

By: Representative Baker (74th)

To: Judiciary A; Juvenile
Justice

HOUSE BILL NO. 803

1 AN ACT TO AMEND SECTIONS 63-11-30, 43-21-159 AND 43-21-605,
2 MISSISSIPPI CODE OF 1972, TO PROVIDE THAT FIRST AND SECOND DUI
3 VIOLATIONS OF PERSONS UNDER THE AGE OF 18 MAY BE TRANSFERRED TO
4 YOUTH COURT BECAUSE OF THE GREATER DISPOSITIONAL RESOURCES OF
5 YOUTH COURT; TO REQUIRE THE TRANSFER OF THIRD VIOLATIONS TO YOUTH
6 COURT BECAUSE OF THE GREATER DISPOSITIONAL RESOURCES OF YOUTH
7 COURT; AND FOR RELATED PURPOSES.

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

9 **SECTION 1.** Section 63-11-30, Mississippi Code of 1972, is
10 amended as follows:

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

30 liters of breath as shown by a chemical analysis of such person's
31 blood, breath or urine, administered as authorized by this chapter
32 for persons operating a commercial motor vehicle.

33 (2) (a) Except as otherwise provided in subsection (3),
34 upon conviction of any person for the first offense of violating
35 subsection (1) of this section where chemical tests provided for
36 under Section 63-11-5 were given, or where chemical test results
37 are not available, such person shall be fined not less than Two
38 Hundred Fifty Dollars (\$250.00) nor more than One Thousand Dollars
39 (\$1,000.00), or imprisoned for not more than forty-eight (48)
40 hours in jail or both; and the court shall order such person to
41 attend and complete an alcohol safety education program as
42 provided in Section 63-11-32. The court may substitute attendance
43 at a victim impact panel instead of forty-eight (48) hours in
44 jail. In addition, the Department of Public Safety, the
45 Commissioner of Public Safety or his duly authorized agent shall,
46 after conviction and upon receipt of the court abstract, suspend
47 the driver's license and driving privileges of such person for a
48 period of not less than ninety (90) days and until such person
49 attends and successfully completes an alcohol safety education
50 program as herein provided; provided, however, in no event shall
51 such period of suspension exceed one (1) year. Commercial driving
52 privileges shall be suspended as provided in Section 63-1-83.

53 The circuit court having jurisdiction in the county in which
54 the conviction was had or the circuit court of the person's county
55 of residence may reduce the suspension of driving privileges under
56 Section 63-11-30(2)(a) if the denial of which would constitute a
57 hardship on the offender, except that no court may issue such an
58 order reducing the suspension of driving privileges under this
59 subsection until thirty (30) days have elapsed from the effective
60 date of the suspension. Hardships shall only apply to first
61 offenses under Section 63-11-30(1), and shall not apply to second,
62 third or subsequent convictions of any person violating subsection

63 (1) of this section. A reduction of suspension on the basis of
64 hardship shall not be available to any person who refused to
65 submit to a chemical test upon the request of a law enforcement
66 officer as provided in Section 63-11-5. When the petition is
67 filed, such person shall pay to the circuit clerk of the court
68 where the petition is filed a fee of Fifty Dollars (\$50.00), which
69 shall be deposited into the State General Fund to the credit of a
70 special fund hereby created in the State Treasury to be used for
71 alcohol or drug abuse treatment and education, upon appropriation
72 by the Legislature. This fee shall be in addition to any other
73 court costs or fees required for the filing of petitions.

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

82 The order entered under the provisions of this subsection
83 shall contain the specific grounds upon which hardship was
84 determined, and shall order the petitioner to attend and complete
85 an alcohol safety education program as provided in Section
86 63-11-32. A certified copy of such order shall be delivered to
87 the Commissioner of Public Safety by the clerk of the court within
88 five (5) days of the entry of the order. The certified copy of
89 such order shall contain information which will identify the
90 petitioner, including, but not limited to, the name, mailing
91 address, street address, social security number and driver's
92 license number of the petitioner.

93 At any time following at least thirty (30) days of suspension
94 for a first offense violation of this section, the court may grant
95 the person hardship driving privileges upon written petition of

96 the defendant, if it finds reasonable cause to believe that
97 revocation would hinder the person's ability to:

98 (i) Continue his employment;

99 (ii) Continue attending school or an educational
100 institution; or

101 (iii) Obtain necessary medical care.

