

By: Representative Watson

To: Judiciary A

HOUSE BILL NO. 1054

1 AN ACT TO AMEND SECTIONS 41-29-139, 41-29-150, 47-7-33 AND
2 99-19-25, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT CERTAIN
3 NONVIOLENT FIRST-TIME OFFENDERS SHALL BE SENTENCED TO
4 REHABILITATION FOR DRUG AND ALCOHOL OFFENSES; TO BRING FORWARD
5 SECTION 63-11-30, MISSISSIPPI CODE OF 1972, FOR PURPOSES OF
6 AMENDMENT; AND FOR RELATED PURPOSES.

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

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

10 41-29-139. (a) Except as authorized by this article, it is
11 unlawful for any person knowingly or intentionally:

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

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

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

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

30 (\$5,000.00) nor more than One Million Dollars (\$1,000,000.00), or
31 both;

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

39 (3) In the case of one (1) ounce or less of marihuana,
40 such person may, upon conviction, be imprisoned for not more than
41 three (3) years or fined not more than Three Thousand Dollars
42 (\$3,000.00), or both;

43 (4) In the case of controlled substances classified in
44 Schedules III and IV, as set out in Sections 41-29-117 and
45 41-29-119, such person may, upon conviction, be imprisoned for not
46 more than twenty (20) years and shall be fined not less than One
47 Thousand Dollars (\$1,000.00) nor more than Two Hundred Fifty
48 Thousand Dollars (\$250,000.00), or both; and

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

54 (c) It is unlawful for any person knowingly or intentionally
55 to possess any controlled substance unless the substance was
56 obtained directly from, or pursuant to, a valid prescription or
57 order of a practitioner while acting in the course of his
58 professional practice, or except as otherwise authorized by this
59 article. The penalties for any violation of this subsection (c)
60 with respect to a controlled substance classified in Schedules I,
61 II, III, IV or V, as set out in Sections 41-29-113, 41-29-115,
62 41-29-117, 41-29-119 or 41-29-121, including marihuana, shall be

63 based on dosage unit as defined herein or the weight of the
64 controlled substance as set forth herein as appropriate:

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

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

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

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

80 Any person who violates this subsection with respect to:

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

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

91 (B) One-tenth (0.1) gram but less than two (2)
92 grams or two (2) dosage units but less than ten (10) dosage units,
93 by imprisonment for not less than two (2) years nor more than
94 eight (8) years and a fine of not more than Fifty Thousand Dollars
95 (\$50,000.00).

96 (C) Two (2) grams but less than ten (10) grams or
97 ten (10) dosage units but less than twenty (20) dosage units, by
98 imprisonment for not less than four (4) years nor more than
99 sixteen (16) years and a fine of not more than Two Hundred Fifty
100 Thousand Dollars (\$250,000.00).

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

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

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

112 (A) Thirty (30) grams or less by a fine of not
113 less than One Hundred Dollars (\$100.00) nor more than Two Hundred
114 Fifty Dollars (\$250.00). The provisions of this paragraph shall
115 be enforceable by summons, provided the offender provides proof of
116 identity satisfactory to the arresting officer and gives written
117 promise to appear in court satisfactory to the arresting officer,
118 as directed by the summons. A second conviction under this
119 section within two (2) years shall be punished by a fine of Two
120 Hundred Fifty Dollars (\$250.00) and not less than five (5) days
121 nor more than sixty (60) days in the county jail and mandatory
122 participation in a drug education program, approved by the
123 Division of Alcohol and Drug Abuse of the State Department of
124 Mental Health, unless the court enters a written finding that such
125 drug education program is inappropriate. A third or subsequent
126 conviction under this section within two (2) years is a
127 misdemeanor punishable by a fine of not less than Two Hundred
128 Fifty Dollars (\$250.00) nor more than Five Hundred Dollars

129 (\$500.00) and confinement for not less than five (5) days nor more
130 than six (6) months in the county jail. Upon a first or second
131 conviction under this section the courts shall forward a report of
132 such conviction to the Mississippi Bureau of Narcotics which shall
133 make and maintain a private, nonpublic record for a period not to
134 exceed two (2) years from the date of conviction. The private,
135 nonpublic record shall be solely for the use of the courts in
136 determining the penalties which attach upon conviction under this
137 section and shall not constitute a criminal record for the purpose
138 of private or administrative inquiry and the record of each
139 conviction shall be expunged at the end of the period of two (2)
140 years following the date of such conviction;

