

By: Senator(s) Doxey

To: Judiciary, Division A

COMMITTEE SUBSTITUTE
FOR
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; TO AMEND SECTION
7 63-11-23, MISSISSIPPI CODE OF 1972, TO AUTHORIZE ISSUANCE OF AN
8 EXTENSION OF DRIVING PRIVILEGES WHEN THE ARRESTING OFFICER HAS
9 FAILED TO FILE THE CHARGING AFFIDAVIT WITH THE COURT; AND FOR
10 RELATED PURPOSES.

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

12 **SECTION 1.** Section 47-5-603, Mississippi Code of 1972, is
13 amended as follows:

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

29 **SECTION 2.** Section 47-5-605, Mississippi Code of 1972, is
30 amended as follows:

31 47-5-605. * * * The participant shall be required to pay a
32 fee of ten dollars (\$10.00) to the Mississippi Department of
33 Corrections drug identification program, which fee shall be used
34 to pay for the cost of administering that particular test. All
35 other costs of the program, including the costs of administering
36 such tests in cases in which the presence of alcohol or a
37 controlled substance is not found, will be paid by expenditures
38 from the community service revolving fund as described in Section
39 47-7-49.

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

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

55 (a) No prisoner convicted as a confirmed and habitual
56 criminal under the provisions of Sections 99-19-81 through
57 99-19-87 shall be eligible for parole;

58 (b) Any person who shall have been convicted of a sex
59 crime shall not be released on parole except for a person under
60 the age of nineteen (19) who has been convicted under Section
61 97-3-67;

62 (c) No one shall be eligible for parole until he shall
63 have served one (1) year of his sentence, unless such person has

64 accrued any meritorious earned time allowances, in which case he
65 shall be eligible for parole if he has served (i) nine (9) months
66 of his sentence or sentences, when his sentence or sentences is
67 two (2) years or less; (ii) ten (10) months of his sentence or
68 sentences when his sentence or sentences is more than two (2)
69 years but no more than five (5) years; and (iii) one (1) year of
70 his sentence or sentences when his sentence or sentences is more
71 than five (5) years;

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

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

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

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

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

129 Controlled Substances Law after July 1, 1995, shall be eligible
130 for parole as provided for such offenders in this paragraph after
131 July 1, 2000.

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

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

155 (b) [Repealed].

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

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

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

169 That the offender shall:

170 (a) Commit no offense against the laws of this or any
171 other state of the United States, or of the United States;

172 (b) Avoid injurious or vicious habits;

173 (c) Avoid persons or places of disreputable or harmful
174 character;

175 (d) Report to the probation and parole officer as
176 directed;

177 (e) Permit the probation and parole officer to visit
178 him at home or elsewhere;

179 (f) Work faithfully at suitable employment so far as
180 possible;

181 (g) Remain within a specified area;

182 (h) Pay his fine in one (1) or several sums;

183 (i) Support his dependents;

184 (j) Submit, as provided in Section 47-5-601, to any
185 type of breath, saliva or urine chemical analysis test, the
186 purpose of which is to detect the possible presence of alcohol or
187 a substance prohibited or controlled by any law of the State of
188 Mississippi or the United States, and pay the cost of the test or
189 tests.

190 (2) When any court places a defendant on misdemeanor
191 probation, the court must cause to be conducted a search of the
192 probationer's name or other identifying information against the
193 registration information regarding sex offenders maintained under
194 Title 45, Chapter 33. The search may be conducted using the

195 Internet site maintained by the Department of Public Safety Sex
196 Offender Registry.

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

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

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

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

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

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

228 be delivered to the central office of the Mississippi Department
229 of Corrections and to the regional office of the department which
230 will be providing supervision to the offender on earned probation.

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

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

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

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

256 63-11-30. (1) It is unlawful for any person to drive or
257 otherwise operate a vehicle within this state who (a) is under the
258 influence of intoxicating liquor; (b) is under the influence of
259 any other substance which has impaired such person's ability to
260 operate a motor vehicle; (c) has an alcohol concentration of eight

261 one-hundredths percent (.08%) or more for persons who are above
262 the legal age to purchase alcoholic beverages under state law, or
263 two one-hundredths percent (.02%) or more for persons who are
264 below the legal age to purchase alcoholic beverages under state
265 law, in the person's blood based upon grams of alcohol per one
266 hundred (100) milliliters of blood or grams of alcohol per two
267 hundred ten (210) liters of breath as shown by a chemical analysis
268 of such person's breath, blood or urine administered as authorized
269 by this chapter; (d) is under the influence of any drug or
270 controlled substance, the possession of which is unlawful under
271 the Mississippi Controlled Substances Law; or (e) has an alcohol
272 concentration of four one-hundredths percent (.04%) or more in the
273 person's blood, based upon grams of alcohol per one hundred (100)
274 milliliters of blood or grams of alcohol per two hundred ten (210)
275 liters of breath as shown by a chemical analysis of such person's
276 blood, breath or urine, administered as authorized by this chapter
277 for persons operating a commercial motor vehicle.

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

294 attends and successfully completes an alcohol safety education
295 program as herein provided; provided, however, in no event shall
296 such period of suspension exceed one (1) year. Commercial driving
297 privileges shall be suspended as provided in Section 63-1-83.

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

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

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

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

- 344 (i) Continue his employment;
- 345 (ii) Continue attending school or an educational
346 institution; or
- 347 (iii) Obtain necessary medical care.

