

By: Representative Holland

To: Judiciary A

## HOUSE BILL NO. 765

1 AN ACT TO PROVIDE FOR DRUG COURT TREATMENT PROGRAMS IN  
2 CIRCUIT COURT DISTRICTS; TO SPECIFY THE PURPOSE AND GOALS OF THIS  
3 ACT; TO DEFINE CERTAIN TERMS; TO PROVIDE FOR DRUG DIVISION  
4 PROBATION PROGRAMS; TO PROVIDE REQUIREMENTS FOR PARTICIPATION IN  
5 SUCH PROGRAMS; TO PROVIDE FOR THE ADMINISTRATION OF SUCH PROGRAMS;  
6 TO PROVIDE THAT SUCCESSFUL COMPLETION OF A DRUG DIVISION PROBATION  
7 PROGRAM MAY RESULT IN DISMISSAL OF CRIMINAL CONVICTION; TO PROVIDE  
8 FOR THE PAYMENT FOR PARTICIPATION IN A PROGRAM; TO AMEND SECTIONS  
9 41-29-149 AND 41-29-150, MISSISSIPPI CODE OF 1972, IN CONFORMITY  
10 THERETO; TO REPEAL SECTIONS 9-23-1 THROUGH 9-23-23, MISSISSIPPI  
11 CODE OF 1972, WHICH AUTHORIZE THE CREATION OF DRUG COURTS; AND FOR  
12 RELATED PURPOSES.

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

14 **SECTION 1.** The Legislature of Mississippi recognizes the  
15 critical need for criminal justice system programs to reduce the  
16 incidence of alcohol and drug use, alcohol and drug addiction, and  
17 crimes committed as a result of alcohol and drug use and alcohol  
18 and drug addiction. The Legislature also recognizes that the  
19 problem of alcohol and drug abuse among the citizens of  
20 Mississippi is excessive and needs to be addressed and corrected  
21 not only for the health and welfare of the citizens of this state,  
22 but also because alcohol and drug abuse or dependency has been  
23 identified as a contributing factor in the commission of many  
24 crimes. It is the intent of the Legislature by this act to create  
25 a program to facilitate the creation of alcohol and drug treatment  
26 divisions in the various district courts of this state.

27 **SECTION 2.** The goals of the alcohol and drug treatment  
28 divisions created under this act include the following:

29 (a) To reduce alcoholism and drug abuse and dependency  
30 among offenders.

31 (b) To reduce criminal recidivism.

32 (c) To reduce the alcohol- and drug-related workload of  
33 the courts.

34 (d) To increase the personal, familial and societal  
35 accountability of offenders.

36 (e) To promote effective interaction and use of  
37 resources among criminal justice personnel and community agencies.

38 (f) To reduce the overcrowding of prisons.

39 **SECTION 3.** The following words and phrases shall have the  
40 meanings ascribed herein unless the context clearly indicates  
41 otherwise:

42 (a) "Alcohol and drug abuse program" means a program  
43 licensed by the State of Mississippi to provide education,  
44 prevention and treatment directed toward achieving the mental and  
45 physical restoration of alcohol and drug abusers or addicts.

46 (b) "Alcohol and drug abuser" means a person whose  
47 consumption of alcohol or other drugs, or any combination thereof,  
48 interferes with or adversely affects his ability to function  
49 socially or economically and endangers the health, safety and  
50 welfare of the abuser and others.

51 (c) "Alcohol- or drug-related offense" means an  
52 alcohol- or drug-related offense and also an offense in which  
53 alcohol or drug abuse or addiction is determined from the evidence  
54 to have been a factor in the commission of the offense.

55 (d) "Alcoholic or drug addict" means any person who  
56 habitually uses alcohol or other drugs to the extent that the  
57 person endangers the health, safety or welfare of that person or  
58 any other person or group of persons.

59 (e) "Conditions of probation" means the specification  
60 of formal terms and conditions which a defendant must fulfill in  
61 order to have the charges against that person dismissed.

62 (f) "Drug division" means the division or divisions of  
63 the court to which alcohol- or drug-related offenses are assigned

64 or the employee of the court designated to administer the  
65 probation program.

