

By: Senator(s) Doxey

To: Judiciary, Division A

SENATE BILL NO. 2457

1 AN ACT TO AMEND SECTIONS 47-5-603, 47-5-605, 47-7-3, 47-7-35,
2 47-7-47, 63-11-30 AND 99-15-26, MISSISSIPPI CODE OF 1972, TO
3 CLARIFY THE ALCOHOL AND DRUG TREATMENT IS AT THE DISCRETION OF THE
4 JUDGE AND THE COST TO THE STATE SHALL BE ADDED TO INMATE'S COURT
5 COST TO BE PAID BY THE INMATE EITHER PRIOR TO INCARCERATION OR
6 DURING PROBATION AS A PART OF THE PROBATION; AND FOR RELATED
7 PURPOSES.

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

9 SECTION 1. Section 47-5-603, Mississippi Code of 1972, is
10 amended as follows:

11 47-5-603. Any offender on probation or released from a
12 facility of the Department of Corrections on parole or earned
13 probation who remains under the supervision of the Department of
14 Corrections or any offender who is incarcerated in a state
15 correctional facility may be ordered, in the discretion of the
16 court or as part of a plea agreement with the district attorney to
17 participate in the Mississippi Department of Corrections drug
18 identification program. Participation by an offender would
19 consist of submission by the offender, from time to time and upon
20 the request of a parole or probation supervisor, or authorized
21 personnel of the department to any type of breath, saliva or urine
22 chemical analysis test, the purpose of which is to detect the
23 possible presence of alcohol or a substance prohibited or
24 controlled by any law of the State of Mississippi or the United
25 States.

26 SECTION 2. Section 47-5-605, Mississippi Code of 1972, is
27 amended as follows:

28 47-5-605. * * * The participant shall be required to pay a
29 fee of ten dollars (\$10.00) to the Mississippi Department of

30 Corrections drug identification program, which fee shall be used
31 to pay for the cost of administering that particular test. All
32 other costs of the program, including the costs of administering
33 such tests in cases in which the presence of alcohol or a
34 controlled substance is not found, will be paid by expenditures
35 from the community service revolving fund as described in Section
36 47-7-49.

37 **SECTION 3.** Section 47-7-3, Mississippi Code of 1972, is
38 amended as follows:

39 47-7-3. (1) Every prisoner who has been convicted of any
40 offense against the State of Mississippi, and is confined in the
41 execution of a judgment of such conviction in the Mississippi
42 Department of Corrections for a definite term or terms of one (1)
43 year or over, or for the term of his or her natural life, whose
44 record of conduct shows that such prisoner has observed the rules
45 of the department, and who has served not less than one-fourth
46 (1/4) of the total of such term or terms for which such prisoner
47 was sentenced, or, if sentenced to serve a term or terms of thirty
48 (30) years or more, or, if sentenced for the term of the natural
49 life of such prisoner, has served not less than ten (10) years of
50 such life sentence, may be released on parole as hereinafter
51 provided, except that:

52 (a) No prisoner convicted as a confirmed and habitual
53 criminal under the provisions of Sections 99-19-81 through
54 99-19-87 shall be eligible for parole;

55 (b) Any person who shall have been convicted of a sex
56 crime shall not be released on parole except for a person under
57 the age of nineteen (19) who has been convicted under Section
58 97-3-67;

59 (c) No one shall be eligible for parole until he shall
60 have served one (1) year of his sentence, unless such person has
61 accrued any meritorious earned time allowances, in which case he
62 shall be eligible for parole if he has served (i) nine (9) months

63 of his sentence or sentences, when his sentence or sentences is
64 two (2) years or less; (ii) ten (10) months of his sentence or
65 sentences when his sentence or sentences is more than two (2)
66 years but no more than five (5) years; and (iii) one (1) year of
67 his sentence or sentences when his sentence or sentences is more
68 than five (5) years;

69 (d) (i) No person shall be eligible for parole who
70 shall, on or after January 1, 1977, be convicted of robbery or
71 attempted robbery through the display of a firearm until he shall
72 have served ten (10) years if sentenced to a term or terms of more
73 than ten (10) years or if sentenced for the term of the natural
74 life of such person. If such person is sentenced to a term or
75 terms of ten (10) years or less, then such person shall not be
76 eligible for parole. The provisions of this paragraph (d) shall
77 also apply to any person who shall commit robbery or attempted
78 robbery on or after July 1, 1982, through the display of a deadly
79 weapon. This paragraph (d)(i) shall not apply to persons
80 convicted after September 30, 1994;