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

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

160 (D) Two hundred fifty (250) grams but less than
161 five hundred (500) grams, by imprisonment for not less than two

162 (2) years nor more than eight (8) years and by a fine of not more
163 than Fifty Thousand Dollars (\$50,000.00);

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

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

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

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

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

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

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

192 (D) Three hundred (300) grams but less than five
193 hundred (500) grams or one thousand (1,000) dosage units but less
194 than two thousand five hundred (2,500) dosage units, by

195 imprisonment for not less than four (4) years nor more than
196 sixteen (16) years and a fine of not more than Two Hundred Fifty
197 Thousand Dollars (\$250,000.00).

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

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

218 (2) It is unlawful for any person to deliver, sell,
219 possess with intent to deliver or sell, or manufacture with intent
220 to deliver or sell, paraphernalia, knowing, or under circumstances
221 where one reasonably should know, that it will be used to plant,
222 propagate, cultivate, grow, harvest, manufacture, compound,
223 convert, produce, process, prepare, test, analyze, pack, repack,
224 store, contain, conceal, inject, ingest, inhale, or otherwise
225 introduce into the human body a controlled substance in violation
226 of the Uniform Controlled Substances Law. Any person who violates
227 this subsection is guilty of a misdemeanor and upon conviction may

228 be confined in the county jail for not more than six (6) months,
229 or fined not more than Five Hundred Dollars (\$500.00), or both.

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

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

246 (e) It shall be unlawful for any physician practicing
247 medicine in this state to prescribe, dispense or administer any
248 amphetamine or amphetamine-like anorectics and/or central nervous
249 system stimulants classified in Schedule II, pursuant to Section
250 41-29-115, for the exclusive treatment of obesity, weight control
251 or weight loss. Any person who violates this subsection, upon
252 conviction, is guilty of a misdemeanor and may be confined for a
253 period not to exceed six (6) months, or fined not more than One
254 Thousand Dollars (\$1,000.00), or both.

255 (f) Except as otherwise authorized in this article, any
256 person twenty-one (21) years of age or older who knowingly sells,
257 barter, transfers, manufactures, distributes or dispenses during
258 any twelve (12) consecutive month period: (i) ten (10) pounds or
259 more of marihuana; (ii) two (2) ounces or more of heroin; (iii)
260 two (2) or more ounces of cocaine or of any mixture containing

261 cocaine as described in Section 41-29-105(s), Mississippi Code of
262 1972; or (iv) one hundred (100) or more dosage units of morphine,
263 Demerol or Dilaudid, shall be guilty of a felony and, upon
264 conviction thereof, shall be sentenced to life imprisonment and
265 such sentence shall not be reduced or suspended nor shall such
266 person be eligible for probation or parole, the provisions of
267 Sections 41-29-149, 47-5-139, 47-7-3 and 47-7-33, Mississippi Code
268 of 1972, to the contrary notwithstanding. The provisions of this
269 subsection shall not apply to any person who furnishes information
270 and assistance to the bureau or its designee which, in the opinion
271 of the trial judge objectively should or would have aided in the
272 arrest or prosecution of others who violate this subsection. The
273 accused shall have adequate opportunity to develop and make a
274 record of all information and assistance so furnished.

275 (g) (1) Any person trafficking in controlled substances
276 shall be guilty of a felony and upon conviction shall be
277 imprisoned for a term of thirty (30) years and such sentence shall
278 not be reduced or suspended nor shall such person be eligible for
279 probation or parole, the provisions of Sections 41-29-149,
280 47-5-139, 47-7-3 and 47-7-33, Mississippi Code of 1972, to the
281 contrary notwithstanding and shall be fined not less than Five
282 Thousand Dollars (\$5,000.00) nor more than One Million Dollars
283 (\$1,000,000.00).

