

By: Senator(s) Doxey

To: Judiciary, Division A

SENATE BILL NO. 2458

1 AN ACT TO AMEND SECTIONS 47-5-603, 47-7-3, 63-11-30 AND
2 99-15-26, MISSISSIPPI CODE OF 1972, TO CLARIFY THAT PARTICIPATION
3 IN THE ALCOHOL AND DRUG TREATMENT PROGRAM IS AT THE DISCRETION OF
4 THE JUDGE OR AS PART OF A PLEA AGREEMENT WITH THE DISTRICT
5 ATTORNEY; AND FOR RELATED PURPOSES.

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

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

9 47-5-603. Any offender on probation or released from a
10 facility of the Department of Corrections on parole or earned
11 probation who remains under the supervision of the Department of
12 Corrections or any offender who is incarcerated in a state
13 correctional facility may be ordered, in the discretion of the
14 court or as part of a plea agreement with the district attorney,
15 to participate in the Mississippi Department of Corrections drug
16 identification program. Participation by an offender would
17 consist of submission by the offender, from time to time and upon
18 the request of a parole or probation supervisor, or authorized
19 personnel of the department to any type of breath, saliva or urine
20 chemical analysis test, the purpose of which is to detect the
21 possible presence of alcohol or a substance prohibited or
22 controlled by any law of the State of Mississippi or the United
23 States.

24 **SECTION 2.** Section 47-7-3, Mississippi Code of 1972, is
25 amended as follows:

26 47-7-3. (1) Every prisoner who has been convicted of any
27 offense against the State of Mississippi, and is confined in the
28 execution of a judgment of such conviction in the Mississippi

29 Department of Corrections for a definite term or terms of one (1)
30 year or over, or for the term of his or her natural life, whose
31 record of conduct shows that such prisoner has observed the rules
32 of the department, and who has served not less than one-fourth
33 (1/4) of the total of such term or terms for which such prisoner
34 was sentenced, or, if sentenced to serve a term or terms of thirty
35 (30) years or more, or, if sentenced for the term of the natural
36 life of such prisoner, has served not less than ten (10) years of
37 such life sentence, may be released on parole as hereinafter
38 provided, except that:

39 (a) No prisoner convicted as a confirmed and habitual
40 criminal under the provisions of Sections 99-19-81 through
41 99-19-87 shall be eligible for parole;

42 (b) Any person who shall have been convicted of a sex
43 crime shall not be released on parole except for a person under
44 the age of nineteen (19) who has been convicted under Section
45 97-3-67;

46 (c) No one shall be eligible for parole until he shall
47 have served one (1) year of his sentence, unless such person has
48 accrued any meritorious earned time allowances, in which case he
49 shall be eligible for parole if he has served (i) nine (9) months
50 of his sentence or sentences, when his sentence or sentences is
51 two (2) years or less; (ii) ten (10) months of his sentence or
52 sentences when his sentence or sentences is more than two (2)
53 years but no more than five (5) years; and (iii) one (1) year of
54 his sentence or sentences when his sentence or sentences is more
55 than five (5) years;

56 (d) (i) No person shall be eligible for parole who
57 shall, on or after January 1, 1977, be convicted of robbery or
58 attempted robbery through the display of a firearm until he shall
59 have served ten (10) years if sentenced to a term or terms of more
60 than ten (10) years or if sentenced for the term of the natural
61 life of such person. If such person is sentenced to a term or

62 terms of ten (10) years or less, then such person shall not be
63 eligible for parole. The provisions of this paragraph (d) shall
64 also apply to any person who shall commit robbery or attempted
65 robbery on or after July 1, 1982, through the display of a deadly
66 weapon. This paragraph (d)(i) shall not apply to persons
67 convicted after September 30, 1994;

68 (ii) No person shall be eligible for parole who
69 shall, on or after October 1, 1994, be convicted of robbery,
70 attempted robbery or carjacking as provided in Section 97-3-115 et
71 seq., through the display of a firearm or drive-by shooting as
72 provided in Section 97-3-109. The provisions of this paragraph
73 (d)(ii) shall also apply to any person who shall commit robbery,
74 attempted robbery, carjacking or a drive-by shooting on or after
75 October 1, 1994, through the display of a deadly weapon;