81 (ii) No person shall be eligible for parole who
82 shall, on or after October 1, 1994, be convicted of robbery,
83 attempted robbery or carjacking as provided in Section 97-3-115 et
84 seq., through the display of a firearm or drive-by shooting as
85 provided in Section 97-3-109. The provisions of this paragraph
86 (d)(ii) shall also apply to any person who shall commit robbery,
87 attempted robbery, carjacking or a drive-by shooting on or after
88 October 1, 1994, through the display of a deadly weapon;

89 (e) No person shall be eligible for parole who, on or
90 after July 1, 1994, is charged, tried, convicted and sentenced to
91 life imprisonment without eligibility for parole under the
92 provisions of Section 99-19-101;

93 (f) No person shall be eligible for parole who is
94 charged, tried, convicted and sentenced to life imprisonment under
95 the provisions of Section 99-19-101;

96 (g) No person shall be eligible for parole who is
97 convicted or whose suspended sentence is revoked after June 30,
98 1995, except that a first offender convicted of a nonviolent crime
99 after January 1, 2000, may be eligible for parole if the offender
100 meets the requirements in subsection (1) and this paragraph. In
101 addition to other requirements, if a first offender is convicted
102 of a drug or driving under the influence felony, the offender, in
103 the discretion of the court or as part of a plea bargain with the
104 district attorney, may complete a drug and alcohol rehabilitation
105 program prior to parole or the offender may, in the discretion of
106 the court or as part of a plea bargain with the district attorney,
107 complete a post-release drug and alcohol program as a condition of
108 parole. The person shall pay the cost of participating in the
109 program. For purposes of this paragraph, "nonviolent crime" means
110 a felony other than homicide, robbery, manslaughter, sex crimes,
111 arson, burglary of an occupied dwelling, aggravated assault,
112 kidnapping, felonious abuse of vulnerable adults, felonies with
113 enhanced penalties, the sale or manufacture of a controlled
114 substance under the Uniform Controlled Substances Law, felony
115 child abuse, or any crime under Section 97-5-33 or Section
116 97-5-39(2) or a violation of Section 63-11-30(5) resulting in
117 death, or serious bodily injury resulting in the loss of a limb or
118 dismemberment, loss of eyesight, a coma, permanent dysfunction of
119 any vital organ, paralysis or resulting in an individual's
120 permanent bedridden state. For purposes of this paragraph, "first
121 offender" means a person who at the time of sentencing has not
122 been convicted of a felony on a previous occasion in any court or
123 courts of the United States or in any state or territory thereof.
124 In addition, a first time offender incarcerated for committing the
125 crime of possession of a controlled substance under the Uniform
126 Controlled Substances Law after July 1, 1995, shall be eligible
127 for parole as provided for such offenders in this paragraph after
128 July 1, 2000.

129 (2) Notwithstanding any other provision of law, an inmate
130 shall not be eligible to receive earned time, good time or any
131 other administrative reduction of time which shall reduce the time
132 necessary to be served for parole eligibility as provided in
133 subsection (1) of this section; however, this subsection shall not
134 apply to the advancement of parole eligibility dates pursuant to
135 the Prison Overcrowding Emergency Powers Act. Moreover,
136 meritorious earned time allowances may be used to reduce the time
137 necessary to be served for parole eligibility as provided in
138 paragraph (c) of subsection (1) of this section.

139 (3) (a) The State Parole Board shall by rules and
140 regulations establish a method of determining a tentative parole
141 hearing date for each eligible offender taken into the custody of
142 the Department of Corrections. The tentative parole hearing date
143 shall be determined within ninety (90) days after the department
144 has assumed custody of the offender. Such tentative parole
145 hearing date shall be calculated by a formula taking into account
146 the offender's age upon first commitment, number of prior
147 incarcerations, prior probation or parole failures, the severity
148 and the violence of the offense committed, employment history and
149 other criteria which in the opinion of the board tend to validly
150 and reliably predict the length of incarceration necessary before
151 the offender can be successfully paroled.

152 (b) [Repealed].

153 (4) Any inmate within twenty-four (24) months of his parole
154 eligibility date and who meets the criteria established by the
155 classification board shall receive priority for placement in any
156 educational development and job training programs. Any inmate
157 refusing to participate in an educational development or job
158 training program may be ineligible for parole.