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

292 (3) The charge of trafficking in controlled substances
293 shall be set forth in one (1) count of an indictment with each of

294 the component offenses alleged therein and it may be charged and
295 tried in any county where a component offense occurred. An
296 indictment for trafficking in controlled substances may also be
297 returned by the State Grand Jury of Mississippi provided at least
298 two (2) of the component offenses occurred in different circuit
299 court districts.

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

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

308 41-29-150. (a) Except as otherwise provided for first-time
309 nonviolent offenders in Section 41-29-139(h), any person convicted
310 under Section 41-29-139 may be required, in the discretion of the
311 court, as a part of the sentence otherwise imposed, or in lieu of
312 imprisonment in cases of probation or suspension of sentence, to
313 attend a course of instruction conducted by the bureau, the State
314 Board of Health, or any similar agency, on the effects, medically,
315 psychologically and socially, of the misuse of controlled
316 substances. Said course may be conducted at any correctional
317 institution, detention center or hospital, or at any center or
318 treatment facility established for the purpose of education and
319 rehabilitation of those persons committed because of abuse of
320 controlled substances.

321 (b) Any person convicted under Section 41-29-139 who is
322 found to be dependent upon or addicted to any controlled substance
323 shall be required, as a part of the sentence otherwise imposed, or
324 in lieu of imprisonment in cases of parole, probation or
325 suspension of sentence, to receive medical treatment for such
326 dependency or addiction. The regimen of medical treatment may

327 include confinement in a medical facility of any correctional
328 institution, detention center or hospital, or at any center or
329 facility established for treatment of those persons committed
330 because of a dependence or addiction to controlled substances.

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

345 (d) (1) If any person who has not previously been convicted
346 of violating Section 41-29-139, or the laws of the United States
347 or of another state relating to narcotic drugs, stimulant or
348 depressant substances, other controlled substances or marihuana is
349 found to be guilty of a violation of subsection (c) or (d) of
350 Section 41-29-139, after trial or upon a plea of guilty, the court
351 may, without entering a judgment of guilty and with the consent of
352 such person, defer further proceedings and place him on probation
353 upon such reasonable conditions as it may require and for such
354 period, not to exceed three (3) years, as the court may prescribe.
355 Upon violation of a condition of the probation, the court may
356 enter an adjudication of guilt and proceed as otherwise provided.
357 The court may, in its discretion, dismiss the proceedings against
358 such person and discharge him from probation before the expiration
359 of the maximum period prescribed for such person's probation. If

360 during the period of his probation such person does not violate
361 any of the conditions of the probation, then upon expiration of
362 such period the court shall discharge such person and dismiss the
363 proceedings against him. Discharge and dismissal under this
364 subsection shall be without court adjudication of guilt, but a
365 nonpublic record thereof shall be retained by the bureau solely
366 for the purpose of use by the courts in determining whether or
367 not, in subsequent proceedings, such person qualifies under this
368 subsection. Such discharge or dismissal shall not be deemed a
369 conviction for purposes of disqualifications or disabilities
370 imposed by law upon conviction of a crime, including the penalties
371 prescribed under this article for second or subsequent conviction,
372 or for any other purpose. Discharge and dismissal under this
373 subsection may occur only once with respect to any person; and

374 (2) Upon the dismissal of such person and discharge of
375 proceedings against him under paragraph (1) of this subsection, or
376 with respect to a person who has been convicted and adjudged
377 guilty of an offense under subsection (c) or (d) of Section
378 41-29-139, or for possession of narcotics, stimulants,
379 depressants, hallucinogens, marihuana, other controlled substances
380 or paraphernalia under prior laws of this state, such person, if
381 he had not reached his twenty-sixth birthday at the time of the
382 offense, may apply to the court for an order to expunge from all
383 official records, other than the nonpublic records to be retained
384 by the bureau under paragraph (1) of this subsection, all
385 recordation relating to his arrest, indictment, trial, finding of
386 guilty, and dismissal and discharge pursuant to this section. If
387 the court determines, after hearing, that such person was
388 dismissed and the proceedings against him discharged and that he
389 had not reached his twenty-sixth birthday at the time of the
390 offense, or that such person had satisfactorily served his
391 sentence or period of probation and parole, and that he had not
392 reached his twenty-sixth birthday at the time of the offense, it

393 shall enter such order. The effect of such order shall be to
394 restore such person, in the contemplation of the law, to the
395 status he occupied before such arrest or indictment. No person as
396 to whom such order has been entered shall be held thereafter under
397 any provision of any law to be guilty of perjury or otherwise
398 giving a false statement by reason of his failures to recite or
399 acknowledge such arrest, or indictment or trial in response to any
400 inquiry made of him for any purpose.