66 (g) "Probation" means referral of a defendant who has  
67 entered a plea of guilty in a criminal case charging an alcohol or  
68 controlled dangerous substance related offense to a supervised  
69 probation program.

70 (h) "Probationer" means a person who has been accepted  
71 into a drug division probation program.

72 (i) "Treatment program" means any governmental agency  
73 or other entity which is licensed by the State of Mississippi to  
74 provide substance abuse or addiction treatment on a residential or  
75 outpatient basis.

76 **SECTION 4.** (1) Each circuit court district by rule shall  
77 designate as a drug division one or more divisions to which  
78 alcohol- or drug-related offenses are assigned and shall establish  
79 a probation program to be administered by the senior judge or  
80 judges thereof or by an employee designated by the court.

81 (2) Participation in probation programs shall be subject to  
82 the following provisions:

83 (a) The district attorney may propose to the court that  
84 an individual defendant be screened for eligibility as a  
85 participant in the drug division probation program if all of the  
86 following criteria are satisfied:

87 (i) The individual is charged with a violation of  
88 a statute of this state relating to the use and possession of any  
89 narcotic drugs, coca leaves, marijuana, stimulants, depressants,  
90 or hallucinogenic drugs, or where there is a significant  
91 relationship between the use of alcohol or drugs, or both, and the  
92 crime before the court.

93 (ii) The district attorney has reason to believe  
94 that the individual who is charged suffers from alcohol or drug  
95 addiction.

96 (iii) It is in the best interest of the community  
97 and in the interest of justice to provide the defendant with  
98 treatment as opposed to incarceration or other sanctions.

99 (b) Upon receipt of the proposal provided for in  
100 paragraph (a) of this subsection, the court shall advise the  
101 defendant that he or she may be eligible for enrollment in a  
102 court-authorized treatment program through the drug division  
103 probation program.

104 (c) In offering a defendant the opportunity to request  
105 treatment, the court shall advise the defendant of the following:

106 (i) If the defendant is accepted into the drug  
107 division probation program, then the defendant must waive the  
108 right to a trial. The defendant must enter a plea of guilty to  
109 the charge, with the stipulation that sentencing be deferred or  
110 that sentence be imposed, but suspended, and the defendant placed  
111 on supervised probation under the usual conditions of probation  
112 and under certain special conditions of probation related to the  
113 completion of such substance abuse treatment programs as are  
114 ordered by the court.

115 (ii) If the defendant requests to undergo  
116 treatment and is accepted, the defendant will be placed under the  
117 supervision of the drug division probation program for a period of  
118 not less than twelve (12) months.

119 (iii) During treatment the defendant may be  
120 confined in a treatment facility or, at the discretion of the  
121 court, the defendant may be released on a probationary basis for  
122 treatment or supervised aftercare in the community.

123 (iv) The court may impose any conditions  
124 reasonably related to the complete rehabilitation of the  
125 defendant.

126 (v) The defendant shall be required to participate  
127 in an alcohol and drug testing program at his own expense, unless  
128 the court determines that he is indigent.

129                   (vi) If the defendant completes the drug division  
130 probation program, and successfully completes all other  
131 requirements of his court-ordered probation, the conviction may be  
132 set aside and the prosecution dismissed. If the defendant was  
133 sentenced at the time of the entry of the plea of guilty, the  
134 successful completion of the drug division probation program and  
135 the other requirements of probation will result in his discharge  
136 from supervision. If the defendant does not successfully complete  
137 the drug division probation program, the judge may revoke the  
138 probation and impose sentence, or the judge may revoke the  
139 probation and order the defendant to serve the sentence previously  
140 imposed and suspended, or the court may impose any sanction  
141 provided by law, and extend probation and order that the defendant  
142 continue treatment for an additional period, or both.

143                   (d) The defendant has the right to be represented by  
144 counsel at all stages of a criminal prosecution and in any court  
145 hearing relating to the drug division probation program. The  
146 defendant shall be represented by counsel during the negotiations  
147 to determine eligibility to participate in the drug division  
148 probation program and shall be represented by counsel at the time  
149 of the execution of the probation agreement, and at any hearing to  
150 revoke the defendant's probation and discharge him from the  
151 program, unless the court finds and the record shows that the  
152 defendant has knowingly and intelligently waived his right to  
153 counsel.

