paragraph, the court shall ascertain whether
the defendant is married, and if the defendant is married shall
obtain the name and address of the defendant's spouse; the clerk
of the court shall submit this information to the Department of
Public Safety. Further, the commissioner shall notify in writing,
by certified mail, return receipt requested, the owner of the
vehicle and the spouse, if any, of the person convicted of the
second violation of the possibility of forfeiture of the vehicle
if such person is convicted of a third violation of subsection (1)
of this section. The owner of the vehicle and the spouse shall be considered notified under this paragraph if the notice is deposited in the United States mail and any claim that the notice was not in fact received by the addressee shall not affect a subsequent forfeiture proceeding.

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

(c) Except as otherwise provided in subsection (3), for any third or subsequent conviction of any person violating subsection (1) of this section, the offenses being committed within a period of five (5) years, such person shall be guilty of a felony and fined not less than Two Thousand Dollars ($2,000.00) nor more than Five Thousand Dollars ($5,000.00), shall be imprisoned not less than one (1) year nor more than five (5) years in the State Penitentiary. The minimum penalties shall not be suspended or reduced by the court and no prosecutor shall offer any suspension or sentence reduction as part of a plea bargain. The law enforcement agency shall seize the vehicle operated by any person charged with a third or subsequent violation of subsection (1) of this section, if such convicted person was driving the vehicle at the time the offense was committed. Such vehicle may be forfeited in the manner provided by Sections 63-11-49 through 63-11-53. Except as may otherwise be provided by paragraph (e) of this subsection, the Commissioner of Public Safety shall suspend the driver's license of such person for five (5) years. The suspension of a commercial driver's license shall be governed by Section 63-1-83.

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

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

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

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

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

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

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

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

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

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

Proof of the hardship shall be established by clear and
convincing evidence which shall be supported by independent
documentation.
Upon any second conviction of any person under the age of twenty-one (21) years violating subsection (1) of this section, the offenses being committed within a period of five (5) years, such person shall be fined not more than Five Hundred Dollars ($500.00) and shall have his driver's license suspended for one (1) year.

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

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

Any person under the age of twenty-one (21) years convicted of a third or subsequent violation of subsection (1) of this section shall complete treatment of an alcohol and/or drug abuse program at a site certified by the Department of Mental Health.
(g) The court shall have the discretion to rule that a first offense of this subsection by a person under the age of twenty-one (21) years shall be nonadjudicated. Such person shall be eligible for nonadjudication only once. The Department of Public Safety shall maintain a confidential registry of all cases which are nonadjudicated as provided in this paragraph. A judge who rules that a case is nonadjudicated shall forward such ruling to the Department of Public Safety. Judges and prosecutors involved in implied consent violations shall have access to the confidential registry for the purpose of determining nonadjudication eligibility. A record of a person who has been nonadjudicated shall be maintained for five (5) years or until such person reaches the age of twenty-one (21) years. Any person whose confidential record has been disclosed in violation of this paragraph shall have a civil cause of action against the person and/or agency responsible for such disclosure.

(4) In addition to the other penalties provided in this section, every person refusing a law enforcement officer's request to submit to a chemical test of his breath as provided in this chapter, or who was unconscious at the time of a chemical test and refused to consent to the introduction of the results of such test in any prosecution, shall suffer an additional suspension of driving privileges as follows:

The Commissioner of Public Safety or his authorized agent shall suspend the driver's license or permit to drive or deny the issuance of a license or permit to such person as provided for first, second and third or subsequent offenders in subsection (2) of this section. Such suspension shall be in addition to any suspension imposed pursuant to subsection (1) of Section 63-11-23. The minimum suspension imposed under this subsection shall not be reduced and no prosecutor is authorized to offer a reduction of such suspension as part of a plea bargain.
(5) Every person who operates any motor vehicle in violation of the provisions of subsection (1) of this section and who in a negligent manner causes the death of another or mutilates, disfigures, permanently disables or destroys the tongue, eye, lip, nose or any other limb, organ or member of another shall, upon conviction, be guilty of a felony and shall be committed to the custody of the State Department of Corrections for a period of time of not less than five (5) years and not to exceed twenty-five (25) years.

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

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

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

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

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

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

SECTION 6. This act shall take effect and be in force from and after July 1, 2003.