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

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

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

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

415 47-7-33. (1) When it appears to the satisfaction of any
416 circuit court or county court in the State of Mississippi, having
417 original jurisdiction over criminal actions, or to the judge
418 thereof, that the ends of justice and the best interest of the
419 public, as well as the defendant, will be served thereby, such
420 court, in termtime or in vacation, shall have the power, after
421 conviction or a plea of guilty, except in a case where a death
422 sentence or life imprisonment is the maximum penalty which may be
423 imposed or where the defendant has been convicted of a felony on a
424 previous occasion in any court or courts of the United States and
425 of any state or territories thereof, to suspend the imposition or

426 execution of sentence, and place the defendant on probation as
427 herein provided or require rehabilitation for first-time
428 nonviolent offenders of the Implied Consent Law or first-time
429 offenders of violations of the Controlled Substances Law not
430 involving sale, distribution or manufacture, except that the court
431 shall not suspend the execution of a sentence of imprisonment
432 after the defendant shall have begun to serve such sentence. In
433 placing any defendant on probation, the court, or judge, shall
434 direct that such defendant be under the supervision of the
435 Department of Corrections.

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

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

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

453 99-19-25. The circuit courts and the county courts, in
454 misdemeanor cases, are hereby authorized to suspend a sentence and
455 to suspend the execution of a sentence, or any part thereof, on
456 such terms as may be imposed by the judge of the court. The court
457 shall sentence first-time nonviolent offenders of the Implied
458 Consent Law or first-time nonviolent offenders of the Controlled

459 Substances Law not involving sale, distribution or manufacture to
460 rehabilitation. Provided, the suspension of imposition or
461 execution of a sentence hereunder may not be revoked after a
462 period of five (5) years.

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

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

473 63-11-30. (1) It is unlawful for any person to drive or
474 otherwise operate a vehicle within this state who (a) is under the
475 influence of intoxicating liquor; (b) is under the influence of
476 any other substance which has impaired such person's ability to
477 operate a motor vehicle; (c) has an alcohol concentration of eight
478 one-hundredths percent (.08%) or more for persons who are above
479 the legal age to purchase alcoholic beverages under state law, or
480 two one-hundredths percent (.02%) or more for persons who are
481 below the legal age to purchase alcoholic beverages under state
482 law, in the person's blood based upon grams of alcohol per one
483 hundred (100) milliliters of blood or grams of alcohol per two
484 hundred ten (210) liters of breath as shown by a chemical analysis
485 of such person's breath, blood or urine administered as authorized
486 by this chapter; (d) is under the influence of any drug or
487 controlled substance, the possession of which is unlawful under
488 the Mississippi Controlled Substances Law; or (e) has an alcohol
489 concentration of four one-hundredths percent (.04%) or more in the
490 person's blood, based upon grams of alcohol per one hundred (100)
491 milliliters of blood or grams of alcohol per two hundred ten (210)

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

495 (2) (a) Except as otherwise provided in subsection (3),
496 upon conviction of any person for the first offense of violating
497 subsection (1) of this section where chemical tests provided for
498 under Section 63-11-5 were given, or where chemical test results
499 are not available, such person shall be fined not less than Two
500 Hundred Fifty Dollars (\$250.00) nor more than One Thousand Dollars
501 (\$1,000.00), or imprisoned for not more than forty-eight (48)
502 hours in jail or both; and the court shall order such person to
503 attend and complete an alcohol safety education program as
504 provided in Section 63-11-32. The court may substitute attendance
505 at a victim impact panel instead of forty-eight (48) hours in
506 jail. In addition, the Department of Public Safety, the
507 Commissioner of Public Safety or his duly authorized agent shall,
508 after conviction and upon receipt of the court abstract, suspend
509 the driver's license and driving privileges of such person for a
510 period of not less than ninety (90) days and until such person
511 attends and successfully completes an alcohol safety education
512 program as herein provided; provided, however, in no event shall
513 such period of suspension exceed one (1) year. Commercial driving
514 privileges shall be suspended as provided in Section 63-1-83.

