

By: Representative Scott

To: Juvenile Justice;  
Appropriations

HOUSE BILL NO. 857

1 AN ACT TO AMEND SECTION 43-21-605, MISSISSIPPI CODE OF 1972,  
 2 TO PROVIDE THAT JUVENILE OFFENDERS MAY BE SENTENCED TO THE  
 3 INTENSIVE SUPERVISION PROGRAM ADMINISTERED BY THE DEPARTMENT OF  
 4 CORRECTIONS; TO PROVIDE THAT THE MINIMUM SENTENCE UNDER SUCH  
 5 PROGRAM SHALL BE SIX MONTHS FOR JUVENILE OFFENDERS; TO REQUIRE  
 6 JUVENILE OFFENDERS TO BE TESTED FOR ALCOHOL AND DRUGS; TO REQUIRE  
 7 SUCH OFFENDERS TO PAY TEN DOLLARS FOR SUCH TEST; TO PROVIDE THAT  
 8 IF A JUVENILE OFFENDER TESTS POSITIVE FOR ALCOHOL OR DRUGS, HE OR  
 9 SHE SHALL BE REQUIRED TO ATTEND AN ALCOHOL AND DRUG REHABILITATION  
 10 PROGRAM; TO REENACT SECTIONS 47-5-1001 THROUGH 47-5-1013,  
 11 MISSISSIPPI CODE OF 1972, WHICH PROVIDE THE INTENSIVE SUPERVISION  
 12 PROGRAM; TO AMEND SECTION 47-5-1015 TO EXTEND THE REPEAL DATE ON  
 13 SUCH REENACTED SECTIONS; TO AMEND REENACTED SECTION 47-5-1007,  
 14 MISSISSIPPI CODE OF 1972, TO PROVIDE THAT JUVENILE OFFENDERS  
 15 SENTENCED TO THE INTENSIVE SUPERVISION PROGRAM SHALL PAY A MONTHLY  
 16 FEE TO OFFSET THE COST OF SUCH PROGRAM; TO AMEND REENACTED SECTION  
 17 47-5-1013, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT JUVENILE  
 18 OFFENDERS SHALL NOT PAY A PROGRAM FEE; TO AMEND REENACTED SECTION  
 19 47-5-1003, MISSISSIPPI CODE OF 1972, IN CONFORMITY THERETO; AND  
 20 FOR RELATED PURPOSES.

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

22 **SECTION 1.** Section 43-21-605, Mississippi Code of 1972, is  
 23 amended as follows:

24 43-21-605. (1) In delinquency cases, the disposition order  
 25 may include any of the following alternatives:

26 (a) Release the child without further action;

27 (b) Place the child in the custody of the parents, a  
 28 relative or other persons subject to any conditions and  
 29 limitations, including restitution, as the youth court may  
 30 prescribe;

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

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

37           (e) Order terms of supervision which may include  
38 participation in a constructive program of service or education or  
39 civil fines not in excess of Five Hundred Dollars (\$500.00), or  
40 restitution not in excess of actual damages caused by the child to  
41 be paid out of his own assets or by performance of services  
42 acceptable to the victims and approved by the youth court and  
43 reasonably capable of performance within one (1) year;

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

46           (g) Give legal custody of the child to any of the  
47 following:

48                   (i) The Department of Human Services for  
49 appropriate placement; or

50                   (ii) Any public or private organization,  
51 preferably community-based, able to assume the education, care and  
52 maintenance of the child, which has been found suitable by the  
53 court; or

54                   (iii) The Department of Human Services for  
55 placement in a wilderness training program or the Division of  
56 Youth Services for placement in a state-supported training school,  
57 except that no child under the age of ten (10) years shall be  
58 committed to a state training school, and no first-time nonviolent  
59 youth offenders shall be committed to a state training school  
60 until all other options provided for in this section have been  
61 considered and the court makes a specific finding of fact that  
62 commitment is appropriate. The training school may retain custody  
63 of the child until the child's twentieth birthday but for no  
64 longer. When the child is committed to a training school, the  
65 child shall remain in the legal custody of the training school  
66 until the child has made sufficient progress in treatment and  
67 rehabilitation and it is in the best interest of the child to  
68 release the child. However, the superintendent of a state  
69 training school, in consultation with the treatment team, may

