

By: Representatives Gipson, Miles, Monsour,
Rogers (14th), Brown, Carpenter, Powell,
Baker

To: Judiciary B

HOUSE BILL NO. 1089
(As Passed the House)

1 AN ACT TO CREATE "THE RIVERS MCGRAW ACT"; TO PROVIDE THAT NO
2 PERSON UNDER THE AGE OF TWENTY-ONE, WHO IS ARRESTED FOR AN OFFENSE
3 UNDER THE UNIFORM CONTROLLED SUBSTANCES LAW OR THE DUI LAW MAY BE
4 RELEASED ON BAIL UNTIL CERTAIN CIRCUMSTANCES ARE MET; TO REQUIRE
5 NOTICE TO PARENTS BEFORE SUCH PERSON IS RELEASED; TO AMEND SECTION
6 63-11-30, MISSISSIPPI CODE OF 1972, TO CONFORM TO THE PRECEDING
7 SECTION; AND FOR RELATED PURPOSES.

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

9 **SECTION 1.** This act shall be known and referred to as "The
10 Rivers McGraw Act."

11 **SECTION 2.** (1) If a person under the age of twenty-one (21)
12 is arrested for an offense under the Uniform Controlled Substances
13 Law or a violation of Section 63-11-30, no bail shall be granted
14 and the person so arrested shall not be released, until one (1) of
15 the following occurs within eight (8) hours of the arrest:

16 (a) That one or more of the parents, or a person having
17 legal custody, of the person arrested is present at the time of
18 release. The court specifically finds that it is an unreasonable
19 burden on law enforcement personnel to make determinations as to



20 parental custody rights in contested situations, and authorizes
21 release to either parent.

22 (b) That, because the parents are not reasonably
23 available to appear personally because of travel, out-of-state
24 residence, or similar circumstances, law enforcement personnel
25 take reasonable steps to determine that the parent or parents are
26 notified and concur in release of the defendant on scheduled bail.

27 (c) That an attorney who represents that he or she is
28 acting with the knowledge and consent of the parent or parents
29 requests release of the defendant on scheduled bail. Such
30 representation and request may either be made in writing or
31 verbally, with any such verbal request to be noted in law
32 enforcement records.

33 (2) If none of the conditions described in subsection (1)
34 are met within eight (8) hours of such arrest, the court shall
35 make itself available for emergency hearing, either in person or
36 by telephone, at the request of counsel representing the
37 defendant. If the defendant remains in custody and is unable to
38 meet any of the conditions of release described herein, the court,
39 the court shall release the defendant on scheduled bail without
40 additional conditions.

41 (3) The provisions of this section do not place any
42 additional responsibility upon the police to make calls or allow
43 the arrested person to make telephone calls beyond the existing



44 requirements of the United States Constitution, the Mississippi
45 Constitution or applicable statutes.

46 (4) Nothing in this section shall be construed to interfere
47 with the judges' authority, if any, to deny bail or to otherwise
48 lawfully detain a particular defendant.

49 (5) The notification and approval provisions of this section
50 shall apply to any person under the age of twenty-one (21) who is
51 asked by any local, state or federal law enforcement official to
52 serve as a confidential informant. Approval shall be obtained at
53 least seventy-two (72) hours before any person under the age of
54 twenty-one (21) serves as a confidential informant.

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

57 63-11-30. (1) It is unlawful for a person to drive or
58 otherwise operate a vehicle within this state if the person:

59 (a) Is under the influence of intoxicating liquor;

60 (b) Is under the influence of any other substance that
61 has impaired the person's ability to operate a motor vehicle;

62 (c) Is under the influence of any drug or controlled
63 substance, the possession of which is unlawful under the
64 Mississippi Controlled Substances Law; or

65 (d) Has an alcohol concentration in the person's blood,
66 based upon grams of alcohol per one hundred (100) milliliters of
67 blood, or grams of alcohol per two hundred ten (210) liters of



68 breath, as shown by a chemical analysis of the person's breath,
69 blood or urine administered as authorized by this chapter, of:

70 (i) Eight one-hundredths percent (.08%) or more
71 for a person who is above the legal age to purchase alcoholic
72 beverages under state law;

73 (ii) Two one-hundredths percent (.02%) or more for
74 a person who is below the legal age to purchase alcoholic
75 beverages under state law; or

76 (iii) Four one-hundredths percent (.04%) or more
77 for a person operating a commercial motor vehicle.