515 The circuit court having jurisdiction in the county in which
516 the conviction was had or the circuit court of the person's county
517 of residence may reduce the suspension of driving privileges under
518 Section 63-11-30(2)(a) if the denial of which would constitute a
519 hardship on the offender, except that no court may issue such an
520 order reducing the suspension of driving privileges under this
521 subsection until thirty (30) days have elapsed from the effective
522 date of the suspension. Hardships shall only apply to first
523 offenses under Section 63-11-30(1), and shall not apply to second,
524 third or subsequent convictions of any person violating subsection

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

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

544 The order entered under the provisions of this subsection
545 shall contain the specific grounds upon which hardship was
546 determined, and shall order the petitioner to attend and complete
547 an alcohol safety education program as provided in Section
548 63-11-32. A certified copy of such order shall be delivered to
549 the Commissioner of Public Safety by the clerk of the court within
550 five (5) days of the entry of the order. The certified copy of
551 such order shall contain information which will identify the
552 petitioner, including, but not limited to, the name, mailing
553 address, street address, social security number and driver's
554 license number of the petitioner.

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

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

560 (i) Continue his employment;

561 (ii) Continue attending school or an educational
562 institution; or

563 (iii) Obtain necessary medical care.

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

567 (b) Except as otherwise provided in subsection (3),
568 upon any second conviction of any person violating subsection (1)
569 of this section, the offenses being committed within a period of
570 five (5) years, such person shall be fined not less than Six
571 Hundred Dollars (\$600.00) nor more than One Thousand Five Hundred
572 Dollars (\$1,500.00), shall be imprisoned not less than five (5)
573 days nor more than one (1) year and sentenced to community service
574 work for not less than ten (10) days nor more than one (1) year.
575 The minimum penalties shall not be suspended or reduced by the
576 court and no prosecutor shall offer any suspension or sentence
577 reduction as part of a plea bargain. Except as may otherwise be
578 provided by paragraph (d) of this subsection, the Commissioner of
579 Public Safety shall suspend the driver's license of such person
580 for two (2) years. Suspension of a commercial driver's license
581 shall be governed by Section 63-1-83. Upon any second conviction
582 as described in this paragraph, the court shall ascertain whether
583 the defendant is married, and if the defendant is married shall
584 obtain the name and address of the defendant's spouse; the clerk
585 of the court shall submit this information to the Department of
586 Public Safety. Further, the commissioner shall notify in writing,
587 by certified mail, return receipt requested, the owner of the
588 vehicle and the spouse, if any, of the person convicted of the
589 second violation of the possibility of forfeiture of the vehicle
590 if such person is convicted of a third violation of subsection (1)

591 of this section. The owner of the vehicle and the spouse shall be
592 considered notified under this paragraph if the notice is
593 deposited in the United States mail and any claim that the notice
594 was not in fact received by the addressee shall not affect a
595 subsequent forfeiture proceeding.

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

599 (c) Except as otherwise provided in subsection (3), for
600 any third or subsequent conviction of any person violating
601 subsection (1) of this section, the offenses being committed
602 within a period of five (5) years, such person shall be guilty of
603 a felony and fined not less than Two Thousand Dollars (\$2,000.00)
604 nor more than Five Thousand Dollars (\$5,000.00), shall be
605 imprisoned not less than one (1) year nor more than five (5) years
606 in the State Penitentiary. The minimum penalties shall not be
607 suspended or reduced by the court and no prosecutor shall offer
608 any suspension or sentence reduction as part of a plea bargain.
609 The law enforcement agency shall seize the vehicle operated by any
610 person charged with a third or subsequent violation of subsection
611 (1) of this section, if such convicted person was driving the
612 vehicle at the time the offense was committed. Such vehicle may
613 be forfeited in the manner provided by Sections 63-11-49 through
614 63-11-53. Except as may otherwise be provided by paragraph (e) of
615 this subsection, the Commissioner of Public Safety shall suspend
616 the driver's license of such person for five (5) years. The
617 suspension of a commercial driver's license shall be governed by
618 Section 63-1-83.