70 parole a child at any time he may deem it in the best interest and  
71 welfare of such child. Twenty (20) days prior to such parole, the  
72 training school shall notify the committing court of the pending  
73 release. The youth court may then arrange subsequent placement  
74 after a reconvened disposition hearing, except that the youth  
75 court may not recommit the child to the training school or any  
76 other secure facility without an adjudication of a new offense or  
77 probation or parole violation. Prior to assigning the custody of  
78 any child to any private institution or agency, the youth court  
79 through its designee shall first inspect the physical facilities  
80 to determine that they provide a reasonable standard of health and  
81 safety for the child. No child shall be placed in the custody of  
82 a state training school for a status offense or for contempt of or  
83 revocation of a status offense adjudication unless the child is  
84 contemporaneously adjudicated for having committed an act of  
85 delinquency that is not a status offense. A disposition order  
86 rendered under this subparagraph shall meet the following  
87 requirements:

88                   1. The disposition is the least restrictive  
89 alternative appropriate to the best interest of the child and the  
90 community;

91                   2. The disposition allows the child to be in  
92 reasonable proximity to the family home community of each child  
93 given the dispositional alternatives available and the best  
94 interest of the child and the state; and

95                   3. The disposition order provides that the  
96 court has considered the medical, educational, vocational, social  
97 and psychological guidance, training, social education,  
98 counseling, substance abuse treatment and other rehabilitative  
99 services required by that child as determined by the court;

100                   (h) Recommend to the child and the child's parents or  
101 guardian that the child attend and participate in the Youth  
102 Challenge Program under the Mississippi National Guard, as created

103 in Section 43-27-203, subject to the selection of the child for  
104 the program by the National Guard; however, the child must  
105 volunteer to participate in the program. The youth court shall  
106 not order any child to apply or attend the program;

107 (i) (i) Adjudicate the juvenile to the Statewide  
108 Juvenile Work Program if the program is established in the court's  
109 jurisdiction. The juvenile and his parents or guardians must sign  
110 a waiver of liability in order to participate in the work program.  
111 The judge will coordinate with the youth services counselors as to  
112 placing participants in the work program;

113 (ii) The severity of the crime, whether or not the  
114 juvenile is a repeat offender or is a felony offender will be  
115 taken into consideration by the judge when adjudicating a juvenile  
116 to the work program. The juveniles adjudicated to the work  
117 program will be supervised by police officers or reserve officers.  
118 The term of service will be from twenty-four (24) to one hundred  
119 twenty (120) hours of community service. A juvenile will work the  
120 hours to which he was adjudicated on the weekends during school  
121 and weekdays during the summer. Parents are responsible for a  
122 juvenile reporting for work. Noncompliance with an order to  
123 perform community service will result in a heavier adjudication.  
124 A juvenile may be adjudicated to the community service program  
125 only two (2) times;

126 (iii) The judge shall assess an additional fine on  
127 the juvenile which will be used to pay the costs of implementation  
128 of the program and to pay for supervision by police officers and  
129 reserve officers. The amount of the fine will be based on the  
130 number of hours to which the juvenile has been adjudicated;

131 (j) Order the child to participate in a youth court  
132 work program as provided in Section 43-21-627; \* \* \*

133 (k) Order terms of house arrest under the intensive  
134 supervision program as created in Sections 47-5-1001 through  
135 47-5-1015. The Department of Corrections shall take bids for the