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

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

83 (g) No person shall be eligible for parole who is
84 convicted or whose suspended sentence is revoked after June 30,
85 1995, except that a first offender convicted of a nonviolent crime
86 after January 1, 2000, may be eligible for parole if the offender
87 meets the requirements in subsection (1) and this paragraph. In
88 addition to other requirements, if a first offender is convicted
89 of a drug or driving under the influence felony, the offender, in
90 the discretion of the court or as part of a plea bargain with the
91 district attorney, may complete a drug and alcohol rehabilitation
92 program prior to parole or the offender may, in the discretion of
93 the court or as part of a plea bargain with the district attorney,
94 complete a post-release drug and alcohol program as a condition of

95 parole. The person shall pay the cost of participating in the
96 program. For purposes of this paragraph, "nonviolent crime" means
97 a felony other than homicide, robbery, manslaughter, sex crimes,
98 arson, burglary of an occupied dwelling, aggravated assault,
99 kidnapping, felonious abuse of vulnerable adults, felonies with
100 enhanced penalties, the sale or manufacture of a controlled
101 substance under the Uniform Controlled Substances Law, felony
102 child abuse, or any crime under Section 97-5-33 or Section
103 97-5-39(2) or a violation of Section 63-11-30(5) resulting in
104 death, or serious bodily injury resulting in the loss of a limb or
105 dismemberment, loss of eyesight, a coma, permanent dysfunction of
106 any vital organ, paralysis or resulting in an individual's
107 permanent bedridden state. For purposes of this paragraph, "first
108 offender" means a person who at the time of sentencing has not
109 been convicted of a felony on a previous occasion in any court or
110 courts of the United States or in any state or territory thereof.
111 In addition, a first time offender incarcerated for committing the
112 crime of possession of a controlled substance under the Uniform
113 Controlled Substances Law after July 1, 1995, shall be eligible
114 for parole as provided for such offenders in this paragraph after
115 July 1, 2000.

116 (2) Notwithstanding any other provision of law, an inmate
117 shall not be eligible to receive earned time, good time or any
118 other administrative reduction of time which shall reduce the time
119 necessary to be served for parole eligibility as provided in
120 subsection (1) of this section; however, this subsection shall not
121 apply to the advancement of parole eligibility dates pursuant to
122 the Prison Overcrowding Emergency Powers Act. Moreover,
123 meritorious earned time allowances may be used to reduce the time
124 necessary to be served for parole eligibility as provided in
125 paragraph (c) of subsection (1) of this section.

126 (3) (a) The State Parole Board shall by rules and
127 regulations establish a method of determining a tentative parole

128 hearing date for each eligible offender taken into the custody of
129 the Department of Corrections. The tentative parole hearing date
130 shall be determined within ninety (90) days after the department
131 has assumed custody of the offender. Such tentative parole
132 hearing date shall be calculated by a formula taking into account
133 the offender's age upon first commitment, number of prior
134 incarcerations, prior probation or parole failures, the severity
135 and the violence of the offense committed, employment history and
136 other criteria which in the opinion of the board tend to validly
137 and reliably predict the length of incarceration necessary before
138 the offender can be successfully paroled.

139 (b) [Repealed].

140 (4) Any inmate within twenty-four (24) months of his parole
141 eligibility date and who meets the criteria established by the
142 classification board shall receive priority for placement in any
143 educational development and job training programs. Any inmate
144 refusing to participate in an educational development or job
145 training program may be ineligible for parole.

