

By: Representative Scott

To: Juvenile Justice;
Corrections

HOUSE BILL NO. 872

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 THIS
5 PROGRAM SHALL BE SIX MONTHS FOR JUVENILE OFFENDERS; TO REQUIRE
6 JUVENILE OFFENDERS TO BE TESTED FOR ALCOHOL AND DRUGS; TO REQUIRE
7 JUVENILE OFFENDERS TO PAY TEN DOLLARS FOR THE TEST; TO PROVIDE
8 THAT IF A JUVENILE OFFENDER TESTS POSITIVE FOR ALCOHOL OR DRUGS HE
9 OR SHE SHALL BE REQUIRED TO ATTEND AN ALCOHOL AND DRUG
10 REHABILITATION PROGRAM; AN ACT TO REENACT SECTIONS 47-5-1001,
11 47-5-1003, 47-5-1005, 47-5-1007, 47-5-1009, 47-5-1011 AND
12 47-5-1013, MISSISSIPPI CODE OF 1972, WHICH ESTABLISH THE INTENSIVE
13 SUPERVISION PROGRAM AND PERMIT A COURT TO PLACE AN OFFENDER IN THE
14 PROGRAM AS AN ALTERNATIVE TO INCARCERATION, PROVIDE RULES AND
15 GUIDELINES FOR OPERATION OF THE PROGRAM, PROVIDE PAYMENT OF FEES
16 BY PARTICIPANTS OF THE PROGRAM; TO AMEND REENACTED SECTION
17 47-5-1007, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT JUVENILE
18 OFFENDERS SENTENCED TO THE INTENSIVE SUPERVISION PROGRAM SHALL PAY
19 A MONTHLY FEE TO OFFSET THE COST OF THE INTENSIVE SUPERVISION
20 PROGRAM; TO AMEND REENACTED SECTION 47-5-1013, MISSISSIPPI CODE OF
21 1972, TO PROVIDE THAT JUVENILE OFFENDERS SHALL NOT PAY A PROGRAM
22 FEE BUT SHALL PAY A MONTHLY FEE; TO AMEND SECTION 47-5-1003,
23 MISSISSIPPI CODE OF 1972, IN CONFORMITY THERETO; TO AMEND SECTION
24 47-5-1015, MISSISSIPPI CODE OF 1972, TO EXTEND THE DATE OF REPEAL
25 ON THE REENACTED SECTIONS FROM JUNE 30, 2006, TO JUNE 30, 2008;
26 AND FOR RELATED PURPOSES.

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

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

30 43-21-605. (1) In delinquency cases, the disposition order
31 may include any of the following alternatives:

32 (a) Release the child without further action;

33 (b) Place the child in the custody of the parents, a
34 relative or other persons subject to any conditions and
35 limitations, including restitution, as the youth court may
36 prescribe;

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

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

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

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

52 (g) Give legal custody of the child to any of the
53 following:

54 (i) The Department of Human Services for
55 appropriate placement; or

56 (ii) Any public or private organization,
57 preferably community-based, able to assume the education, care and
58 maintenance of the child, which has been found suitable by the
59 court; or

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

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

94 1. The disposition is the least restrictive
95 alternative appropriate to the best interest of the child and the
96 community;

97 2. The disposition allows the child to be in
98 reasonable proximity to the family home community of each child
99 given the dispositional alternatives available and the best
100 interest of the child and the state; and

101 3. The disposition order provides that the
102 court has considered the medical, educational, vocational, social
103 and psychological guidance, training, social education,
104 counseling, substance abuse treatment and other rehabilitative
105 services required by that child as determined by the court;

106 (h) Recommend to the child and the child's parents or
107 guardian that the child attend and participate in the Youth
108 Challenge Program under the Mississippi National Guard, as created
109 in Section 43-27-203, subject to the selection of the child for
110 the program by the National Guard; however, the child must
111 volunteer to participate in the program. The youth court shall
112 not order any child to apply or attend the program;