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

105 (b) Except as otherwise provided in subsection (3),
106 upon any second conviction of any person violating subsection (1)
107 of this section, the offenses being committed within a period of
108 five (5) years, such person shall be fined not less than Six
109 Hundred Dollars (\$600.00) nor more than One Thousand Five Hundred
110 Dollars (\$1,500.00), shall be imprisoned not less than five (5)
111 days nor more than one (1) year and sentenced to community service
112 work for not less than ten (10) days nor more than one (1) year.
113 The minimum penalties shall not be suspended or reduced by the
114 court and no prosecutor shall offer any suspension or sentence
115 reduction as part of a plea bargain. Except as may otherwise be
116 provided by paragraph (d) of this subsection, the Commissioner of
117 Public Safety shall suspend the driver's license of such person
118 for two (2) years. Suspension of a commercial driver's license
119 shall be governed by Section 63-1-83. Upon any second conviction
120 as described in this paragraph, the court shall ascertain whether
121 the defendant is married, and if the defendant is married shall
122 obtain the name and address of the defendant's spouse; the clerk
123 of the court shall submit this information to the Department of
124 Public Safety. Further, the commissioner shall notify in writing,
125 by certified mail, return receipt requested, the owner of the
126 vehicle and the spouse, if any, of the person convicted of the
127 second violation of the possibility of forfeiture of the vehicle
128 if such person is convicted of a third violation of subsection (1)

129 of this section. The owner of the vehicle and the spouse shall be
130 considered notified under this paragraph if the notice is
131 deposited in the United States mail and any claim that the notice
132 was not in fact received by the addressee shall not affect a
133 subsequent forfeiture proceeding.

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

137 (c) * * * For any third or subsequent conviction of any
138 person violating subsection (1) of this section, the offenses
139 being committed within a period of five (5) years, if such person
140 is under the age of eighteen (18) years, the court shall transfer
141 the case to the youth court for disposition in accordance with
142 Section 43-21-605, otherwise such person shall be guilty of a
143 felony and fined not less than Two Thousand Dollars (\$2,000.00)
144 nor more than Five Thousand Dollars (\$5,000.00), and shall be
145 imprisoned not less than one (1) year nor more than five (5) years
146 in the State Penitentiary. The minimum penalties shall not be
147 suspended or reduced by the court and no prosecutor shall offer
148 any suspension or sentence reduction as part of a plea bargain.
149 The law enforcement agency shall seize the vehicle operated by any
150 person charged with a third or subsequent violation of subsection
151 (1) of this section, if such convicted person was driving the
152 vehicle at the time the offense was committed. Such vehicle may
153 be forfeited in the manner provided by Sections 63-11-49 through
154 63-11-53. Except as may otherwise be provided by paragraph (e) of
155 this subsection, the Commissioner of Public Safety shall suspend
156 the driver's license of such person for five (5) years. The
157 suspension of a commercial driver's license shall be governed by
158 Section 63-1-83.

159 (d) Except as otherwise provided in subsection (3), any
160 person convicted of a second violation of subsection (1) of this
161 section shall receive an in-depth diagnostic assessment, and if as

162 a result of such assessment is determined to be in need of
163 treatment of his alcohol and/or drug abuse problem, such person
164 shall successfully complete treatment of his alcohol and/or drug
165 abuse problem at a program site certified by the Department of
166 Mental Health. Such person shall be eligible for reinstatement of
167 his driving privileges upon the successful completion of such
168 treatment after a period of one (1) year after such person's
169 driver's license is suspended. Each person who receives a
170 diagnostic assessment shall pay a fee representing the cost of
171 such assessment. Each person who participates in a treatment
172 program shall pay a fee representing the cost of such treatment.

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

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

192 (3) (a) This subsection shall be known and may be cited as
193 Zero Tolerance for Minors. The provisions of this subsection
194 shall apply only for the first offense or second offense of

195 violating subsection (1) of this section when a person under the
196 age of twenty-one (21) years has a blood alcohol concentration two
197 one-hundredths percent (.02%) or more, but lower than eight
198 one-hundredths percent (.08%). If such person's blood alcohol
199 concentration is eight one-hundredths percent (.08%) or more, or
200 if such person has two (2) or more prior convictions for violating
201 subsection (1) of this section, the offenses being committed
202 within a period of five (5) years, the provisions of subsection
203 (2) shall apply.