146 **SECTION 3.** Section 63-11-30, Mississippi Code of 1972, is
147 amended as follows:

148 63-11-30. (1) It is unlawful for any person to drive or
149 otherwise operate a vehicle within this state who (a) is under the
150 influence of intoxicating liquor; (b) is under the influence of
151 any other substance which has impaired such person's ability to
152 operate a motor vehicle; (c) has an alcohol concentration of eight
153 one-hundredths percent (.08%) or more for persons who are above
154 the legal age to purchase alcoholic beverages under state law, or
155 two one-hundredths percent (.02%) or more for persons who are
156 below the legal age to purchase alcoholic beverages under state
157 law, in the person's blood based upon grams of alcohol per one
158 hundred (100) milliliters of blood or grams of alcohol per two
159 hundred ten (210) liters of breath as shown by a chemical analysis
160 of such person's breath, blood or urine administered as authorized

161 by this chapter; (d) is under the influence of any drug or
162 controlled substance, the possession of which is unlawful under
163 the Mississippi Controlled Substances Law; or (e) has an alcohol
164 concentration of four one-hundredths percent (.04%) or more in the
165 person's blood, based upon grams of alcohol per one hundred (100)
166 milliliters of blood or grams of alcohol per two hundred ten (210)
167 liters of breath as shown by a chemical analysis of such person's
168 blood, breath or urine, administered as authorized by this chapter
169 for persons operating a commercial motor vehicle.

170 (2) (a) Except as otherwise provided in subsection (3),
171 upon conviction of any person for the first offense of violating
172 subsection (1) of this section where chemical tests provided for
173 under Section 63-11-5 were given, or where chemical test results
174 are not available, such person shall be fined not less than Two
175 Hundred Fifty Dollars (\$250.00) nor more than One Thousand Dollars
176 (\$1,000.00), or imprisoned for not more than forty-eight (48)
177 hours in jail or both; and the court shall order such person to
178 attend and complete an alcohol safety education program as
179 provided in Section 63-11-32. The court may substitute attendance
180 at a victim impact panel instead of forty-eight (48) hours in
181 jail. In addition, the Department of Public Safety, the
182 Commissioner of Public Safety or his duly authorized agent shall,
183 after conviction and upon receipt of the court abstract, suspend
184 the driver's license and driving privileges of such person for a
185 period of not less than ninety (90) days and until such person
186 attends and successfully completes an alcohol safety education
187 program as herein provided; provided, however, in no event shall
188 such period of suspension exceed one (1) year. Commercial driving
189 privileges shall be suspended as provided in Section 63-1-83.

190 The circuit court having jurisdiction in the county in which
191 the conviction was had or the circuit court of the person's county
192 of residence may reduce the suspension of driving privileges under
193 Section 63-11-30(2)(a) if the denial of which would constitute a

194 hardship on the offender, except that no court may issue such an
195 order reducing the suspension of driving privileges under this
196 subsection until thirty (30) days have elapsed from the effective
197 date of the suspension. Hardships shall only apply to first
198 offenses under Section 63-11-30(1), and shall not apply to second,
199 third or subsequent convictions of any person violating subsection
200 (1) of this section. A reduction of suspension on the basis of
201 hardship shall not be available to any person who refused to
202 submit to a chemical test upon the request of a law enforcement
203 officer as provided in Section 63-11-5. When the petition is
204 filed, such person shall pay to the circuit clerk of the court
205 where the petition is filed a fee of Fifty Dollars (\$50.00), which
206 shall be deposited into the State General Fund to the credit of a
207 special fund hereby created in the State Treasury to be used for
208 alcohol or drug abuse treatment and education, upon appropriation
209 by the Legislature. This fee shall be in addition to any other
210 court costs or fees required for the filing of petitions.

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

219 The order entered under the provisions of this subsection
220 shall contain the specific grounds upon which hardship was
221 determined, and may order the petitioner to attend and complete an
222 alcohol safety education program as provided in Section 63-11-32.
223 A certified copy of such order shall be delivered to the
224 Commissioner of Public Safety by the clerk of the court within
225 five (5) days of the entry of the order. The certified copy of
226 such order shall contain information which will identify the

227 petitioner, including, but not limited to, the name, mailing
228 address, street address, social security number and driver's
229 license number of the petitioner.

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

235 (i) Continue his employment;

236 (ii) Continue attending school or an educational
237 institution; or

238 (iii) Obtain necessary medical care.