159 **SECTION 4.** Section 47-7-35, Mississippi Code of 1972, is
160 amended as follows:

161 47-7-35. (1) The courts referred to in Section 47-7-33 or
162 47-7-34 shall determine the terms and conditions of probation or
163 post-release supervision and may alter or modify, at any time
164 during the period of probation or post-release supervision, the
165 conditions and may include among them the following or any other:

166 That the offender shall:

- 167 (a) Commit no offense against the laws of this or any
168 other state of the United States, or of the United States;
- 169 (b) Avoid injurious or vicious habits;
- 170 (c) Avoid persons or places of disreputable or harmful
171 character;
- 172 (d) Report to the probation and parole officer as
173 directed;
- 174 (e) Permit the probation and parole officer to visit
175 him at home or elsewhere;
- 176 (f) Work faithfully at suitable employment so far as
177 possible;
- 178 (g) Remain within a specified area;
- 179 (h) Pay his fine in one (1) or several sums;
- 180 (i) Support his dependents;
- 181 (j) Submit, as provided in Section 47-5-601, to any
182 type of breath, saliva or urine chemical analysis test, the
183 purpose of which is to detect the possible presence of alcohol or
184 a substance prohibited or controlled by any law of the State of
185 Mississippi or the United States, and pay the cost of the test or
186 tests.

187 (2) When any court places a defendant on misdemeanor
188 probation, the court must cause to be conducted a search of the
189 probationer's name or other identifying information against the
190 registration information regarding sex offenders maintained under
191 Title 45, Chapter 33. The search may be conducted using the
192 Internet site maintained by the Department of Public Safety Sex
193 Offender Registry.

194 **SECTION 5.** Section 47-7-47, Mississippi Code of 1972, is
195 amended as follows:

196 47-7-47. (1) The judge of any circuit court may place an
197 offender on a program of earned probation after a period of
198 confinement as set out herein and the judge may seek the advice of
199 the commissioner and shall direct that the defendant be under the
200 supervision of the department.

201 (2) (a) Any circuit court or county court may, upon its own
202 motion, acting upon the advice and consent of the commissioner not
203 earlier than thirty (30) days nor later than one (1) year after
204 the defendant has been delivered to the custody of the department,
205 to which he has been sentenced, suspend the further execution of
206 the sentence and place the defendant on earned probation, except
207 when a death sentence or life imprisonment is the maximum penalty
208 which may be imposed or if the defendant has been confined two (2)
209 or more times for the conviction of a felony on a previous
210 occasion in any court or courts of the United States and of any
211 state or territories thereof or has been convicted of a felony
212 involving the use of a deadly weapon.

213 (b) The authority granted in this subsection shall be
214 exercised by the judge who imposed sentence on the defendant, or
215 his successor.

216 (c) The time limit imposed by paragraph (a) of this
217 subsection is not applicable to those defendants sentenced to the
218 custody of the department prior to April 14, 1977. Persons who
219 are convicted of crimes that carry mandatory sentences shall not
220 be eligible for earned probation.

221 (3) When any circuit or county court places an offender on
222 earned probation, the court shall give notice to the Mississippi
223 Department of Corrections within fifteen (15) days of the court's
224 decision to place the offender on earned probation. Notice shall
225 be delivered to the central office of the Mississippi Department

226 of Corrections and to the regional office of the department which
227 will be providing supervision to the offender on earned probation.

228 (4) If the court places any person on probation or earned
229 probation, the court may order the person, as a condition of
230 probation, to a period of confinement and treatment at a private
231 or public agency or institution, either within or without the
232 state, which treats emotional, mental or drug-related problems.
233 Any person who, as a condition of probation, is confined for
234 treatment at an out-of-state facility shall be supervised pursuant
235 to Section 47-7-71, and any person confined at a private agency
236 shall not be confined at public expense. Time served in any such
237 agency or institution may be counted as time required to meet the
238 criteria of subsection (2)(a). The person must pay the cost of
239 the treatment, tests and supervision.

240 (5) If the court places any person on probation or earned
241 probation, the court may order the person to make appropriate
242 restitution to any victim of his crime or to society through the
243 performance of reasonable work for the benefit of the community.

244 (6) If the court places any person on probation or earned
245 probation, the court may order the person, as a condition of
246 probation, to submit, as provided in Section 47-5-601, to any type
247 of breath, saliva or urine chemical analysis test, the purpose of
248 which is to detect the possible presence of alcohol or a substance
249 prohibited or controlled by any law of the State of Mississippi or
250 the United States. The person must pay the cost of the tests.