136 program provided by this act. The Department of Human Services  
137 shall promulgate rules regarding the supervision of juveniles  
138 placed in the intensive supervision program. There shall be  
139 fifteen hundred (1,500) slots created in the intensive supervision  
140 program for juveniles. Any juvenile sentenced to house arrest  
141 shall be tested for alcohol and drugs, and if the juvenile tests  
142 positive for alcohol or drugs, the juvenile shall be ordered to  
143 participate in an alcohol and drug rehabilitation program. The  
144 juvenile shall pay Ten Dollars (\$10.00) to offset the cost of  
145 administering the alcohol and drug test. The juveniles must  
146 attend school, alternative school or be in the process of working  
147 towards a general educational development (GED) certificate; or

148           (1) Order the child into a juvenile detention center  
149 operated by the county or into a juvenile detention center  
150 operated by any county with which the county in which the court is  
151 located has entered into a contract for the purpose of housing  
152 delinquents. The time period for such detention cannot exceed  
153 ninety (90) days, and any detention exceeding forty-five (45) days  
154 shall be administratively reviewed by the youth court no later  
155 than forty-five (45) days after the entry of the order. The youth  
156 court judge may order that the number of days specified in the  
157 detention order be served either throughout the week or on  
158 weekends only. No first-time nonviolent youth offender shall be  
159 committed to a detention center for a period of ninety (90) days  
160 until all other options provided for in this section have been  
161 considered and the court makes a specific finding of fact that  
162 commitment to a detention center is appropriate. However, if a  
163 child is committed to a detention center ninety (90) consecutive  
164 days, the disposition order shall meet the following requirements:

165           (i) The disposition order is the least restrictive  
166 alternative appropriate to the best interest of the child and the  
167 community;

168                    (ii) The disposition order allows the child to be  
169 in reasonable proximity to the family home community of each child  
170 given the dispositional alternatives available and the best  
171 interest of the child and the state; and

172                    (iii) The disposition order provides that the  
173 court has considered the medical, educational, vocational, social  
174 and psychological guidance, training, social education,  
175 counseling, substance abuse treatment and other rehabilitative  
176 services required by that child as determined by the court; or

177                    (m) Referral to A-team provided system of care  
178 services.

179            (2) In addition to any of the disposition alternatives  
180 authorized under subsection (1) of this section, the disposition  
181 order in any case in which the child is adjudicated delinquent for  
182 an offense under Section 63-11-30 shall include an order denying  
183 the driver's license and driving privileges of the child as  
184 required under Section 63-11-30(9).

185            (3) If the youth court places a child in a state-supported  
186 training school, the court may order the parents or guardians of  
187 the child and other persons living in the child's household to  
188 receive counseling and parenting classes for rehabilitative  
189 purposes while the child is in the legal custody of the training  
190 school. A youth court entering an order under this subsection (3)  
191 shall utilize appropriate services offered either at no cost or  
192 for a fee calculated on a sliding scale according to income unless  
193 the person ordered to participate elects to receive other  
194 counseling and classes acceptable to the court at the person's  
195 sole expense.

196            (4) Fines levied under this chapter shall be paid into the  
197 general fund of the county but, in those counties wherein the  
198 youth court is a branch of the municipal government, it shall be  
199 paid into the municipal treasury.

200 (5) Any institution or agency to which a child has been  
201 committed shall give to the youth court any information concerning  
202 the child as the youth court may at any time require.

203 (6) The youth court shall not place a child in another  
204 school district who has been expelled from a school district for  
205 the commission of a violent act. For the purpose of this  
206 subsection, "violent act" means any action which results in death  
207 or physical harm to another or an attempt to cause death or  
208 physical harm to another.

209 (7) The youth court may require drug testing as part of a  
210 disposition order. If a child tests positive, the court may  
211 require treatment, counseling and random testing, as it deems  
212 appropriate. The costs of such tests shall be paid by the parent,  
213 guardian or custodian of the child unless the court specifically  
214 finds that the parent, guardian or custodian is unable to pay.