154                   (e) The defendant must agree to the drug division  
155 probation program. If the defendant elects to undergo treatment  
156 and participate in the drug division probation program, the court  
157 shall order an examination of the defendant by one (1) of the  
158 court's designated licensed treatment programs. Treatment  
159 programs shall possess sufficient experience in working with  
160 criminal justice clients with alcohol or drug addictions, or both,  
161 and shall be certified and approved by the State of Mississippi.

162 The designated treatment program shall utilize standardized  
163 testing and evaluation procedures to determine whether or not the  
164 defendant is an appropriate candidate for a treatment program and  
165 shall report such findings to the court and the district attorney.

166 (f) The designated treatment program shall examine the  
167 defendant, using standardized testing and evaluation procedures,  
168 and shall report to the court and the district attorney the  
169 results of the examination and evaluation along with its  
170 recommendation as to whether or not the individual is a suitable  
171 candidate for the drug division probation program. Only those  
172 defendants who suffer from alcoholism or a drug addiction, or  
173 both, or who are in danger of becoming dependent on alcohol or  
174 drugs and who are likely to be rehabilitated through treatment  
175 shall be considered for treatment.

176 (g) The court shall inform the defendant that the  
177 treatment program examiner or district attorney may request that  
178 the defendant provide the following information to the court:

179 (i) Information regarding prior criminal charges.

180 (ii) Education, work experience and training.

181 (iii) Family history, including residence in the  
182 community.

183 (iv) Medical and mental history, including any  
184 psychiatric or psychological treatment or counseling.

185 (v) Any other information reasonably related to  
186 the success of the treatment program.

187 (h) The designated program shall recommend to the court  
188 a preliminary length of stay and level of care for the defendant.

189 (i) Besides the report submitted by the examiner, the  
190 judge and district attorney shall consider the following factors  
191 in determining whether drug court probation would be in the  
192 interests of justice and of benefit to the defendant and the  
193 community:

194 (i) The nature of the crime charged and the  
195 circumstances surrounding the crime.

196 (ii) Any special characteristics or circumstances  
197 of the defendant.

198 (iii) Whether the defendant is a first-time  
199 offender of an alcohol- or drug-related offense, and, if the  
200 defendant has previously participated in this or a similar  
201 program, the degree of success attained.

202 (iv) Whether there is a probability that the  
203 defendant will cooperate with and benefit from probation and  
204 treatment through the drug division probation program.

205 (v) Whether the available drug division probation  
206 program is appropriate to meet the needs of the defendant.

207 (vi) The impact of the defendant's probation and  
208 treatment upon the community.

209 (vii) Recommendations, if any, of the involved law  
210 enforcement agency.

211 (viii) Recommendations, if any, of the victim.

212 (ix) Provisions for and the likelihood of  
213 obtaining restitution from the defendant over the course of his  
214 probation.

215 (x) Any mitigating circumstances.

216 (xi) Any other circumstances reasonably related to  
217 the individual defendant's case.

218 (j) In order to be eligible for the drug division  
219 probation program, the defendant must satisfy each of the  
220 following criteria:

221 (i) The defendant cannot have any prior felony  
222 convictions for any offenses which are crimes of violence.

223 (ii) The crime before the court cannot be a crime  
224 of violence, including domestic violence.

225 (iii) Other criminal proceedings alleging  
226 commission of a crime of violence cannot be pending against the  
227 defendant.

228 (iv) The defendant cannot have been convicted of  
229 burglary of an inhabited dwelling if the defendant has a record of  
230 one or more prior felony convictions.

231 (v) The crime before the court cannot be a charge  
232 of driving under the influence of alcohol or any other drug or  
233 drugs that resulted in the death of a person.

234 (vi) The crime charged cannot be one of multiple  
235 counts of distribution, possession with intent to distribute,  
236 production, manufacture or cultivation of controlled dangerous  
237 substances.