113 (i) (i) Adjudicate the juvenile to the Statewide
114 Juvenile Work Program if the program is established in the court's
115 jurisdiction. The juvenile and his parents or guardians must sign
116 a waiver of liability in order to participate in the work program.
117 The judge will coordinate with the youth services counselors as to
118 placing participants in the work program;

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

132 (iii) The judge shall assess an additional fine on
133 the juvenile which will be used to pay the costs of implementation
134 of the program and to pay for supervision by police officers and
135 reserve officers. The amount of the fine will be based on the
136 number of hours to which the juvenile has been adjudicated;

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

139 (k) Order terms of house arrest under the intensive
140 supervision program as created in Sections 47-5-1001 through
141 47-5-1015. The Department of Corrections shall take bids for the
142 program provided by this act. The Department of Human Services
143 shall promulgate rules regarding the supervision of juveniles
144 placed in the intensive supervision program. There shall be one
145 thousand five hundred (1,500) slots created in the intensive
146 supervision program for juveniles. Any juvenile sentenced to
147 house arrest shall be tested for alcohol and drugs, and if the
148 juvenile tests positive for alcohol or drugs, the juvenile shall
149 be ordered to participate in an alcohol and drug rehabilitation
150 program. The juvenile shall pay Ten Dollars (\$10.00) to offset
151 the cost of administering the alcohol and drug test. The
152 juveniles must attend school, alternative school or be in the
153 process of working toward a general educational development (GED)
154 certificate;

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

172 (i) The disposition order is the least restrictive
173 alternative appropriate to the best interest of the child and the
174 community;

175 (ii) The disposition order allows the child to be
176 in reasonable proximity to the family home community of each child
177 given the dispositional alternatives available and the best
178 interest of the child and the state; and

179 (iii) The disposition order provides that the
180 court has considered the medical, educational, vocational, social
181 and psychological guidance, training, social education,
182 counseling, substance abuse treatment and other rehabilitative
183 services required by that child as determined by the court; or

184 (m) Referral to A-team provided system of care
185 services.

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

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

203 (4) Fines levied under this chapter shall be paid into the
204 general fund of the county but, in those counties wherein the

205 youth court is a branch of the municipal government, it shall be
206 paid into the municipal treasury.

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

210 (6) The youth court shall not place a child in another
211 school district who has been expelled from a school district for
212 the commission of a violent act. For the purpose of this
213 subsection, "violent act" means any action which results in death
214 or physical harm to another or an attempt to cause death or
215 physical harm to another.

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

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

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

239 47-5-1001. For purposes of Sections 47-5-1001 through
240 47-5-1015, the following words shall have the meaning ascribed
241 herein unless the context shall otherwise require:

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

246 (b) "Correctional field officer" means the supervising
247 probation and parole officer in charge of supervising the
248 offender.

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

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

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

255 (f) "Operating capacity" means the total number of
256 state offenders which can be safely and reasonably housed in
257 facilities operated by the department and in local or county jails
258 or other facilities authorized to house state offenders as
259 certified by the department, subject to applicable federal and
260 state laws and rules and regulations.

261 (g) "Participant" means an offender placed into an
262 intensive supervision program.

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

265 47-5-1003. (1) An intensive supervision program may be used
266 as an alternative to incarceration for offenders who are low risk
267 and nonviolent as selected by the department or court and for
268 juvenile offenders as provided in Section 43-21-605(k). Any

269 offender convicted of a sex crime or a felony violation of Section
270 41-29-139(a)(1) shall not be placed in the program.

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

282 (3) To protect and to ensure the safety of the state's
283 citizens, any offender who violates an order or condition of the
284 intensive supervision program may be arrested by the correctional
285 field officer and placed in the actual custody of the Department
286 of Corrections. Such offender is under the full and complete
287 jurisdiction of the department and subject to removal from the
288 program by the classification hearing officer.

289 (4) When any circuit or county court places an offender in
290 an intensive supervision program, the court shall give notice to
291 the Mississippi Department of Corrections within fifteen (15) days
292 of the court's decision to place the offender in an intensive
293 supervision program. Notice shall be delivered to the central
294 office of the Mississippi Department of Corrections and to the
295 regional office of the department which will be providing
296 supervision to the offender in an intensive supervision program.