215 (8) The Mississippi Department of Human Services, Division  
216 of Youth Services, shall operate and maintain services for youth  
217 adjudicated delinquent at Columbia and Oakley Training Schools.  
218 The program shall be designed for children committed to the  
219 training schools by the youth courts. The purpose of the program  
220 is to promote good citizenship, self-reliance, leadership and  
221 respect for constituted authority, teamwork, cognitive abilities  
222 and appreciation of our national heritage. The Division of Youth  
223 Services shall issue credit towards academic promotions and high  
224 school completion. The Division of Youth Services may award  
225 credits to each student who meets the requirements for a general  
226 education development certification. The Division of Youth  
227 Services must also provide to each special education eligible  
228 youth the services required by that youth's individualized  
229 education plan.

230 **SECTION 2.** Section 47-5-1001, Mississippi Code of 1972, is  
231 reenacted as follows:

232 47-5-1001. For purposes of Sections 47-5-1001 through  
233 47-5-1015, the following words shall have the meaning ascribed  
234 herein unless the context shall otherwise require:

235 (a) "Approved electronic monitoring device" means a  
236 device approved by the department which is primarily intended to  
237 record and transmit information regarding the offender's presence  
238 or nonpresence in the home.

239 (b) "Correctional field officer" means the supervising  
240 probation and parole officer in charge of supervising the  
241 offender.

242 (c) "Court" means a circuit court having jurisdiction  
243 to place an offender to the intensive supervision program.

244 (d) "Department" means the Department of Corrections.

245 (e) "House arrest" means the confinement of a person  
246 convicted or charged with a crime to his place of residence under  
247 the terms and conditions established by the department or court.

248 (f) "Operating capacity" means the total number of  
249 state offenders which can be safely and reasonably housed in  
250 facilities operated by the department and in local or county jails  
251 or other facilities authorized to house state offenders as  
252 certified by the department, subject to applicable federal and  
253 state laws and rules and regulations.

254 (g) "Participant" means an offender placed into an  
255 intensive supervision program.

256 **SECTION 3.** Section 47-5-1003, Mississippi Code of 1972, is  
257 reenacted and amended as follows:

258 47-5-1003. (1) An intensive supervision program may be used  
259 as an alternative to incarceration for offenders who are low risk  
260 and nonviolent as selected by the department or court and for  
261 juvenile offenders as provided in Section 43-21-605 (k). Any  
262 offender convicted of a sex crime or a felony violation of Section  
263 41-29-139(a)(1) shall not be placed in the program.



264 (2) The court placing an offender in the intensive  
265 supervision program may, acting upon the advice and consent of the  
266 commissioner and not later than one (1) year after the defendant  
267 has been delivered to the custody of the department, suspend the  
268 further execution of the sentence and place the defendant on  
269 intensive supervision, except when a death sentence or life  
270 imprisonment is the maximum penalty which may be imposed or if the  
271 defendant has been confined for the conviction of a felony on a  
272 previous occasion in any court or courts of the United States and  
273 of any state or territories thereof or has been convicted of a  
274 felony involving the use of a deadly weapon.

275 (3) To protect and to ensure the safety of the state's  
276 citizens, any offender who violates an order or condition of the  
277 intensive supervision program may be arrested by the correctional  
278 field officer and placed in the actual custody of the Department  
279 of Corrections. Such offender is under the full and complete  
280 jurisdiction of the department and subject to removal from the  
281 program by the classification hearing officer.

282 (4) When any circuit or county court places an offender in  
283 an intensive supervision program, the court shall give notice to  
284 the Mississippi Department of Corrections within fifteen (15) days  
285 of the court's decision to place the offender in an intensive  
286 supervision program. Notice shall be delivered to the central  
287 office of the Mississippi Department of Corrections and to the  
288 regional office of the department which will be providing  
289 supervision to the offender in an intensive supervision program.

290 The courts may not require an offender to complete the  
291 intensive supervision program as a condition of probation or  
292 post-release supervision.