78 (2) Except as otherwise provided in subsection (3) of this
79 section (Zero Tolerance for Minors):

80 (a) **First offense DUI.** (i) Upon conviction of any
81 person for the first offense of violating subsection (1) of this
82 section where chemical tests under Section 63-11-5 were given, or
83 where chemical test results are not available, the person shall be
84 fined not less than Two Hundred Fifty Dollars (\$250.00) nor more
85 than One Thousand Dollars (\$1,000.00), or imprisoned for not more
86 than forty-eight (48) hours in jail, or both; however, any person
87 who is under the age of twenty-one (21) shall be released as
88 provided in Section 1 of this act. The court shall order the
89 person to attend and complete an alcohol safety education program
90 as provided in Section 63-11-32 within six (6) months of
91 sentencing. The court may substitute attendance at a victim
92 impact panel instead of forty-eight (48) hours in jail.



93 (ii) Suspension of commercial driving privileges
94 is governed by Section 63-1-216.

95 (iii) A qualifying first offense may be
96 nonadjudicated by the court under subsection (14) of this section.
97 The holder of a commercial driver's license or a commercial
98 learning permit is ineligible for nonadjudication.

99 (iv) Eligibility for an interlock-restricted
100 license is governed by Section 63-11-31 and suspension of regular
101 driving privileges is governed by Section 63-11-23.

102 (b) **Second offense DUI.** (i) Upon any second
103 conviction of any person violating subsection (1) of this section,
104 the offenses being committed within a period of five (5) years,
105 the person shall be guilty of a misdemeanor, fined not less than
106 Six Hundred Dollars (\$600.00) nor more than One Thousand Five
107 Hundred Dollars (\$1,500.00), shall be imprisoned not less than
108 five (5) days nor more than six (6) months and sentenced to
109 community service work for not less than ten (10) days nor more
110 than six (6) months. The minimum penalties shall not be suspended
111 or reduced by the court and no prosecutor shall offer any
112 suspension or sentence reduction as part of a plea bargain.

113 (ii) Suspension of commercial driving privileges
114 is governed by Section 63-1-216.

115 (iii) Eligibility for an interlock-restricted
116 license is governed by Section 63-11-31 and suspension of regular
117 driving privileges is governed by Section 63-11-23.



118 (c) **Third offense DUI.** (i) For a third conviction of
119 a person for violating subsection (1) of this section, the
120 offenses being committed within a period of five (5) years, the
121 person shall be guilty of a felony and fined not less than Two
122 Thousand Dollars (\$2,000.00) nor more than Five Thousand Dollars
123 (\$5,000.00), and shall serve not less than one (1) year nor more
124 than five (5) years in the custody of the Department of
125 Corrections. For any offense that does not result in serious
126 injury or death to any person, the sentence of incarceration may
127 be served in the county jail rather than in the State Penitentiary
128 at the discretion of the circuit court judge. The minimum
129 penalties shall not be suspended or reduced by the court and no
130 prosecutor shall offer any suspension or sentence reduction as
131 part of a plea bargain.

132 (ii) The suspension of commercial driving
133 privileges is governed by Section 63-1-216.

134 (iii) The suspension of regular driving privileges
135 is governed by Section 63-11-23.

136 (d) **Fourth and subsequent offense DUI.** (i) For any
137 fourth or subsequent conviction of a violation of subsection (1)
138 of this section, without regard to the time period within which
139 the violations occurred, the person shall be guilty of a felony
140 and fined not less than Three Thousand Dollars (\$3,000.00) nor
141 more than Ten Thousand Dollars (\$10,000.00), and shall serve not



142 less than two (2) years nor more than ten (10) years in the
143 custody of the Department of Corrections.

144 (ii) The suspension of commercial driving
145 privileges is governed by Section 63-1-216.

146 (iii) A person convicted of a fourth or subsequent
147 offense is ineligible to exercise the privilege to operate a motor
148 vehicle that is not equipped with an ignition-interlock device for
149 ten (10) years.

150 (e) Any person convicted of a second or subsequent
151 violation of subsection (1) of this section shall receive an
152 in-depth diagnostic assessment, and if as a result of the
153 assessment is determined to be in need of treatment for alcohol or
154 drug abuse, the person must successfully complete treatment at a
155 program site certified by the Department of Mental Health. Each
156 person who receives a diagnostic assessment shall pay a fee
157 representing the cost of the assessment. Each person who
158 participates in a treatment program shall pay a fee representing
159 the cost of treatment.