251 **SECTION 6.** Section 63-11-30, Mississippi Code of 1972, is
252 amended as follows:

253 63-11-30. (1) It is unlawful for any person to drive or
254 otherwise operate a vehicle within this state who (a) is under the
255 influence of intoxicating liquor; (b) is under the influence of
256 any other substance which has impaired such person's ability to
257 operate a motor vehicle; (c) has an alcohol concentration of eight
258 one-hundredths percent (.08%) or more for persons who are above

259 the legal age to purchase alcoholic beverages under state law, or
260 two one-hundredths percent (.02%) or more for persons who are
261 below the legal age to purchase alcoholic beverages under state
262 law, in the person's blood based upon grams of alcohol per one
263 hundred (100) milliliters of blood or grams of alcohol per two
264 hundred ten (210) liters of breath as shown by a chemical analysis
265 of such person's breath, blood or urine administered as authorized
266 by this chapter; (d) is under the influence of any drug or
267 controlled substance, the possession of which is unlawful under
268 the Mississippi Controlled Substances Law; or (e) has an alcohol
269 concentration of four one-hundredths percent (.04%) or more in the
270 person's blood, based upon grams of alcohol per one hundred (100)
271 milliliters of blood or grams of alcohol per two hundred ten (210)
272 liters of breath as shown by a chemical analysis of such person's
273 blood, breath or urine, administered as authorized by this chapter
274 for persons operating a commercial motor vehicle.

275 (2) (a) Except as otherwise provided in subsection (3),
276 upon conviction of any person for the first offense of violating
277 subsection (1) of this section where chemical tests provided for
278 under Section 63-11-5 were given, or where chemical test results
279 are not available, such person shall be fined not less than Two
280 Hundred Fifty Dollars (\$250.00) nor more than One Thousand Dollars
281 (\$1,000.00), or imprisoned for not more than forty-eight (48)
282 hours in jail or both; and the court shall order such person to
283 attend and complete an alcohol safety education program as
284 provided in Section 63-11-32. The court may substitute attendance
285 at a victim impact panel instead of forty-eight (48) hours in
286 jail. In addition, the Department of Public Safety, the
287 Commissioner of Public Safety or his duly authorized agent shall,
288 after conviction and upon receipt of the court abstract, suspend
289 the driver's license and driving privileges of such person for a
290 period of not less than ninety (90) days and until such person
291 attends and successfully completes an alcohol safety education

292 program as herein provided; provided, however, in no event shall
293 such period of suspension exceed one (1) year. Commercial driving
294 privileges shall be suspended as provided in Section 63-1-83.

295 The circuit court having jurisdiction in the county in which
296 the conviction was had or the circuit court of the person's county
297 of residence may reduce the suspension of driving privileges under
298 Section 63-11-30(2)(a) if the denial of which would constitute a
299 hardship on the offender, except that no court may issue such an
300 order reducing the suspension of driving privileges under this
301 subsection until thirty (30) days have elapsed from the effective
302 date of the suspension. Hardships shall only apply to first
303 offenses under Section 63-11-30(1), and shall not apply to second,
304 third or subsequent convictions of any person violating subsection
305 (1) of this section. A reduction of suspension on the basis of
306 hardship shall not be available to any person who refused to
307 submit to a chemical test upon the request of a law enforcement
308 officer as provided in Section 63-11-5. When the petition is
309 filed, such person shall pay to the circuit clerk of the court
310 where the petition is filed a fee of Fifty Dollars (\$50.00), which
311 shall be deposited into the State General Fund to the credit of a
312 special fund hereby created in the State Treasury to be used for
313 alcohol or drug abuse treatment and education, upon appropriation
314 by the Legislature. This fee shall be in addition to any other
315 court costs or fees required for the filing of petitions.

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

324 The order entered under the provisions of this subsection
325 shall contain the specific grounds upon which hardship was
326 determined, and may order the petitioner to attend and complete an
327 alcohol safety education program as provided in Section 63-11-32.
328 A certified copy of such order shall be delivered to the
329 Commissioner of Public Safety by the clerk of the court within
330 five (5) days of the entry of the order. The certified copy of
331 such order shall contain information which will identify the
332 petitioner, including, but not limited to, the name, mailing
333 address, street address, social security number and driver's
334 license number of the petitioner. The person must pay the cost of
335 the program.