293 **SECTION 4.** Section 47-5-1005, Mississippi Code of 1972, is  
294 reenacted as follows:

295 47-5-1005. (1) The department shall promulgate rules that  
296 prescribe reasonable guidelines under which an intensive

297 supervision program shall operate. These rules shall include, but  
298 not be limited to, the following:

299 (a) The participant shall remain within the interior  
300 premises or within the property boundaries of his or her residence  
301 at all times during the hours designated by the correctional field  
302 officer.

303 (b) Approved absences from the home may include, but  
304 are not limited to, the following:

305 (i) Working or employment approved by the court or  
306 department and traveling to or from approved employment;

307 (ii) Unemployed and seeking employment approved  
308 for the participant by the court or department;

309 (iii) Undergoing medical, psychiatric, mental  
310 health treatment, counseling or other treatment programs approved  
311 for the participant by the court or department;

312 (iv) Attending an educational institution or a  
313 program approved for the participant by the court or department;

314 (v) Participating in community work release or  
315 community service program approved for the participant by the  
316 court or department; or

317 (vi) For another compelling reason consistent with  
318 the public interest, as approved by the court or department.

319 (2) The department shall select and approve all electronic  
320 monitoring devices used under Sections 47-5-1001 through  
321 47-5-1015.

322 (3) The department may lease the equipment necessary to  
323 implement the intensive supervision program and to contract for  
324 the monitoring of such devices. The department is authorized to  
325 select the lowest price and best source in contracting for these  
326 services.

327 **SECTION 5.** Section 47-5-1007, Mississippi Code of 1972, is  
328 reenacted and amended as follows:

329           47-5-1007. (1) Any participant in the intensive supervision  
330 program who engages in employment shall pay a monthly fee to the  
331 department for each month such person is enrolled in the program.  
332 The department may waive the monthly fee if the offender is a  
333 full-time student or is engaged in vocational training. Juvenile  
334 offenders shall pay a monthly fee of not less than Ten Dollars  
335 (\$10.00) but not more than Fifty Dollars (\$50.00) based on a  
336 sliding scale using the standard of need for each family that is  
337 used to calculate TANF benefits. Money received by the department  
338 from participants in the program shall be deposited into a special  
339 fund which is hereby created in the State Treasury. It shall be  
340 used, upon appropriation by the Legislature, for the purpose of  
341 helping to defray the costs involved in administering and  
342 supervising such program. Unexpended amounts remaining in such  
343 special fund at the end of a fiscal year shall not lapse into the  
344 State General Fund, and any interest earned on amounts in such  
345 special fund shall be deposited to the credit of the special fund.

346           (2) The participant shall admit any correctional officer  
347 into his residence at any time for purposes of verifying the  
348 participant's compliance with the conditions of his detention.

349           (3) The participant shall make the necessary arrangements to  
350 allow for correctional officers to visit the participant's place  
351 of education or employment at any time, based upon the approval of  
352 the educational institution or employer, for the purpose of  
353 verifying the participant's compliance with the conditions of his  
354 detention.

355           (4) The participant shall acknowledge and participate with  
356 the approved electronic monitoring device as designated by the  
357 department at any time for the purpose of verifying the  
358 participant's compliance with the conditions of his detention.

359           (5) The participant shall be responsible for and shall  
360 maintain the following:

361           (a) A working telephone line in the participant's home;

362 (b) A monitoring device in the participant's home, or  
363 on the participant's person or both; and

364 (c) A monitoring device in the participant's home and  
365 on the participant's person in the absence of a telephone.

366 (6) The participant shall obtain approval from the  
367 correctional field officer before the participant changes  
368 residence.

369 (7) The participant shall not commit another crime during  
370 the period of home detention ordered by the court or department.

371 (8) Notice shall be given to the participant that violation  
372 of the order of home detention shall subject the participant to  
373 prosecution for the crime of escape as a felony.

374 (9) The participant shall abide by other conditions as set  
375 by the department.

