

By: Representative Dixon

To: Judiciary B

HOUSE BILL NO. 1144

1 AN ACT TO AMEND SECTION 9-23-15, MISSISSIPPI CODE OF 1972, TO
2 PROVIDE THAT IF ANY YOUTH IS FOUND IN POSSESSION OF ILLEGAL DRUGS
3 OR DRUG PARAPHERNALIA ON SCHOOL PROPERTY THEN SUCH YOUTH SHALL BE
4 ORDERED BY A YOUTH COURT JUDGE TO PARTICIPATE IN A DRUG COURT
5 PROGRAM; TO AMEND SECTION 43-21-605, MISSISSIPPI CODE OF 1972, IN
6 CONFORMITY THERETO; AND FOR RELATED PURPOSES.

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

8 **SECTION 1.** Section 9-23-15, Mississippi Code of 1972, is
9 amended as follows:

10 9-23-15. (1) In order to be eligible for alternative
11 sentencing through a local drug court, the participant must
12 satisfy each of the following criteria:

13 (a) The participant cannot have any felony convictions
14 for any offenses that are crimes of violence.

15 (b) The crime before the court cannot be a crime of
16 violence.

17 (c) Other criminal proceedings alleging commission of a
18 crime of violence cannot be pending against the participant.

19 (d) The participant cannot have been currently charged
20 with burglary of an occupied dwelling.



21 (e) The crime before the court cannot be a charge of
22 driving under the influence of alcohol or any other drug or drugs
23 that resulted in the death of a person.

24 (f) The crime charged cannot be one of distribution,
25 sale, possession with intent to distribute, production,
26 manufacture or cultivation of controlled substances, nor can the
27 participant have a prior conviction for same.

28 (2) Participation in the services of an alcohol and drug
29 intervention component shall be open only to the individuals over
30 whom the court has jurisdiction, except that the court may agree
31 to provide the services for individuals referred from another drug
32 court. In cases transferred from another jurisdiction, the
33 receiving judge shall act as a special master and make
34 recommendations to the sentencing judge.

35 (3) (a) As a condition of participation in a drug court, a
36 participant may be required to undergo a chemical test or a series
37 of chemical tests as specified by the drug court. A participant
38 is liable for the costs of all chemical tests required under this
39 section, regardless of whether the costs are paid to the drug
40 court or the laboratory; however, if testing is available from
41 other sources or the program itself, the judge may waive any fees
42 for testing.

43 (b) A laboratory that performs a chemical test under
44 this section shall report the results of the test to the drug
45 court.



(4) Except for youth described in subsection (5) of this section, a person does not have a right to participate in drug court under this chapter. The court having jurisdiction over a person for a matter before the court shall have the final determination about whether the person may participate in drug court under this chapter.

(5) Any youth who meets the eligibility criteria prescribed in subsection (1) of this section and who is found in possession of illegal drugs or drug paraphernalia on school property shall be ordered by a youth court judge to participate in a drug court program. If a youth successfully completes the program, the youth's record pertaining to such drugs or drug paraphernalia shall be expunged automatically by the youth court.

SECTION 2. Section 43-21-605, Mississippi Code of 1972, is amended as follows:

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

- (a) Release the child without further action;
- (b) Place the child in the custody of the parents, a relative or other persons subject to any conditions and limitations, including restitution, as the youth court may prescribe;
- (c) Place the child on probation subject to any reasonable and appropriate conditions and limitations, including restitution, as the youth court may prescribe;



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

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

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

83 (g) Give legal custody of the child to any of the
84 following:

85 (i) The Department of Human Services for
86 appropriate placement; or

87 (ii) Any public or private organization,
88 preferably community-based, able to assume the education, care and
89 maintenance of the child, which has been found suitable by the
90 court; or

91 (iii) The Division of Youth Services for placement
92 in the least restrictive environment, except that no child under
93 the age of ten (10) years shall be committed to the state training
94 school. Only a child who has been adjudicated delinquent for a
95 felony or who has been adjudicated delinquent three (3) or more



96 times for a misdemeanor offense may be committed to the training
97 school. For the purposes of this section, a misdemeanor offense
98 does not include contempt of court for a probation violation,
99 unless the probation violation constitutes a charge that would be
100 a crime if committed by an adult. In the event a child is
101 committed to the Oakley Youth Development Center by the court, the
102 child shall be deemed to be committed to the custody of the
103 Department of Human Services which may place the child in the
104 Oakley Youth Development Center or another appropriate facility.