239 Proof of the hardship shall be established by clear and
240 convincing evidence which shall be supported by independent
241 documentation.

242 (b) Except as otherwise provided in subsection (3),
243 upon any second conviction of any person violating subsection (1)
244 of this section, the offenses being committed within a period of
245 five (5) years, such person shall be fined not less than Six
246 Hundred Dollars (\$600.00) nor more than One Thousand Five Hundred
247 Dollars (\$1,500.00), shall be imprisoned not less than five (5)
248 days nor more than one (1) year and sentenced to community service
249 work for not less than ten (10) days nor more than one (1) year.
250 The minimum penalties shall not be suspended or reduced by the
251 court and no prosecutor shall offer any suspension or sentence
252 reduction as part of a plea bargain. Except as may otherwise be
253 provided by paragraph (d) of this subsection, the Commissioner of
254 Public Safety shall suspend the driver's license of such person
255 for two (2) years. Suspension of a commercial driver's license
256 shall be governed by Section 63-1-83. Upon any second conviction
257 as described in this paragraph, the court shall ascertain whether
258 the defendant is married, and if the defendant is married shall
259 obtain the name and address of the defendant's spouse; the clerk

260 of the court shall submit this information to the Department of
261 Public Safety. Further, the commissioner shall notify in writing,
262 by certified mail, return receipt requested, the owner of the
263 vehicle and the spouse, if any, of the person convicted of the
264 second violation of the possibility of forfeiture of the vehicle
265 if such person is convicted of a third violation of subsection (1)
266 of this section. The owner of the vehicle and the spouse shall be
267 considered notified under this paragraph if the notice is
268 deposited in the United States mail and any claim that the notice
269 was not in fact received by the addressee shall not affect a
270 subsequent forfeiture proceeding.

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

274 (c) Except as otherwise provided in subsection (3), for
275 any third or subsequent conviction of any person violating
276 subsection (1) of this section, the offenses being committed
277 within a period of five (5) years, such person shall be guilty of
278 a felony and fined not less than Two Thousand Dollars (\$2,000.00)
279 nor more than Five Thousand Dollars (\$5,000.00), shall serve not
280 less than one (1) year nor more than five (5) years in the custody
281 of the Department of Corrections; provided, however, that for any
282 such offense which does not result in serious injury or death to
283 any person, any sentence of incarceration may be served in the
284 county jail rather than in the State Penitentiary at the
285 discretion of the circuit court judge. The minimum penalties
286 shall not be suspended or reduced by the court and no prosecutor
287 shall offer any suspension or sentence reduction as part of a plea
288 bargain. The law enforcement agency shall seize the vehicle
289 operated by any person charged with a third or subsequent
290 violation of subsection (1) of this section, if such convicted
291 person was driving the vehicle at the time the offense was
292 committed. Such vehicle may be forfeited in the manner provided

293 by Sections 63-11-49 through 63-11-53. Except as may otherwise be
294 provided by paragraph (e) of this subsection, the Commissioner of
295 Public Safety shall suspend the driver's license of such person
296 for five (5) years. The suspension of a commercial driver's
297 license shall be governed by Section 63-1-83.

298 (d) Except as otherwise provided in subsection (3), any
299 person convicted of a second violation of subsection (1) of this
300 section shall receive an in-depth diagnostic assessment, and if as
301 a result of such assessment is determined to be in need of
302 treatment of his alcohol and/or drug abuse problem, such person
303 shall successfully complete treatment of his alcohol and/or drug
304 abuse problem at a program site certified by the Department of
305 Mental Health. Such person shall be eligible for reinstatement of
306 his driving privileges upon the successful completion of such
307 treatment after a period of one (1) year after such person's
308 driver's license is suspended. Each person who receives a
309 diagnostic assessment shall pay a fee representing the cost of
310 such assessment. Each person who participates in a treatment
311 program shall pay a fee representing the cost of such treatment.