238 (k) (i) The judge shall make the final determination  
239 of eligibility. If, based on the examiner's report and the  
240 recommendations of the district attorney and the defense counsel,  
241 the judge determines that the defendant should be enrolled in the  
242 drug division probation program, the court shall accept the  
243 defendant's guilty plea and suspend or defer the imposition of  
244 sentence and place the defendant on probation under the terms and  
245 conditions of the drug division probation program. The court also  
246 may impose sentence and suspend the execution thereof, placing the  
247 defendant on probation under the terms and conditions of the drug  
248 division probation program.

249 (ii) If the judge determines that the defendant is  
250 not qualified for enrollment, the judge shall state for the record  
251 the reasons for that determination.

252 (iii) A treatment program may petition the court  
253 to reject a referral through the drug division probation program  
254 if the treatment program administrator deems the defendant to be  
255 inappropriate for admission to the treatment program.

256 Additionally, a treatment program may petition the court for  
257 immediate discharge of any individual who fails to comply with



258 treatment program rules and treatment expectations or who refuses  
259 to constructively engage in the treatment process.

260 (3) (a) The terms of each probation agreement shall be  
261 decided by the judge. The defendant must agree to enter the  
262 program and sign a probation agreement stating the terms and  
263 conditions of his program. The defendant must plead guilty to the  
264 charge in order to be eligible for the drug division probation  
265 program.

266 (b) Any probation agreement entered into pursuant to  
267 this section shall include the following:

268 (i) The terms of the agreement, which shall  
269 provide that if the defendant fulfills the obligations of the  
270 agreement, as determined by the court, then the criminal charges  
271 may be dismissed and the prosecution set aside, or, if the  
272 defendant has been sentenced following the plea of guilty, then  
273 the successful completion of the drug division probation program  
274 may result in the discharge of the defendant from continued  
275 supervision.

276 (ii) A waiver by the defendant of the right to  
277 trial by jury under the laws and Constitution of Mississippi and  
278 the United States.

279 (iii) The defendant's full name.

280 (iv) The defendant's full name at the time the  
281 complaint was filed, if different from the defendant's current  
282 name.

283 (v) The defendant's sex and date of birth.

284 (vi) The crime before the court.

285 (vii) The date the complaint was filed.

286 (viii) The court in which the agreement was filed.

287 (ix) A stipulation of the facts upon which the  
288 charge was based, as agreed to by the defendant and the district  
289 attorney.

290 (x) A provision that the defendant will be  
291 required to pay a probation supervision fee.

292 (xi) A provision in cases where applicable that  
293 the defendant will be required to pay restitution to the victim.

294 (xii) A provision that once the defendant is  
295 receiving treatment as an outpatient or living in a halfway house  
296 he will participate in appropriate job training or schooling or  
297 seek gainful employment.

298 (xiii) A copy of the plea agreement.

299 (c) A defendant who is placed under the supervision of  
300 the drug division probation program shall pay the cost of the  
301 treatment program to which he is assigned and the cost of any  
302 additional supervision that may be required, to the extent of his  
303 financial resources, as determined by the drug division.

304 (d) If the probationer does not have the financial  
305 resources to pay all the related costs of the probation program:

306 (i) The court, to the extent practicable, shall  
307 arrange for the probationer to be assigned to a treatment program  
308 funded by the state or federal government.

309 (ii) The court, with the recommendation of the  
310 treatment program, may order the probationer to perform supervised  
311 work for the benefit of the community in lieu of paying all or a  
312 part of the costs relating to his treatment and supervision. The  
313 work must be performed for and under the supervising authority of  
314 a county, municipality, or other political subdivision or agency  
315 of the State of Mississippi or a charitable organization that  
316 renders service to the community or its residents.