105 The training school may retain custody of the child until the
106 child's twentieth birthday but for no longer. When the child is
107 committed to the training school, the child shall remain in the
108 legal custody of the training school until the child has made
109 sufficient progress in treatment and rehabilitation and it is in
110 the best interest of the child to release the child. However, the
111 superintendent of the state training school, in consultation with
112 the treatment team, may parole a child at any time he or she may
113 deem it in the best interest and welfare of such child. Ten (10)
114 business days before the parole, the training school shall notify
115 the committing court of the pending release. The youth court may
116 then arrange subsequent placement after a reconvened disposition
117 hearing, except that the youth court may not recommit the child to
118 the training school or any other secure facility without an
119 adjudication of a new offense or probation or parole violation.
120 The Department of Human Services shall ensure that staffs create



transition planning for youth leaving the facilities. Plans shall include providing the youth and his or her parents or guardian with copies of the youth's training school education and health records, information regarding the youth's home community, referrals to mental and counseling services when appropriate, and providing assistance in making initial appointments with community service providers. Before assigning the custody of any child to any private institution or agency, the youth court through its designee shall first inspect the physical facilities to determine that they provide a reasonable standard of health and safety for the child. No child shall be placed in the custody of the state training school for a status offense or for contempt of or revocation of a status offense adjudication unless the child is contemporaneously adjudicated for having committed an act of delinquency that is not a status offense. A disposition order rendered under this subparagraph shall meet the following requirements:

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

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



145 3. The disposition order provides that the
146 court has considered the medical, educational, vocational, social
147 and psychological guidance, training, social education,
148 counseling, substance abuse treatment and other rehabilitative
149 services required by that child as determined by the court;

150 (h) Recommend to the child and the child's parents or
151 guardian that the child attend and participate in the Youth
152 Challenge Program under the Mississippi National Guard, as created
153 in Section 43-27-203, subject to the selection of the child for
154 the program by the National Guard; however, the child must
155 volunteer to participate in the program. The youth court shall
156 not order any child to apply for or attend the program;

157 (i) (i) Adjudicate the juvenile to the Statewide
158 Juvenile Work Program if the program is established in the court's
159 jurisdiction. The juvenile and his or her parents or guardians
160 must sign a waiver of liability in order to participate in the
161 work program. The judge will coordinate with the youth services
162 counselors as to placing participants in the work program;

163 (ii) The severity of the crime, whether or not the
164 juvenile is a repeat offender or is a felony offender will be
165 taken into consideration by the judge when adjudicating a juvenile
166 to the work program. The juveniles adjudicated to the work
167 program will be supervised by police officers or reserve officers.
168 The term of service will be from twenty-four (24) to one hundred
169 twenty (120) hours of community service. A juvenile will work the



hours to which he or she was adjudicated on the weekends during school and weekdays during the summer. Parents are responsible for a juvenile reporting for work. Noncompliance with an order to perform community service will result in a heavier adjudication. A juvenile may be adjudicated to the community service program only two (2) times;

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

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

(k) Order terms of house arrest under the intensive supervision program as created in Sections 47-5-1001 through 47-5-1015. The Department of Human Services shall take bids for the placement of juveniles in the intensive supervision program. The Department of Human Services shall promulgate rules regarding the supervision of juveniles placed in the intensive supervision program. For each county there shall be seventy-five (75) slots created in the intensive supervision program for juveniles. Any youth ordered into the intensive home-based supervision program shall receive comprehensive strength-based needs assessments and individualized treatment plans. Based on the assessment, an individualized treatment plan shall be developed that defines the