312 (e) Except as otherwise provided in subsection (3), any
313 person convicted of a third or subsequent violation of subsection
314 (1) of this section shall receive an in-depth diagnostic
315 assessment, and if as a result of such assessment is determined to
316 be in need of treatment of his alcohol and/or drug abuse problem,
317 such person may be ordered to enter an alcohol and/or drug abuse
318 program approved by the Department of Mental Health for treatment
319 of such person's alcohol and/or drug abuse problem at the
320 discretion of the judge or as a part of a plea agreement with the
321 district attorney. If such person successfully completes such
322 treatment, such person shall be eligible for reinstatement of his
323 driving privileges after a period of three (3) years after such
324 person's driver's license is suspended.

325 (f) The Department of Public Safety shall promulgate
326 rules and regulations for the use of interlock ignition devices as
327 provided in Section 63-11-31 and consistent with the provisions
328 therein. Such rules and regulations shall provide for the
329 calibration of such devices and shall provide that the cost of the
330 use of such systems shall be borne by the offender. The
331 Department of Public Safety shall approve which vendors of such
332 devices shall be used to furnish such systems.

333 (3) (a) This subsection shall be known and may be cited as
334 Zero Tolerance for Minors. The provisions of this subsection
335 shall apply only when a person under the age of twenty-one (21)
336 years has a blood alcohol concentration of two one-hundredths
337 percent (.02%) or more, but lower than eight one-hundredths
338 percent (.08%). If such person's blood alcohol concentration is
339 eight one-hundredths percent (.08%) or more, the provisions of
340 subsection (2) shall apply.

341 (b) Upon conviction of any person under the age of
342 twenty-one (21) years for the first offense of violating
343 subsection (1) of this section where chemical tests provided for
344 under Section 63-11-5 were given, or where chemical test results
345 are not available, such person shall have his driver's license
346 suspended for ninety (90) days and shall be fined Two Hundred
347 Fifty Dollars (\$250.00); and the court shall order such person to
348 attend and complete an alcohol safety education program as
349 provided in Section 63-11-32. The court may also require
350 attendance at a victim impact panel.

351 The court in the county in which the conviction was had or
352 the circuit court of the person's county of residence may reduce
353 the suspension of driving privileges under Section 63-11-30(2)(a)
354 if the denial of which would constitute a hardship on the
355 offender, except that no court may issue such an order reducing
356 the suspension of driving privileges under this subsection until
357 thirty (30) days have elapsed from the effective date of the

358 suspension. Hardships shall only apply to first offenses under
359 Section 63-11-30(1), and shall not apply to second, third or
360 subsequent convictions of any person violating subsection (1) of
361 this section. A reduction of suspension on the basis of hardship
362 shall not be available to any person who refused to submit to a
363 chemical test upon the request of a law enforcement officer as
364 provided in Section 63-11-5. When the petition is filed, such
365 person shall pay to the circuit clerk of the court where the
366 petition is filed a fee of Fifty Dollars (\$50.00), which shall be
367 deposited into the State General Fund to the credit of a special
368 fund hereby created in the State Treasury to be used for alcohol
369 or drug abuse treatment and education, upon appropriation by the
370 Legislature. This fee shall be in addition to any other court
371 costs or fees required for the filing of petitions.

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

380 The order entered under the provisions of this subsection
381 shall contain the specific grounds upon which hardship was
382 determined, and shall order the petitioner to attend and complete
383 an alcohol safety education program as provided in Section
384 63-11-32. A certified copy of such order shall be delivered to
385 the Commissioner of Public Safety by the clerk of the court within
386 five (5) days of the entry of the order. The certified copy of
387 such order shall contain information which will identify the
388 petitioner, including, but not limited to, the name, mailing
389 address, street address, social security number and driver's
390 license number of the petitioner.

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

- 396 (i) Continue his employment;
- 397 (ii) Continue attending school or an educational
398 institution; or
- 399 (iii) Obtain necessary medical care.

400 Proof of the hardship shall be established by clear and
401 convincing evidence which shall be supported by independent
402 documentation.