204 (b) Except as otherwise provided in subsection (3) (f)
205 of this section, upon conviction of any person under the age of
206 twenty-one (21) years for the first offense of violating
207 subsection (1) of this section where chemical tests provided for
208 under Section 63-11-5 were given, or where chemical test results
209 are not available, such person shall have his driver's license
210 suspended for ninety (90) days and shall be fined Two Hundred
211 Fifty Dollars (\$250.00); and the court shall order such person to
212 attend and complete an alcohol safety education program as
213 provided in Section 63-11-32. The court may also require
214 attendance at a victim impact panel.

215 The circuit court having jurisdiction in the county in which
216 the conviction was had or the circuit court of the person's county
217 of residence may reduce the suspension of driving privileges under
218 Section 63-11-30(3)(b) if the denial of which would constitute a
219 hardship on the offender, except that no court may issue such an
220 order reducing the suspension of driving privileges under this
221 subsection until thirty (30) days have elapsed from the effective
222 date of the suspension. Hardships shall only apply to first
223 offenses under Section 63-11-30(1), and shall not apply to second,
224 third or subsequent convictions of any person violating subsection
225 (1) of this section. A reduction of suspension on the basis of
226 hardship shall not be available to any person who refused to
227 submit to a chemical test upon the request of a law enforcement

228 officer as provided in Section 63-11-5. When the petition is
229 filed, such person shall pay to the circuit clerk of the court
230 where the petition is filed a fee of Fifty Dollars (\$50.00), which
231 shall be deposited into the State General Fund to the credit of a
232 special fund hereby created in the State Treasury to be used for
233 alcohol or drug abuse treatment and education, upon appropriation
234 by the Legislature. This fee shall be in addition to any other
235 court costs or fees required for the filing of petitions.

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

244 The order entered under the provisions of this subsection
245 shall contain the specific grounds upon which hardship was
246 determined, and shall order the petitioner to attend and complete
247 an alcohol safety education program as provided in Section
248 63-11-32. A certified copy of such order shall be delivered to
249 the Commissioner of Public Safety by the clerk of the court within
250 five (5) days of the entry of the order. The certified copy of
251 such order shall contain information which will identify the
252 petitioner, including, but not limited to, the name, mailing
253 address, street address, social security number and driver's
254 license number of the petitioner.

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

260 (i) Continue his employment;

261 (ii) Continue attending school or an educational
262 institution; or

263 (iii) Obtain necessary medical care.

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

267 (c) Except as otherwise provided in subsection (3)(f)
268 of this section, upon any second conviction of any person under
269 the age of twenty-one (21) years violating subsection (1) of this
270 section, the offenses being committed within a period of five (5)
271 years, such person shall be fined not more than Five Hundred
272 Dollars (\$500.00) and shall have his driver's license suspended
273 for one (1) year.

274 * * *

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

290 * * *

291 (e) The court shall have the discretion to rule that a
292 first offense of this subsection by a person under the age of
293 twenty-one (21) years shall be nonadjudicated. Such person shall

294 be eligible for nonadjudication only once. The Department of
295 Public Safety shall maintain a confidential registry of all cases
296 which are nonadjudicated as provided in this paragraph. A judge
297 who rules that a case is nonadjudicated shall forward such ruling
298 to the Department of Public Safety. Judges and prosecutors
299 involved in implied consent violations shall have access to the
300 confidential registry for the purpose of determining
301 nonadjudication eligibility. A record of a person who has been
302 nonadjudicated shall be maintained for five (5) years or until
303 such person reaches the age of twenty-one (21) years. Any person
304 whose confidential record has been disclosed in violation of this
305 paragraph shall have a civil cause of action against the person
306 and/or agency responsible for such disclosure.

307 (f) Any person under the age of eighteen (18) years
308 convicted of a first or second violation of subsection (1) of this
309 section shall be transferred to the youth court for disposition in
310 accordance with Section 43-21-605.

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

318 The Commissioner of Public Safety or his authorized agent
319 shall suspend the driver's license or permit to drive or deny the
320 issuance of a license or permit to such person as provided for
321 first, second and third or subsequent offenders in subsection (2)
322 of this section. Such suspension shall be in addition to any
323 suspension imposed pursuant to subsection (1) of Section 63-11-23.
324 The minimum suspension imposed under this subsection shall not be
325 reduced and no prosecutor is authorized to offer a reduction of
326 such suspension as part of a plea bargain.