376 **SECTION 6.** Section 47-5-1009, Mississippi Code of 1972, is  
377 reenacted as follows:

378 47-5-1009. (1) The department shall have absolute immunity  
379 from liability for any injury resulting from a determination by a  
380 judge or correctional officer that an offender shall be allowed to  
381 participate in the electronic home detention program.

382 (2) The Department of Audit shall annually audit the records  
383 of the department to ensure compliance with Sections 47-5-1001  
384 through 47-5-1015.

385 **SECTION 7.** Section 47-5-1011, Mississippi Code of 1972, is  
386 reenacted as follows:

387 47-5-1011. (1) Before entering an order for commitment for  
388 electronic house arrest, the department shall inform the  
389 participant and other persons residing in the home of the nature  
390 and extent of the approved electronic monitoring devices by doing  
391 the following:

392 (a) Securing the written consent of the participant in  
393 the program to comply with the rules and regulations of the  
394 program.

395           (b) Advising adult persons residing in the home of the  
396 participant at the time an order or commitment for electronic  
397 house arrest is entered and asking such persons to acknowledge the  
398 nature and extent of approved electronic monitoring devices.

399           (c) Insuring that the approved electronic devices are  
400 minimally intrusive upon the privacy of other persons residing in  
401 the home while remaining in compliance with Sections 47-5-1001  
402 through 47-5-1015.

403           (2) The participant shall be responsible for the cost of  
404 equipment and any damage to such equipment. Any intentional  
405 damage, any attempt to defeat monitoring, any committing of a  
406 criminal offense or any associating with felons or known  
407 criminals, shall constitute a violation of the program.

408           (3) Any person whose residence is utilized in the program  
409 shall agree to keep the home drug and alcohol free and to exclude  
410 known felons and criminals in order to provide a noncriminal  
411 environment.

412           **SECTION 8.** Section 47-5-1013, Mississippi Code of 1972, is  
413 reenacted and amended as follows:

414           47-5-1013. Participants enrolled in an intensive supervision  
415 program shall be required to:

416           (a) Maintain employment if physically able, or  
417 full-time student status at an approved school or vocational  
418 trade, and make progress deemed satisfactory to the correctional  
419 field officer, or both, or be involved in supervised job searches.

420           (b) Pay restitution and program fees as directed by the  
421 department. Program fees shall not be less than Seventy-five  
422 Dollars (\$75.00) per month. The sentencing judge may charge a  
423 program fee of less than Seventy-five Dollars (\$75.00) per month  
424 in cases of extreme financial hardship, when such judge determines  
425 that the offender's participation in the program would provide a  
426 benefit to his community. Juvenile offenders shall not pay a  
427 program fee, but shall pay a monthly fee as provided in Section

428 47-5-1007. Program fees shall be deposited in the special fund  
429 created in Section 47-5-1007.

430 (c) Establish a place of residence at a place approved  
431 by the correctional field officer, and not change his residence  
432 without the officer's approval. The correctional officer shall be  
433 allowed to inspect the place of residence for alcoholic beverages,  
434 controlled substances and drug paraphernalia.

435 (d) Remain at his place of residence at all times  
436 except to go to work, to attend school, to perform community  
437 service and as specifically allowed in each instance by the  
438 correctional field officer.

439 (e) Allow administration of drug and alcohol tests as  
440 requested by the field officer.

441 (f) Perform not less than ten (10) hours of community  
442 service each month.

443 (g) Meet any other conditions imposed by the court to  
444 meet the needs of the offender and limit the risks to the  
445 community.

446 **SECTION 9.** Section 47-5-1015, Mississippi Code of 1972, is  
447 amended as follows:

448 47-5-1015. Sections 47-5-1001 through 47-5-1013 and  
449 47-5-1015 shall stand repealed after June 30, 2008.

450 **SECTION 10.** This act shall take effect and be in force from  
451 and after June 30, 2006.