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

409 (d) For any third or subsequent conviction of any
410 person under the age of twenty-one (21) years violating subsection
411 (1) of this section, the offenses being committed within a period
412 of five (5) years, such person shall be fined not more than One
413 Thousand Dollars (\$1,000.00) and shall have his driver's license
414 suspended until he reaches the age of twenty-one (21) or for two
415 (2) years, whichever is longer.

416 (e) Any person under the age of twenty-one (21) years
417 convicted of a second violation of subsection (1) of this section,
418 may have the period that his driver's license is suspended reduced
419 if such person receives an in-depth diagnostic assessment, and as
420 a result of such assessment is determined to be in need of
421 treatment of his alcohol and/or drug abuse problem and
422 successfully completes treatment of his alcohol and/or drug abuse
423 problem at a program site certified by the Department of Mental

424 Health at the discretion of the judge or as a part of a plea
425 agreement with the district attorney. Such person shall be
426 eligible for reinstatement of his driving privileges upon the
427 successful completion of such treatment after a period of six (6)
428 months after such person's driver's license is suspended. Each
429 person who receives a diagnostic assessment shall pay a fee
430 representing the cost of such assessment. Each person who
431 participates in a treatment program shall pay a fee representing
432 the cost of such treatment.

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

439 (g) The court shall have the discretion to rule that a
440 first offense of this subsection by a person under the age of
441 twenty-one (21) years shall be nonadjudicated. Such person shall
442 be eligible for nonadjudication only once. The Department of
443 Public Safety shall maintain a confidential registry of all cases
444 which are nonadjudicated as provided in this paragraph. A judge
445 who rules that a case is nonadjudicated shall forward such ruling
446 to the Department of Public Safety. Judges and prosecutors
447 involved in implied consent violations shall have access to the
448 confidential registry for the purpose of determining
449 nonadjudication eligibility. A record of a person who has been
450 nonadjudicated shall be maintained for five (5) years or until
451 such person reaches the age of twenty-one (21) years. Any person
452 whose confidential record has been disclosed in violation of this
453 paragraph shall have a civil cause of action against the person
454 and/or agency responsible for such disclosure.

455 (4) In addition to the other penalties provided in this
456 section, every person refusing a law enforcement officer's request

457 to submit to a chemical test of his breath as provided in this
458 chapter, or who was unconscious at the time of a chemical test and
459 refused to consent to the introduction of the results of such test
460 in any prosecution, shall suffer an additional suspension of
461 driving privileges as follows:

462 The Commissioner of Public Safety or his authorized agent
463 shall suspend the driver's license or permit to drive or deny the
464 issuance of a license or permit to such person as provided for
465 first, second and third or subsequent offenders in subsection (2)
466 of this section. Such suspension shall be in addition to any
467 suspension imposed pursuant to subsection (1) of Section 63-11-23.
468 The minimum suspension imposed under this subsection shall not be
469 reduced and no prosecutor is authorized to offer a reduction of
470 such suspension as part of a plea bargain.

471 (5) Every person who operates any motor vehicle in violation
472 of the provisions of subsection (1) of this section and who in a
473 negligent manner causes the death of another or mutilates,
474 disfigures, permanently disables or destroys the tongue, eye, lip,
475 nose or any other limb, organ or member of another shall, upon
476 conviction, be guilty of a separate felony for each such death,
477 mutilation, disfigurement or other injury and shall be committed
478 to the custody of the State Department of Corrections for a period
479 of time of not less than five (5) years and not to exceed
480 twenty-five (25) years for each such death, mutilation,
481 disfigurement or other injury, and the imprisonment for the second
482 or each subsequent conviction, in the discretion of the court,
483 shall commence either at the termination of the imprisonment for
484 the preceding conviction or run concurrently with the preceding
485 conviction. Any person charged with causing the death of another
486 as described in this subsection shall be required to post bail
487 before being released after arrest.