317 (4) (a) When appropriate, the imposition or execution of a  
318 sentence shall be postponed while the defendant is enrolled in the  
319 treatment program. As long as the probationer follows the  
320 conditions of his agreement, he or she shall remain on probation.  
321 At the conclusion of the period of probation, the district  
322 attorney, on advice of the person providing the probationer's

323 treatment and the probation officer, may recommend that the drug  
324 division take one (1) of the following courses of action:

325           (i) That the probationer's probation be revoked  
326 and the probationer be sentenced because the probationer has not  
327 successfully completed the treatment and has violated one or more  
328 conditions of probation; or, if already sentenced, that the  
329 probation be revoked and the probationer be remanded to the  
330 appropriate custodian for service of that sentence.

331           (ii) That the period of probation be extended so  
332 that the probationer may continue the program.

333           (iii) That the probationer's conviction be set  
334 aside and the prosecution dismissed because the probationer has  
335 successfully completed all the conditions of his or her probation  
336 and treatment agreement.

337           (b) The district attorney shall make the final  
338 determination on whether to request revocation, extension or  
339 dismissal.

340           (c) (i) If an individual who has enrolled in a program  
341 violates any of the conditions of his probation or his treatment  
342 agreement or appears to be performing unsatisfactorily in the  
343 assigned program, or if it appears that the probationer is not  
344 benefiting from education, treatment or rehabilitation, the  
345 treatment supervisor, probation officer or the district attorney  
346 may move the court for a hearing to determine if the probationer  
347 should remain in the program or whether the probation should be  
348 revoked and the probationer removed from the program and sentenced  
349 or ordered to serve any sentence previously imposed. If at the  
350 hearing the moving party can show sufficient proof that the  
351 probationer has violated his probation or his treatment agreement  
352 and has not shown a willingness to submit to rehabilitation, the  
353 probationer may be removed from the program or his treatment  
354 agreement may be changed to meet the probationer's specific needs.

355                   (ii) If the court finds that the probationer has  
356 violated a condition of his or her probation or a provision of his  
357 or her probation agreement and that the probationer should be  
358 removed from the probation program, then the court may revoke the  
359 probation and sentence the individual in accordance with his or  
360 her guilty plea or, if the individual has been sentenced and the  
361 sentence suspended, order the individual to begin serving the  
362 sentence.

363                   (iii) If a defendant who has been admitted to the  
364 probation program fails to complete the program and is thereafter  
365 sentenced to jail time for the offense, he shall be entitled to  
366 credit for the time served in any correctional facility in  
367 connection with the charge before the court.

368                   (iv) At any time and for any appropriate reason,  
369 the probationer, his probation officer, the district attorney or  
370 his treatment provider may petition the court to reconsider,  
371 suspend or modify its order for rehabilitation or treatment  
372 concerning that probationer.

373                   (v) The burden of proof at all such hearings shall  
374 be the burden of proof required to revoke probation as provided by  
375 law.

376           (5) The appropriate alcohol and drug treatment program shall  
377 report the following changes or conditions to the district  
378 attorney at any periodic reporting period specified by the court:

379                   (a) The probationer is changed from an inpatient to an  
380 outpatient.

381                   (b) The probationer is transferred to another treatment  
382 center or program.

383                   (c) The probationer fails to comply with program rules  
384 and treatment expectations.

385                   (d) The probationer refuses to engage constructively in  
386 the treatment process.

387           (e) The probationer terminates his or her participation  
388 in the treatment program.

389           (f) The probationer is rehabilitated or obtains the  
390 maximum benefits of rehabilitation or treatment.

391           (6) Upon successful completion of the drug division  
392 probation program and its terms and conditions, the judge, after  
393 receiving the recommendation from the district attorney, may  
394 vacate the judgment of conviction and dismiss the criminal  
395 proceedings against the probationer or may discharge the defendant  
396 from probation.

397           (7) Discharge and dismissal under this act shall have the  
398 same effect as acquittal, except that the conviction may be  
399 considered in order to provide the basis for subsequent  
400 prosecution of the party as a multiple offender and shall be  
401 considered as an offense for the purposes of any other law or laws  
402 relating to cumulation of offenses. Dismissal under this act  
403 shall occur only once with respect to any person. Nothing herein  
404 shall be construed as a basis for the destruction of records of  
405 the arrest and prosecution of the person.

406           (8) Nothing contained in this act shall confer a right or an  
407 expectation of a right to treatment for a defendant or offender  
408 within the criminal justice system.