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

- 341 (i) Continue his employment;
- 342 (ii) Continue attending school or an educational
343 institution; or
- 344 (iii) Obtain necessary medical care.

345 Proof of the hardship shall be established by clear and
346 convincing evidence which shall be supported by independent
347 documentation.

348 (b) Except as otherwise provided in subsection (3),
349 upon any second conviction of any person violating subsection (1)
350 of this section, the offenses being committed within a period of
351 five (5) years, such person shall be fined not less than Six
352 Hundred Dollars (\$600.00) nor more than One Thousand Five Hundred
353 Dollars (\$1,500.00), shall be imprisoned not less than five (5)
354 days nor more than one (1) year and sentenced to community service
355 work for not less than ten (10) days nor more than one (1) year.
356 The minimum penalties shall not be suspended or reduced by the

357 court and no prosecutor shall offer any suspension or sentence
358 reduction as part of a plea bargain. Except as may otherwise be
359 provided by paragraph (d) of this subsection, the Commissioner of
360 Public Safety shall suspend the driver's license of such person
361 for two (2) years. Suspension of a commercial driver's license
362 shall be governed by Section 63-1-83. Upon any second conviction
363 as described in this paragraph, the court shall ascertain whether
364 the defendant is married, and if the defendant is married shall
365 obtain the name and address of the defendant's spouse; the clerk
366 of the court shall submit this information to the Department of
367 Public Safety. Further, the commissioner shall notify in writing,
368 by certified mail, return receipt requested, the owner of the
369 vehicle and the spouse, if any, of the person convicted of the
370 second violation of the possibility of forfeiture of the vehicle
371 if such person is convicted of a third violation of subsection (1)
372 of this section. The owner of the vehicle and the spouse shall be
373 considered notified under this paragraph if the notice is
374 deposited in the United States mail and any claim that the notice
375 was not in fact received by the addressee shall not affect a
376 subsequent forfeiture proceeding.

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

380 (c) Except as otherwise provided in subsection (3), for
381 any third or subsequent conviction of any person violating
382 subsection (1) of this section, the offenses being committed
383 within a period of five (5) years, such person shall be guilty of
384 a felony and fined not less than Two Thousand Dollars (\$2,000.00)
385 nor more than Five Thousand Dollars (\$5,000.00), shall serve not
386 less than one (1) year nor more than five (5) years in the custody
387 of the Department of Corrections; provided, however, that for any
388 such offense which does not result in serious injury or death to
389 any person, any sentence of incarceration may be served in the

390 county jail rather than in the State Penitentiary at the
391 discretion of the circuit court judge. The minimum penalties
392 shall not be suspended or reduced by the court and no prosecutor
393 shall offer any suspension or sentence reduction as part of a plea
394 bargain. The law enforcement agency shall seize the vehicle
395 operated by any person charged with a third or subsequent
396 violation of subsection (1) of this section, if such convicted
397 person was driving the vehicle at the time the offense was
398 committed. Such vehicle may be forfeited in the manner provided
399 by Sections 63-11-49 through 63-11-53. Except as may otherwise be
400 provided by paragraph (e) of this subsection, the Commissioner of
401 Public Safety shall suspend the driver's license of such person
402 for five (5) years. The suspension of a commercial driver's
403 license shall be governed by Section 63-1-83.

404 (d) Except as otherwise provided in subsection (3), any
405 person convicted of a second violation of subsection (1) of this
406 section shall receive an in-depth diagnostic assessment, and if as
407 a result of such assessment is determined to be in need of
408 treatment of his alcohol and/or drug abuse problem, such person
409 shall successfully complete treatment of his alcohol and/or drug
410 abuse problem at a program site certified by the Department of
411 Mental Health. Such person shall be eligible for reinstatement of
412 his driving privileges upon the successful completion of such
413 treatment after a period of one (1) year after such person's
414 driver's license is suspended. Each person who receives a
415 diagnostic assessment shall pay a fee representing the cost of
416 such assessment. Each person who participates in a treatment
417 program shall pay a fee representing the cost of such treatment.