195 supervision and programming that is needed by a youth. The
196 treatment plan shall be developed by a multidisciplinary team that
197 includes the family of the youth whenever possible. The juvenile
198 shall pay Ten Dollars (\$10.00) to offset the cost of administering
199 the alcohol and drug test. The juvenile must attend school,
200 alternative school or be in the process of working toward a
201 general educational development (GED) certificate;

202 (1) Order the child into a juvenile detention center
203 operated by the county or into a juvenile detention center
204 operated by any county with which the county in which the court is
205 located has entered into a contract for the purpose of housing
206 delinquents. The time period for detention cannot exceed ninety
207 (90) days, and any detention exceeding forty-five (45) days shall
208 be administratively reviewed by the youth court no later than
209 forty-five (45) days after the entry of the order. At that time
210 the youth court counselor shall review the status of the youth in
211 detention and shall report any concerns to the court. The youth
212 court judge may order that the number of days specified in the
213 detention order be served either throughout the week or on
214 weekends only. No first-time nonviolent youth offender shall be
215 committed to a detention center for a period in excess of ninety
216 (90) days until all other options provided for in this section
217 have been considered and the court makes a specific finding of
218 fact by a preponderance of the evidence by assessing what is in
219 the best rehabilitative interest of the child and the public



safety of communities and that there is no reasonable alternative to a nonsecure setting and therefore commitment to a detention center is appropriate.

If a child is committed to a detention center for ninety (90) days, the disposition order shall meet the following requirements:

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

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

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

(m) The judge may consider house arrest in an intensive supervision program as a reasonable prospect of rehabilitation within the juvenile justice system. The Department of Human Services shall promulgate rules regarding the supervision of juveniles placed in the intensive supervision program; * * *

(n) Referral to A-team provided system of care services * * *; or



244 (p) Order the child to participate in a drug court
245 program as provided in Section 9-23-15 (5).

246 (2) If a disposition order requires that a child miss school
247 due to other placement, the youth court shall notify a child's
248 school while maintaining the confidentiality of the youth court
249 process. If a disposition order requires placement of a child in
250 a juvenile detention facility, the facility shall comply with the
251 educational services and notification requirements of Section
252 43-21-321.

253 (3) In addition to any of the disposition alternatives
254 authorized under subsection (1) of this section, the disposition
255 order in any case in which the child is adjudicated delinquent for
256 an offense under Section 63-11-30 shall include an order denying
257 the driver's license and driving privileges of the child as
258 required under Section 63-11-30(9).

259 (4) If the youth court places a child in a state-supported
260 training school, the court may order the parents or guardians of
261 the child and other persons living in the child's household to
262 receive counseling and parenting classes for rehabilitative
263 purposes while the child is in the legal custody of the training
264 school. A youth court entering an order under this subsection (4)
265 shall utilize appropriate services offered either at no cost or
266 for a fee calculated on a sliding scale according to income unless
267 the person ordered to participate elects to receive other



counseling and classes acceptable to the court at the person's sole expense.

(5) Fines levied under this chapter shall be paid into the general fund of the county but, in those counties wherein the youth court is a branch of the municipal government, it shall be paid into the municipal treasury.

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

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

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

(9) The Mississippi Department of Human Services, Division of Youth Services, shall operate and maintain services for youth adjudicated delinquent at the Oakley Youth Development Center. The program shall be designed for children committed to the



293 training schools by the youth courts. The purpose of the program
294 is to promote good citizenship, self-reliance, leadership and
295 respect for constituted authority, teamwork, cognitive abilities
296 and appreciation of our national heritage. The program must use
297 evidenced-based practices and gender-specific programming and must
298 develop an individualized and specific treatment plan for each
299 youth. The Division of Youth Services shall issue credit towards
300 academic promotions and high school completion. The Division of
301 Youth Services may award credits to each student who meets the
302 requirements for a general education development certification.
303 The Division of Youth Services must also provide to each special
304 education eligible youth the services required by that youth's
305 individualized education plan.

306 **SECTION 3.** This act shall take effect and be in force from
307 and after July 1, 2013.