409           (9) Each defendant shall contribute to the cost of substance  
410 abuse treatment received in the drug treatment program based upon  
411 guidelines developed by the drug division.

412           (10) Each circuit court district shall adopt written  
413 policies and guidelines for the implementation of a probation  
414 program in accordance with this act. The policies and guidelines  
415 shall include provisions concerning the following:

416           (a) How to examine the defendant initially to determine  
417 if he or she is qualified for enrollment.

418           (b) How to advise the defendant of the program if the  
419 court has reason to believe the defendant may suffer from alcohol  
420 or drug addiction.

421           (c) What licensed treatment programs are certified by  
422 the court.

423           (11) Each drug division shall develop a method of evaluation  
424 so that its effectiveness can be measured. These evaluations  
425 shall be compiled annually and transmitted to the Administrative  
426 Office of Courts.

427           (12) (a) Except as otherwise provided for by law, the  
428 registration and other records of a treatment facility are  
429 confidential and shall not be disclosed to any person not  
430 connected with the treatment facility or the drug division and  
431 district attorney without the consent of the patient.

432           (b) The provisions of paragraph (a) of this subsection  
433 shall not restrict the use of patients' records for the purpose of  
434 research into the cause and treatment of alcoholism and drug  
435 addiction, provided that such information shall not be published  
436 in a way that discloses the patient's name and identifying  
437 information.

438           (13) No statement, or any information procured therefrom,  
439 with respect to the specific offenses with which the defendant is  
440 charged, which is made to any probation officer or alcohol and  
441 drug treatment worker subsequent to the granting of probation,  
442 shall be admissible in any civil or criminal action or proceeding,  
443 except a drug division probation revocation proceeding.

444           (14) A record of the fact that an individual has  
445 participated in a drug division probation program shall be sent to  
446 the Office of the Attorney General and shall be made available  
447 upon request to any district attorney for the purpose of  
448 determining if an individual has previously participated in a drug  
449 division probation program.

450           **SECTION 5.** Section 41-29-149, Mississippi Code of 1972, is  
451 amended as follows:

452           41-29-149. (a) Regardless of the penalties provided  
453 heretofore for the violation of any section or portion of this  
454 article, the judge of the court of jurisdiction of any defendant  
455 may, in his discretion, suspend such penalty, penalties, or  
456 portions thereof, or place such defendant in a program as provided  
457 in Sections 1 through 4 of House Bill No. \_\_\_\_\_, 2007 Regular  
458 Session, for any person charged with a first offense.

459           (b) A person convicted under this article or under any prior  
460 law superseded by this article for a violation of the law  
461 regarding controlled substances shall be eligible for parole just  
462 as in any other criminal conviction as provided by Section 47-7-3.

463           (c) Any person who was convicted and/or who is still serving  
464 a sentence in the Mississippi State Penitentiary for a first  
465 offense under any prior law superseded by this article may  
466 petition the court of original jurisdiction for resentencing under  
467 the provisions of this article.

468           (d) Any person previously indicted under a prior law for  
469 violation of any law regarding controlled substances but not yet  
470 sentenced shall be sentenced under the provisions of this article  
471 provided that the sentence imposed is not greater than that  
472 provided under said prior law.

473           (e) For the purposes of the sentencing provisions of this  
474 article, a first offense shall be deemed to be and include any  
475 offense, offenses, act or acts prohibited by said law, or any  
476 prior law superseded by said law, committed prior to a first  
477 indictment under said law or under prior law superseded by said  
478 law.

479           **SECTION 6.** Section 41-29-150, Mississippi Code of 1972, is  
480 amended as follows:

481           41-29-150. (a) Any person convicted under Section 41-29-139  
482 may be required, in the discretion of the court, as a part of the

483 sentence otherwise imposed, or in lieu of imprisonment in cases of  
484 probation or suspension of sentence, to attend a course of  
485 instruction conducted by the bureau, the State Board of Health, or  
486 any similar agency, on the effects, medically, psychologically and  
487 socially, of the misuse of controlled substances or successfully  
488 complete a treatment program as provided in Sections 1 through 4  
489 of House Bill No. \_\_\_\_\_, 2007 Regular Session. Said course may be  
490 conducted at any correctional institution, detention center or  
491 hospital, or at any center or treatment facility established for  
492 the purpose of education and rehabilitation of those persons  
493 committed because of abuse of controlled substances.