418 (e) Except as otherwise provided in subsection (3), any
419 person convicted of a third or subsequent violation of subsection
420 (1) of this section shall receive an in-depth diagnostic
421 assessment, and if as a result of such assessment is determined to
422 be in need of treatment of his alcohol and/or drug abuse problem,

423 such person may be ordered to enter an alcohol and/or drug abuse
424 program approved by the Department of Mental Health for treatment
425 of such person's alcohol and/or drug abuse problem at the
426 discretion of the judge or as a part of a plea agreement with the
427 district attorney. If such person successfully completes such
428 treatment, such person shall be eligible for reinstatement of his
429 driving privileges after a period of three (3) years after such
430 person's driver's license is suspended. The person must pay the
431 cost of the person's participation.

432 (f) The Department of Public Safety shall promulgate
433 rules and regulations for the use of interlock ignition devices as
434 provided in Section 63-11-31 and consistent with the provisions
435 therein. Such rules and regulations shall provide for the
436 calibration of such devices and shall provide that the cost of the
437 use of such systems shall be borne by the offender. The
438 Department of Public Safety shall approve which vendors of such
439 devices shall be used to furnish such systems.

440 (3) (a) This subsection shall be known and may be cited as
441 Zero Tolerance for Minors. The provisions of this subsection
442 shall apply only when a person under the age of twenty-one (21)
443 years has a blood alcohol concentration of two one-hundredths
444 percent (.02%) or more, but lower than eight one-hundredths
445 percent (.08%). If such person's blood alcohol concentration is
446 eight one-hundredths percent (.08%) or more, the provisions of
447 subsection (2) shall apply.

448 (b) Upon conviction of any person under the age of
449 twenty-one (21) years for the first offense of violating
450 subsection (1) of this section where chemical tests provided for
451 under Section 63-11-5 were given, or where chemical test results
452 are not available, such person shall have his driver's license
453 suspended for ninety (90) days and shall be fined Two Hundred
454 Fifty Dollars (\$250.00); and the court shall order such person to
455 attend and complete an alcohol safety education program as

456 provided in Section 63-11-32. The court may also require
457 attendance at a victim impact panel.

458 The court in the county in which the conviction was had or
459 the circuit court of the person's county of residence may reduce
460 the suspension of driving privileges under Section 63-11-30(2)(a)
461 if the denial of which would constitute a hardship on the
462 offender, except that no court may issue such an order reducing
463 the suspension of driving privileges under this subsection until
464 thirty (30) days have elapsed from the effective date of the
465 suspension. Hardships shall only apply to first offenses under
466 Section 63-11-30(1), and shall not apply to second, third or
467 subsequent convictions of any person violating subsection (1) of
468 this section. A reduction of suspension on the basis of hardship
469 shall not be available to any person who refused to submit to a
470 chemical test upon the request of a law enforcement officer as
471 provided in Section 63-11-5. When the petition is filed, such
472 person shall pay to the circuit clerk of the court where the
473 petition is filed a fee of Fifty Dollars (\$50.00), which shall be
474 deposited into the State General Fund to the credit of a special
475 fund hereby created in the State Treasury to be used for alcohol
476 or drug abuse treatment and education, upon appropriation by the
477 Legislature. This fee shall be in addition to any other court
478 costs or fees required for the filing of petitions.

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

487 The order entered under the provisions of this subsection
488 shall contain the specific grounds upon which hardship was

489 determined, and shall order the petitioner to attend and complete
490 an alcohol safety education program as provided in Section
491 63-11-32. A certified copy of such order shall be delivered to
492 the Commissioner of Public Safety by the clerk of the court within
493 five (5) days of the entry of the order. The certified copy of
494 such order shall contain information which will identify the
495 petitioner, including, but not limited to, the name, mailing
496 address, street address, social security number and driver's
497 license number of the petitioner.

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

- 503 (i) Continue his employment;
- 504 (ii) Continue attending school or an educational
505 institution; or
- 506 (iii) Obtain necessary medical care.

507 Proof of the hardship shall be established by clear and
508 convincing evidence which shall be supported by independent
509 documentation.

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

516 (d) For any third or subsequent conviction of any
517 person under the age of twenty-one (21) years violating subsection
518 (1) of this section, the offenses being committed within a period
519 of five (5) years, such person shall be fined not more than One
520 Thousand Dollars (\$1,000.00) and shall have his driver's license

521 suspended until he reaches the age of twenty-one (21) or for two
522 (2) years, whichever is longer.