488 (6) Upon conviction of any violation of subsection (1) of
489 this section, the trial judge shall sign in the place provided on

490 the traffic ticket, citation or affidavit stating that the person
491 arrested either employed an attorney or waived his right to an
492 attorney after having been properly advised. If the person
493 arrested employed an attorney, the name, address and telephone
494 number of the attorney shall be written on the ticket, citation or
495 affidavit. The judge shall cause a copy of the traffic ticket,
496 citation or affidavit, and any other pertinent documents
497 concerning the conviction, to be sent to the Commissioner of
498 Public Safety. A copy of the traffic ticket, citation or
499 affidavit and any other pertinent documents, having been attested
500 as true and correct by the Commissioner of Public Safety, or his
501 designee, shall be sufficient proof of the conviction for purposes
502 of determining the enhanced penalty for any subsequent convictions
503 of violations of subsection (1) of this section.

504 (7) Convictions in other states of violations for driving or
505 operating a vehicle while under the influence of an intoxicating
506 liquor or while under the influence of any other substance that
507 has impaired the person's ability to operate a motor vehicle
508 occurring after July 1, 1992, shall be counted for the purposes of
509 determining if a violation of subsection (1) of this section is a
510 first, second, third or subsequent offense and the penalty that
511 shall be imposed upon conviction for a violation of subsection (1)
512 of this section.

513 (8) For the purposes of determining how to impose the
514 sentence for a second, third or subsequent conviction under this
515 section, the indictment shall not be required to enumerate
516 previous convictions. It shall only be necessary that the
517 indictment state the number of times that the defendant has been
518 convicted and sentenced within the past five (5) years under this
519 section to determine if an enhanced penalty shall be imposed. The
520 amount of fine and imprisonment imposed in previous convictions
521 shall not be considered in calculating offenses to determine a
522 second, third or subsequent offense of this section.

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

527 (10) Suspension of driving privileges for any person
528 convicted of violations of Section 63-11-30(1) shall run
529 consecutively.

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

532 **SECTION 4.** Section 99-15-26, Mississippi Code of 1972, is
533 amended as follows:

534 99-15-26. (1) In all criminal cases, felony and
535 misdemeanor, other than crimes against the person, the circuit or
536 county court shall be empowered, upon the entry of a plea of
537 guilty by a criminal defendant, to withhold acceptance of the plea
538 and sentence thereon pending successful completion of such
539 conditions as may be imposed by the court pursuant to subsection
540 (2) of this section. In all misdemeanor criminal cases, other
541 than crimes against the person, the justice or municipal court
542 shall be empowered, upon the entry of a plea of guilty by a
543 criminal defendant, to withhold acceptance of the plea and
544 sentence thereon pending successful completion of such conditions
545 as may be imposed by the court pursuant to subsection (2) of this
546 section. No person having previously qualified under the
547 provisions of this section or having ever been convicted of a
548 felony shall be eligible to qualify for release in accordance with
549 this section. A person shall not be eligible to qualify for
550 release in accordance with this section if such person has been
551 charged (a) with an offense pertaining to the sale, barter,
552 transfer, manufacture, distribution or dispensing of a controlled
553 substance, or the possession with intent to sell, barter,
554 transfer, manufacture, distribute or dispense a controlled
555 substance, as provided in Section 41-29-139(a)(1), Mississippi

556 Code of 1972, except for a charge under said provision when the
557 controlled substance involved is one (1) ounce or less of
558 marihuana; (b) with an offense pertaining to the possession of one
559 (1) kilogram or more of marihuana as provided in Section
560 41-29-139(c)(2)(D), Mississippi Code of 1972; or (c) with an
561 offense under the Mississippi Implied Consent Law.

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

565 (i) Reasonable restitution to the victim of the
566 crime.

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

569 (iii) Payment of a fine not to exceed the
570 statutory limit.

571 (iv) Successful completion of drug, alcohol,
572 psychological or psychiatric treatment or any combination thereof
573 if the court deems such treatment necessary.

574 (v) The circuit or county court, in its
575 discretion, may require the defendant to remain in the program
576 subject to good behavior for a period of time not to exceed five
577 (5) years. The justice or municipal court, in its discretion, may
578 require the defendant to remain in the program subject to good
579 behavior for a period of time not to exceed two (2) years.

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

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

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

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

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

595 **SECTION 5.** This act shall take effect and be in force from
596 and after July 1, 2007.