327 (5) Every person who operates any motor vehicle in violation
328 of the provisions of subsection (1) of this section and who in a
329 negligent manner causes the death of another or mutilates,
330 disfigures, permanently disables or destroys the tongue, eye, lip,
331 nose or any other limb, organ or member of another shall, upon
332 conviction, be guilty of a felony and shall be committed to the
333 custody of the State Department of Corrections for a period of
334 time of not less than five (5) years and not to exceed twenty-five
335 (25) years.

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

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

359 shall be imposed upon conviction for a violation of subsection (1)
360 of this section.

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

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

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

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

380 **SECTION 2.** Section 43-21-159, Mississippi Code of 1972, is
381 amended as follows:

382 43-21-159. (1) When a person appears before a court other
383 than the youth court, and it is determined that the person is a
384 child under jurisdiction of the youth court, such court shall,
385 unless the jurisdiction of the offense has been transferred to
386 such court as provided in this chapter, or unless the child has
387 previously been the subject of a transfer from the youth court to
388 the circuit court for trial as an adult and was convicted,
389 immediately dismiss the proceeding without prejudice and forward
390 all documents pertaining to the cause to the youth court; and all
391 entries in permanent records shall be expunged. The youth court

392 shall have the power to order and supervise the expunction or the
393 destruction of such records in accordance with Section 43-21-265.
394 Upon petition therefor, the youth court shall expunge the record
395 of any case within its jurisdiction in which an arrest was made,
396 the person arrested was released and the case was dismissed or the
397 charges were dropped or there was no disposition of such case. In
398 cases where the child is charged with a hunting or fishing
399 violation or a traffic violation whether it be any state or
400 federal law, a violation of the Mississippi Implied Consent Law,
401 or municipal ordinance or county resolution or where the child is
402 charged with a violation of Section 67-3-70, the appropriate
403 criminal court shall proceed to dispose of the same in the same
404 manner as for other adult offenders and it shall not be necessary
405 to transfer the case to the youth court of the county, except for
406 transfers ordered pursuant to Section 63-11-30(2)(c) or Section
407 63-11-30(3). Unless the cause has been transferred, or unless the
408 child has previously been the subject of a transfer from the youth
409 court to the circuit court for trial as an adult, except for
410 violations under the Implied Consent Law, and was convicted, the
411 youth court shall have power on its own motion to remove
412 jurisdiction from any criminal court of any offense including a
413 hunting or fishing violation, a traffic violation, or a violation
414 of Section 67-3-70, committed by a child in a matter under the
415 jurisdiction of the youth court and proceed therewith in
416 accordance with the provisions of this chapter.

417 (2) After conviction and sentence of any child by any other
418 court having original jurisdiction on a misdemeanor charge, and
419 within the time allowed for an appeal of such conviction and
420 sentence, the youth court of the county shall have the full power
421 to stay the execution of the sentence and to release the child on
422 good behavior or on other order as the youth court may see fit to
423 make unless the child has previously been the subject of a
424 transfer from the youth court to the circuit court for trial as an

425 adult and was convicted. When a child is convicted of a
426 misdemeanor and is committed to, incarcerated in or imprisoned in
427 a jail or other place of detention by a criminal court having
428 proper jurisdiction of such charge, such court shall notify the
429 youth court judge or the judge's designee of the conviction and
430 sentence prior to the commencement of such incarceration. The
431 youth court shall have the power to order and supervise the
432 destruction of any records involving children maintained by the
433 criminal court in accordance with Section 43-21-265. However, the
434 youth court shall have the power to set aside a judgment of any
435 other court rendered in any matter over which the youth court has
436 exclusive original jurisdiction, to expunge or destroy the records
437 thereof in accordance with Section 43-21-265, and to order a
438 refund of fines and costs.