619 (d) Except as otherwise provided in subsection (3), any
620 person convicted of a second violation of subsection (1) of this
621 section shall receive an in-depth diagnostic assessment, and if as
622 a result of such assessment is determined to be in need of
623 treatment of his alcohol and/or drug abuse problem, such person

624 shall successfully complete treatment of his alcohol and/or drug
625 abuse problem at a program site certified by the Department of
626 Mental Health. Such person shall be eligible for reinstatement of
627 his driving privileges upon the successful completion of such
628 treatment after a period of one (1) year after such person's
629 driver's license is suspended. Each person who receives a
630 diagnostic assessment shall pay a fee representing the cost of
631 such assessment. Each person who participates in a treatment
632 program shall pay a fee representing the cost of such treatment.

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

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

653 (3) (a) This subsection shall be known and may be cited as
654 Zero Tolerance for Minors. The provisions of this subsection
655 shall apply only when a person under the age of twenty-one (21)
656 years has a blood alcohol concentration two one-hundredths percent

657 (.02%) or more, but lower than eight one-hundredths percent
658 (.08%). If such person's blood alcohol concentration is eight
659 one-hundredths percent (.08%) or more, the provisions of
660 subsection (2) shall apply.

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

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

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

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

700 The order entered under the provisions of this subsection
701 shall contain the specific grounds upon which hardship was
702 determined, and shall order the petitioner to attend and complete
703 an alcohol safety education program as provided in Section
704 63-11-32. A certified copy of such order shall be delivered to
705 the Commissioner of Public Safety by the clerk of the court within
706 five (5) days of the entry of the order. The certified copy of
707 such order shall contain information which will identify the
708 petitioner, including, but not limited to, the name, mailing
709 address, street address, social security number and driver's
710 license number of the petitioner.

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

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

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

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

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

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

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

756 (g) The court shall have the discretion to rule that a
757 first offense of this subsection by a person under the age of
758 twenty-one (21) years shall be nonadjudicated. Such person shall
759 be eligible for nonadjudication only once. The Department of
760 Public Safety shall maintain a confidential registry of all cases
761 which are nonadjudicated as provided in this paragraph. A judge
762 who rules that a case is nonadjudicated shall forward such ruling
763 to the Department of Public Safety. Judges and prosecutors
764 involved in implied consent violations shall have access to the
765 confidential registry for the purpose of determining
766 nonadjudication eligibility. A record of a person who has been
767 nonadjudicated shall be maintained for five (5) years or until
768 such person reaches the age of twenty-one (21) years. Any person
769 whose confidential record has been disclosed in violation of this
770 paragraph shall have a civil cause of action against the person
771 and/or agency responsible for such disclosure.

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

779 The Commissioner of Public Safety or his authorized agent
780 shall suspend the driver's license or permit to drive or deny the
781 issuance of a license or permit to such person as provided for
782 first, second and third or subsequent offenders in subsection (2)
783 of this section. Such suspension shall be in addition to any
784 suspension imposed pursuant to subsection (1) of Section 63-11-23.
785 The minimum suspension imposed under this subsection shall not be
786 reduced and no prosecutor is authorized to offer a reduction of
787 such suspension as part of a plea bargain.

788 (5) Every person who operates any motor vehicle in violation
789 of the provisions of subsection (1) of this section and who in a
790 negligent manner causes the death of another or mutilates,
791 disfigures, permanently disables or destroys the tongue, eye, lip,
792 nose or any other limb, organ or member of another shall, upon
793 conviction, be guilty of a felony and shall be committed to the
794 custody of the State Department of Corrections for a period of
795 time of not less than five (5) years and not to exceed twenty-five
796 (25) years.

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

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

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

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

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

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

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

841 **SECTION 6.** This act shall take effect and be in force from
842 and after July 1, 2004.