297 The courts may not require an offender to complete the
298 intensive supervision program as a condition of probation or
299 post-release supervision.

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

302 47-5-1005. (1) The department shall promulgate rules that
303 prescribe reasonable guidelines under which an intensive
304 supervision program shall operate. These rules shall include, but
305 not be limited to, the following:

306 (a) The participant shall remain within the interior
307 premises or within the property boundaries of his or her residence
308 at all times during the hours designated by the correctional field
309 officer.

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

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

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

316 (iii) Undergoing medical, psychiatric, mental
317 health treatment, counseling or other treatment programs approved
318 for the participant by the court or department;

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

321 (v) Participating in community work release or
322 community service program approved for the participant by the
323 court or department; or

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

326 (2) The department shall select and approve all electronic
327 monitoring devices used under Sections 47-5-1001 through
328 47-5-1015.

329 (3) The department may lease the equipment necessary to
330 implement the intensive supervision program and to contract for
331 the monitoring of such devices. The department is authorized to
332 select the lowest price and best source in contracting for these
333 services.

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

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

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

356 (3) The participant shall make the necessary arrangements to
357 allow for correctional officers to visit the participant's place
358 of education or employment at any time, based upon the approval of
359 the educational institution or employer, for the purpose of
360 verifying the participant's compliance with the conditions of his
361 detention.

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

366 (5) The participant shall be responsible for and shall
367 maintain the following:

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

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

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

373 (6) The participant shall obtain approval from the
374 correctional field officer before the participant changes
375 residence.

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

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

381 (9) The participant shall abide by other conditions as set
382 by the department.

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

385 47-5-1009. (1) The department shall have absolute immunity
386 from liability for any injury resulting from a determination by a
387 judge or correctional officer that an offender shall be allowed to
388 participate in the electronic home detention program.

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

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

394 47-5-1011. (1) Before entering an order for commitment for
395 electronic house arrest, the department shall inform the
396 participant and other persons residing in the home of the nature
397 and extent of the approved electronic monitoring devices by doing
398 the following:

399 (a) Securing the written consent of the participant in
400 the program to comply with the rules and regulations of the
401 program.

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

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

410 (2) The participant shall be responsible for the cost of
411 equipment and any damage to such equipment. Any intentional
412 damage, any attempt to defeat monitoring, any committing of a
413 criminal offense or any associating with felons or known
414 criminals, shall constitute a violation of the program.

415 (3) Any person whose residence is utilized in the program
416 shall agree to keep the home drug and alcohol free and to exclude
417 known felons and criminals in order to provide a noncriminal
418 environment.

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

421 47-5-1013. Participants enrolled in an intensive supervision
422 program shall be required to:

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

427 (b) Pay restitution and program fees as directed by the
428 department. Program fees shall not be less than Seventy-five
429 Dollars (\$75.00) per month. The sentencing judge may charge a
430 program fee of less than Seventy-five Dollars (\$75.00) per month
431 in cases of extreme financial hardship, when such judge determines

432 that the offender's participation in the program would provide a
433 benefit to his community. Juvenile offenders shall not pay a
434 program fee, but shall pay a monthly fee as provided in Section
435 47-5-1007. Program fees shall be deposited in the special fund
436 created in Section 47-5-1007.

437 (c) Establish a place of residence at a place approved
438 by the correctional field officer, and not change his residence
439 without the officer's approval. The correctional officer shall be
440 allowed to inspect the place of residence for alcoholic beverages,
441 controlled substances and drug paraphernalia.

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

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

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

450 (g) Meet any other conditions imposed by the court to
451 meet the needs of the offender and limit the risks to the
452 community.

453 **SECTION 9.** Section 47-5-1015, Mississippi Code of 1972, is
454 reenacted and amended as follows:

455 47-5-1015. Sections 47-5-1001 through 47-5-1013 and
456 47-5-1015, shall stand repealed after June 30, 2008.

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