494 (b) Any person convicted under Section 41-29-139 who is  
495 found to be dependent upon or addicted to any controlled substance  
496 shall be required, as a part of the sentence otherwise imposed, or  
497 in lieu of imprisonment in cases of parole, probation or  
498 suspension of sentence, to receive medical treatment for such  
499 dependency or addiction or successfully complete a treatment  
500 program as provided in Sections 1 through 4 of House Bill No.  
501 \_\_\_\_\_ , 2007 Regular Session. The regimen of medical treatment may  
502 include confinement in a medical facility of any correctional  
503 institution, detention center or hospital, or at any center or  
504 facility established for treatment of those persons committed  
505 because of a dependence or addiction to controlled substances.

506 (c) Those persons previously convicted of a felony under  
507 Section 41-29-139 and who are now confined at the Mississippi  
508 State Hospital at Whitfield, Mississippi, or at the East  
509 Mississippi State Hospital at Meridian, Mississippi, for the term  
510 of their sentence shall remain under the jurisdiction of the  
511 Mississippi Department of Corrections and shall be required to  
512 abide by all reasonable rules and regulations promulgated by the  
513 director and staff of said institutions and of the Department of  
514 Corrections. Any persons so confined who shall refuse to abide by  
515 said rules or who attempt an escape or who shall escape shall be



516 transferred to the State Penitentiary or to a county jail, where  
517 appropriate, to serve the remainder of the term of imprisonment;  
518 this provision shall not preclude prosecution and conviction for  
519 escape from said institutions.

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

549           (2) Upon the dismissal of such person and discharge of  
550 proceedings against him under paragraph (1) of this subsection, or  
551 with respect to a person who has been convicted and adjudged  
552 guilty of an offense under subsection (c) or (d) of Section  
553 41-29-139, or for possession of narcotics, stimulants,  
554 depressants, hallucinogens, marijuana, other controlled substances  
555 or paraphernalia under prior laws of this state, such person, if  
556 he had not reached his twenty-sixth birthday at the time of the  
557 offense, may apply to the court for an order to expunge from all  
558 official records, other than the nonpublic records to be retained  
559 by the bureau under paragraph (1) of this subsection, all  
560 recordation relating to his arrest, indictment, trial, finding of  
561 guilty, and dismissal and discharge pursuant to this section. If  
562 the court determines, after hearing, that such person was  
563 dismissed and the proceedings against him discharged and that he  
564 had not reached his twenty-sixth birthday at the time of the  
565 offense, or that such person had satisfactorily served his  
566 sentence or period of probation and parole, and that he had not  
567 reached his twenty-sixth birthday at the time of the offense, it  
568 shall enter such order. The effect of such order shall be to  
569 restore such person, in the contemplation of the law, to the  
570 status he occupied before such arrest or indictment. No person as  
571 to whom such order has been entered shall be held thereafter under  
572 any provision of any law to be guilty of perjury or otherwise  
573 giving a false statement by reason of his failures to recite or  
574 acknowledge such arrest, or indictment or trial in response to any  
575 inquiry made of him for any purpose.

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

580           (f) It shall be unlawful for any person confined under the  
581 provisions of subsection (b) or (c) of this section to escape or

582 attempt to escape from said institution, and upon conviction said  
583 person shall be guilty of a felony and shall be imprisoned for a  
584 term not to exceed two (2) years.

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

588 **SECTION 7.** Sections 9-23-1, 9-23-3, 9-23-5, 9-23-7, 9-23-9,  
589 9-23-11, 9-23-13, 9-23-15, 9-23-17, 9-23-19, 9-23-21 and 9-23-23,  
590 Mississippi Code of 1972, which authorize the creation of drug  
591 courts, are repealed.

592 **SECTION 8.** This act shall take effect and be in force from  
593 and after July 1, 2007.