523 (e) Any person under the age of twenty-one (21) years
524 convicted of a second violation of subsection (1) of this section,
525 may have the period that his driver's license is suspended reduced
526 if such person receives an in-depth diagnostic assessment, and as
527 a result of such assessment is determined to be in need of
528 treatment of his alcohol and/or drug abuse problem and
529 successfully completes treatment of his alcohol and/or drug abuse
530 problem at a program site certified by the Department of Mental
531 Health at the discretion of the judge or as a part of a plea
532 agreement with the district attorney. Such person shall be
533 eligible for reinstatement of his driving privileges upon the
534 successful completion of such treatment after a period of six (6)
535 months after such person's driver's license is suspended. Each
536 person who receives a diagnostic assessment shall pay a fee
537 representing the cost of such assessment. Each person who
538 participates in a treatment program shall pay a fee representing
539 the cost of such treatment.

540 (f) Any person under the age of twenty-one (21) years
541 convicted of a third or subsequent violation of subsection (1) of
542 this section may complete treatment of an alcohol and/or drug
543 abuse program at a site certified by the Department of Mental
544 Health at the discretion of the judge or as a part of a plea
545 agreement with the district attorney.

546 (g) The court shall have the discretion to rule that a
547 first offense of this subsection by a person under the age of
548 twenty-one (21) years shall be nonadjudicated. Such person shall
549 be eligible for nonadjudication only once. The Department of
550 Public Safety shall maintain a confidential registry of all cases
551 which are nonadjudicated as provided in this paragraph. A judge
552 who rules that a case is nonadjudicated shall forward such ruling
553 to the Department of Public Safety. Judges and prosecutors

554 involved in implied consent violations shall have access to the
555 confidential registry for the purpose of determining
556 nonadjudication eligibility. A record of a person who has been
557 nonadjudicated shall be maintained for five (5) years or until
558 such person reaches the age of twenty-one (21) years. Any person
559 whose confidential record has been disclosed in violation of this
560 paragraph shall have a civil cause of action against the person
561 and/or agency responsible for such disclosure.

562 (4) In addition to the other penalties provided in this
563 section, every person refusing a law enforcement officer's request
564 to submit to a chemical test of his breath as provided in this
565 chapter, or who was unconscious at the time of a chemical test and
566 refused to consent to the introduction of the results of such test
567 in any prosecution, shall suffer an additional suspension of
568 driving privileges as follows:

569 The Commissioner of Public Safety or his authorized agent
570 shall suspend the driver's license or permit to drive or deny the
571 issuance of a license or permit to such person as provided for
572 first, second and third or subsequent offenders in subsection (2)
573 of this section. Such suspension shall be in addition to any
574 suspension imposed pursuant to subsection (1) of Section 63-11-23.
575 The minimum suspension imposed under this subsection shall not be
576 reduced and no prosecutor is authorized to offer a reduction of
577 such suspension as part of a plea bargain.

578 (5) Every person who operates any motor vehicle in violation
579 of the provisions of subsection (1) of this section and who in a
580 negligent manner causes the death of another or mutilates,
581 disfigures, permanently disables or destroys the tongue, eye, lip,
582 nose or any other limb, organ or member of another shall, upon
583 conviction, be guilty of a separate felony for each such death,
584 mutilation, disfigurement or other injury and shall be committed
585 to the custody of the State Department of Corrections for a period
586 of time of not less than five (5) years and not to exceed

587 twenty-five (25) years for each such death, mutilation,
588 disfigurement or other injury, and the imprisonment for the second
589 or each subsequent conviction, in the discretion of the court,
590 shall commence either at the termination of the imprisonment for
591 the preceding conviction or run concurrently with the preceding
592 conviction. Any person charged with causing the death of another
593 as described in this subsection shall be required to post bail
594 before being released after arrest.

595 (6) Upon conviction of any violation of subsection (1) of
596 this section, the trial judge shall sign in the place provided on
597 the traffic ticket, citation or affidavit stating that the person
598 arrested either employed an attorney or waived his right to an
599 attorney after having been properly advised. If the person
600 arrested employed an attorney, the name, address and telephone
601 number of the attorney shall be written on the ticket, citation or
602 affidavit. The judge shall cause a copy of the traffic ticket,
603 citation or affidavit, and any other pertinent documents
604 concerning the conviction, to be sent to the Commissioner of
605 Public Safety. A copy of the traffic ticket, citation or
606 affidavit and any other pertinent documents, having been attested
607 as true and correct by the Commissioner of Public Safety, or his
608 designee, shall be sufficient proof of the conviction for purposes
609 of determining the enhanced penalty for any subsequent convictions
610 of violations of subsection (1) of this section.