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

442 (4) In any case wherein the defendant is a child as defined
443 in this chapter and of which the circuit court has original
444 jurisdiction, the circuit judge, upon a finding that it would be
445 in the best interest of such child and in the interest of justice,
446 may at any stage of the proceedings prior to the attachment of
447 jeopardy transfer such proceedings to the youth court for further
448 proceedings unless the child has previously been the subject of a
449 transfer from the youth court to the circuit court for trial as an
450 adult and was convicted or has previously been convicted of a
451 crime which was in original circuit court jurisdiction, and the
452 youth court shall, upon acquiring jurisdiction, proceed as
453 provided in this chapter for the adjudication and disposition of
454 delinquent child proceeding proceedings. If the case is not
455 transferred to the youth court and the youth is convicted of a
456 crime by any circuit court, the trial judge shall sentence the
457 youth as though such youth was an adult. The circuit court shall

458 not have the authority to commit such child to the custody of the
459 Department of Youth Services for placement in a state-supported
460 training school.

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

464 (6) When a child's driver's license is suspended by the
465 youth court for any reason, the clerk of the youth court shall
466 report the suspension, without a court order under Section
467 43-21-261, to the Commissioner of Public Safety in the same manner
468 as such suspensions are reported in cases involving adults.

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

473 **SECTION 3.** Section 43-21-605, Mississippi Code of 1972, is
474 amended as follows:

475 43-21-605. (1) In delinquency cases, the disposition order
476 may include any of the following alternatives:

477 (a) Release the child without further action;

478 (b) Place the child in the custody of the parents, a
479 relative or other persons subject to any conditions and
480 limitations, including restitution, as the youth court may
481 prescribe;

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

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

488 (e) Order terms of supervision which may include
489 participation in a constructive program of service or education or
490 civil fines not in excess of Five Hundred Dollars (\$500.00), or

491 restitution not in excess of actual damages caused by the child to
492 be paid out of his own assets or by performance of services
493 acceptable to the victims and approved by the youth court and
494 reasonably capable of performance within one (1) year;

495 (f) Suspend the child's driver's license by taking and
496 keeping it in custody of the court for not more than one (1) year;

497 (g) Give legal custody of the child to any of the
498 following:

499 (i) The Department of Human Services for
500 appropriate placement; or

501 (ii) Any public or private organization,
502 preferably community-based, able to assume the education, care and
503 maintenance of the child, which has been found suitable by the
504 court; or

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

524 training school for truancy, unless such child has been
525 adjudicated to have committed an act of delinquency in addition to
526 truancy;

527 (h) Recommend to the child and the child's parents or
528 guardian that the child attend and participate in the Youth
529 Challenge Program under the Mississippi National Guard, as created
530 in Section 43-27-203, subject to the selection of the child for
531 the program by the National Guard; however, the child must
532 volunteer to participate in the program. The youth court may not
533 order any child to apply or attend the program;

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

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

553 (iii) The judge shall assess an additional fine on
554 the juvenile which will be used to pay the costs of implementation
555 of the program and to pay for supervision by police officers and

556 reserve officers. The amount of the fine will be based on the
557 number of hours to which the juvenile has been adjudicated;

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

560 (k) Order the child into a juvenile detention center
561 operated by the county or into a juvenile detention center
562 operated by any county with which the county in which the court is
563 located has entered into a contract for the purpose of housing
564 delinquents. The time period for such detention cannot exceed
565 ninety (90) days. The youth court judge may order that the number
566 of days specified in the detention order be served either
567 throughout the week or on weekends only.

568 (2) In addition to any of the disposition alternatives
569 authorized under subsection (1) of this section, the disposition
570 order in any case in which the child is convicted of an offense
571 under Section 63-11-30 shall include an order denying the driver's
572 license and driving privileges of the child for:

573 (a) Ninety (90) days for any first conviction of
574 violating Section 63-11-30(1); or

575 (b) One (1) year for any second conviction of violating
576 Section 63-11-30(1).

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

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

584 (5) The youth court shall not place a child in another
585 school district who has been expelled from a school district for
586 the commission of a violent act. For the purpose of this
587 subsection, "violent act" means any action which results in death

588 or physical harm to another or an attempt to cause death or
589 physical harm to another.

590 (6) The youth court may require drug testing as part of a
591 disposition order. If a child tests positive, the court may
592 require treatment, counseling and random testing, as it deems
593 appropriate. The costs of such tests shall be paid by the parent,
594 guardian or custodian of the child unless the court specifically
595 finds that the parent, guardian or custodian is unable to pay.

596 **SECTION 4.** This act shall take effect and be in force from
597 and after its passage.