348 Proof of the hardship shall be established by clear and
349 convincing evidence which shall be supported by independent
350 documentation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 506 (i) Continue his employment;
- 507 (ii) Continue attending school or an educational
508 institution; or
- 509 (iii) Obtain necessary medical care.

510 Proof of the hardship shall be established by clear and
511 convincing evidence which shall be supported by independent
512 documentation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

637 (10) Suspension of driving privileges for any person
638 convicted of violations of Section 63-11-30(1) shall run
639 consecutively.

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

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

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

656 section. No person having previously qualified under the
657 provisions of this section or having ever been convicted of a
658 felony shall be eligible to qualify for release in accordance with
659 this section. A person shall not be eligible to qualify for
660 release in accordance with this section if such person has been
661 charged (a) with an offense pertaining to the sale, barter,
662 transfer, manufacture, distribution or dispensing of a controlled
663 substance, or the possession with intent to sell, barter,
664 transfer, manufacture, distribute or dispense a controlled
665 substance, as provided in Section 41-29-139(a)(1), Mississippi
666 Code of 1972, except for a charge under said provision when the
667 controlled substance involved is one (1) ounce or less of
668 marihuana; (b) with an offense pertaining to the possession of one
669 (1) kilogram or more of marihuana as provided in Section
670 41-29-139(c)(2)(D), Mississippi Code of 1972; or (c) with an
671 offense under the Mississippi Implied Consent Law.

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

675 (i) Reasonable restitution to the victim of the
676 crime.

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

679 (iii) Payment of a fine not to exceed the
680 statutory limit.

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

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

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

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

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

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

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

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

706 **SECTION 8.** Section 63-11-23, Mississippi Code of 1972, is
707 amended as follows:

708 63-11-23. (1) The Commissioner of Public Safety, or his
709 authorized agent, shall review the sworn report by a law
710 enforcement officer as provided in Section 63-11-21. If upon such
711 review the Commissioner of Public Safety, or his authorized agent,
712 finds (a) that the law enforcement officer had reasonable grounds
713 and probable cause to believe the person had been driving a motor
714 vehicle upon the public highways, public roads and streets of this
715 state while under the influence of intoxicating liquor or any
716 other substance which may impair a person's mental or physical
717 ability; (b) that he refused to submit to the test upon request of
718 the officer; and (c) that the person was informed that his license
719 and/or driving privileges would be suspended or denied if he
720 refused to submit to the chemical test, then the Commissioner of
721 Public Safety, or his authorized agent, shall give notice to the

722 licensee that his license or permit to drive, or any nonresident
723 operating privilege, shall be suspended thirty (30) days after the
724 date of such notice for a period of ninety (90) days in the event
725 such person has not previously been convicted of a violation of
726 Section 63-11-30, or, for a period of one (1) year in the event of
727 any previous conviction of such person under Section 63-11-30. In
728 the event the commissioner or his authorized agent determines that
729 the license should not be suspended, he shall return the license
730 or permit to the licensee.

731 The notice of suspension shall be in writing and given in the
732 manner provided in Section 63-1-52(2)(a).

733 (2) If the chemical testing of a person's breath indicates
734 the blood alcohol concentration was eight one-hundredths percent
735 (.08%) or more for persons who are above the legal age to purchase
736 alcoholic beverages under state law, or two one-hundredths percent
737 (.02%) or more for persons who are below the legal age to purchase
738 alcoholic beverages under state law, based upon grams of alcohol
739 per one hundred (100) milliliters of blood or grams of alcohol per
740 two hundred ten (210) liters of breath as shown by a chemical
741 analysis of such person's blood, or breath, or urine, the
742 arresting officer shall seize the license and give the driver a
743 receipt for his license on forms prescribed by the Commissioner of
744 Public Safety and shall promptly forward the license together with
745 a sworn report to the Commissioner of Public Safety. The receipt
746 given a person as provided herein shall be valid as a permit to
747 operate a motor vehicle for a period of thirty (30) days in order
748 that the defendant be processed through the court having original
749 jurisdiction and a final disposition had. If the defendant
750 requests a trial within thirty (30) days and such trial is not
751 commenced within thirty (30) days, then the court shall determine
752 if the delay in the trial is the fault of the defendant or his
753 counsel. If the court finds that such is not the fault of the
754 defendant or his counsel, or finds that the arresting officer has

755 not filed the charging affidavit with the court within twenty-five
756 (25) days of the arrest, then the court shall order the
757 defendant's driving privileges to be extended until such time as
758 the defendant is convicted. If a receipt or permit to drive
759 issued pursuant to the provisions of this subsection expires
760 without a trial having been requested as provided for in this
761 subsection and without an extension of driving privileges having
762 been granted, then the Commissioner of Public Safety or his
763 authorized agent shall suspend the license or permit to drive or
764 any nonresident operating privilege for the applicable period of
765 time as provided for in subsection (1) of this section.

766 (3) If the person is a resident without a license or permit
767 to operate a motor vehicle in this state, the Commissioner of
768 Public Safety, or his authorized agent, shall deny to the person
769 the issuance of a license or permit for a period of one (1) year
770 beginning thirty (30) days after the date of notice of such
771 suspension.

772 (4) It shall be the duty of the county prosecuting attorney,
773 an attorney employed under the provisions of Section 19-3-49, or
774 in the event there is no such prosecuting attorney for the county,
775 the duty of the district attorney to represent the state in any
776 hearing held under the provisions of Section 63-11-25, under the
777 provisions of Section 63-11-37(2) or under the provisions of
778 Section 63-11-30(2)(a).

779 **SECTION 9.** This act shall take effect and be in force from
780 and after July 1, 2007.