611 (7) Convictions in other states of violations for driving or
612 operating a vehicle while under the influence of an intoxicating
613 liquor or while under the influence of any other substance that
614 has impaired the person's ability to operate a motor vehicle
615 occurring after July 1, 1992, shall be counted for the purposes of
616 determining if a violation of subsection (1) of this section is a
617 first, second, third or subsequent offense and the penalty that
618 shall be imposed upon conviction for a violation of subsection (1)
619 of this section.

620 (8) For the purposes of determining how to impose the
621 sentence for a second, third or subsequent conviction under this
622 section, the indictment shall not be required to enumerate
623 previous convictions. It shall only be necessary that the
624 indictment state the number of times that the defendant has been
625 convicted and sentenced within the past five (5) years under this
626 section to determine if an enhanced penalty shall be imposed. The
627 amount of fine and imprisonment imposed in previous convictions
628 shall not be considered in calculating offenses to determine a
629 second, third or subsequent offense of this section.

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

634 (10) Suspension of driving privileges for any person
635 convicted of violations of Section 63-11-30(1) shall run
636 consecutively.

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

639 **SECTION 7.** Section 99-15-26, Mississippi Code of 1972, is
640 amended as follows:

641 99-15-26. (1) In all criminal cases, felony and
642 misdemeanor, other than crimes against the person, the circuit or
643 county court shall be empowered, upon the entry of a plea of
644 guilty by a criminal defendant, to withhold acceptance of the plea
645 and sentence thereon pending successful completion of such
646 conditions as may be imposed by the court pursuant to subsection
647 (2) of this section. In all misdemeanor criminal cases, other
648 than crimes against the person, the justice or municipal court
649 shall be empowered, upon the entry of a plea of guilty by a
650 criminal defendant, to withhold acceptance of the plea and
651 sentence thereon pending successful completion of such conditions
652 as may be imposed by the court pursuant to subsection (2) of this

653 section. No person having previously qualified under the
654 provisions of this section or having ever been convicted of a
655 felony shall be eligible to qualify for release in accordance with
656 this section. A person shall not be eligible to qualify for
657 release in accordance with this section if such person has been
658 charged (a) with an offense pertaining to the sale, barter,
659 transfer, manufacture, distribution or dispensing of a controlled
660 substance, or the possession with intent to sell, barter,
661 transfer, manufacture, distribute or dispense a controlled
662 substance, as provided in Section 41-29-139(a)(1), Mississippi
663 Code of 1972, except for a charge under said provision when the
664 controlled substance involved is one (1) ounce or less of
665 marihuana; (b) with an offense pertaining to the possession of one
666 (1) kilogram or more of marihuana as provided in Section
667 41-29-139(c)(2)(D), Mississippi Code of 1972; or (c) with an
668 offense under the Mississippi Implied Consent Law.

669 (2) (a) Conditions which the circuit, county, justice or
670 municipal court may impose under subsection (1) of this section
671 shall consist of:

672 (i) Reasonable restitution to the victim of the
673 crime.

674 (ii) Performance of not more than nine hundred
675 sixty (960) hours of public service work approved by the court.

676 (iii) Payment of a fine not to exceed the
677 statutory limit.

678 (iv) Successful completion of drug, alcohol,
679 psychological or psychiatric treatment or any combination thereof
680 if the court deems such treatment necessary; the participant shall
681 pay the cost thereof.

682 (v) The circuit or county court, in its
683 discretion, may require the defendant to remain in the program
684 subject to good behavior for a period of time not to exceed five
685 (5) years. The justice or municipal court, in its discretion, may

686 require the defendant to remain in the program subject to good
687 behavior for a period of time not to exceed two (2) years.

688 (b) Conditions which the circuit or county court may
689 impose under subsection (1) of this section also include
690 successful completion of a regimented inmate discipline program.

691 (3) When the court has imposed upon the defendant the
692 conditions set out in this section, the court shall release the
693 bail bond, if any.

694 (4) Upon successful completion of the court-imposed
695 conditions permitted by subsection (2) of this section, the court
696 shall direct that the cause be dismissed and the case be closed.

697 (5) Upon petition therefor, the court shall expunge the
698 record of any case in which an arrest was made, the person
699 arrested was released and the case was dismissed or the charges
700 were dropped or there was no disposition of such case.

701 (6) This section shall take effect and be in force from and
702 after March 31, 1983.

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