160 (f) The use of ignition-interlock devices is governed
161 by Section 63-11-31.

162 (3) **Zero Tolerance for Minors.** (a) This subsection shall
163 be known and may be cited as Zero Tolerance for Minors. The
164 provisions of this subsection shall apply only when a person under
165 the age of twenty-one (21) years has a blood alcohol concentration
166 of two one-hundredths percent (.02%) or more, but lower than eight



167 one-hundredths percent (.08%). If the person's blood alcohol
168 concentration is eight one-hundredths percent (.08%) or more, the
169 provisions of subsection (2) shall apply; however, any person who
170 is under the age of twenty-one (21) and not within the
171 jurisdiction of the youth court shall be released as provided in
172 Section 1 of this act.

173 (b) (i) A person under the age of twenty-one (21) is
174 eligible for nonadjudication of a qualifying first offense by the
175 court pursuant to subsection (14) of this section.

176 (ii) Upon conviction of any person under the age
177 of twenty-one (21) years for the first offense of violating
178 subsection (1) of this section where chemical tests provided for
179 under Section 63-11-5 were given, or where chemical test results
180 are not available, the person shall be fined Two Hundred Fifty
181 Dollars (\$250.00); the court shall order the person to attend and
182 complete an alcohol safety education program as provided in
183 Section 63-11-32 within six (6) months. The court may also
184 require attendance at a victim impact panel.

185 (c) A person under the age of twenty-one (21) years who
186 is convicted of a second violation of subsection (1) of this
187 section, the offenses being committed within a period of five (5)
188 years, shall be fined not more than Five Hundred Dollars
189 (\$500.00).

190 (d) A person under the age of twenty-one (21) years who
191 is convicted of a third or subsequent violation of subsection (1)



192 of this section, the offenses being committed within a period of
193 five (5) years, shall be fined not more than One Thousand Dollars
194 (\$1,000.00).

195 (e) License suspension is governed by Section 63-11-23
196 and ignition interlock is governed by Section 63-11-31.

197 (f) Any person under the age of twenty-one (21) years
198 convicted of a third or subsequent violation of subsection (1) of
199 this section must complete treatment of an alcohol or drug abuse
200 program at a site certified by the Department of Mental Health.

201 (4) **DUI test refusal.** In addition to the other penalties
202 provided in this section, every person refusing a law enforcement
203 officer's request to submit to a chemical test of the person's
204 breath as provided in this chapter, or who was unconscious at the
205 time of a chemical test and refused to consent to the introduction
206 of the results of the test in any prosecution, shall suffer an
207 additional administrative suspension of driving privileges as set
208 forth in Section 63-11-23.

209 (5) **Aggravated DUI.** (a) Every person who operates any
210 motor vehicle in violation of the provisions of subsection (1) of
211 this section and who in a negligent manner causes the death of
212 another or mutilates, disfigures, permanently disables or destroys
213 the tongue, eye, lip, nose or any other limb, organ or member of
214 another shall, upon conviction, be guilty of a separate felony for
215 each victim who suffers death, mutilation, disfigurement or other
216 injury and shall be committed to the custody of the State



217 Department of Corrections for a period of time of not less than
218 five (5) years and not to exceed twenty-five (25) years for each
219 death, mutilation, disfigurement or other injury, and the
220 imprisonment for the second or each subsequent conviction, in the
221 discretion of the court, shall commence either at the termination
222 of the imprisonment for the preceding conviction or run
223 concurrently with the preceding conviction. Any person charged
224 with causing the death of another as described in this subsection
225 shall be required to post bail before being released after arrest.

226 (b) A holder of a commercial driver's license who is
227 convicted of operating a commercial motor vehicle with an alcohol
228 concentration of eight one-hundredths percent (.08%) or more shall
229 be guilty of a felony and shall be committed to the custody of the
230 Department of Corrections for not less than two (2) years and not
231 more than ten (10) years.

232 (c) The court shall order an ignition-interlock
233 restriction on the offender's privilege to drive as a condition of
234 probation or post-release supervision not to exceed five (5) years
235 unless a longer restriction is required under other law.

236 (6) **DUI citations.** (a) Upon conviction of a violation of
237 subsection (1) of this section, the trial judge shall sign in the
238 place provided on the traffic ticket, citation or affidavit
239 stating that the person arrested either employed an attorney or
240 waived his right to an attorney after having been properly
241 advised. If the person arrested employed an attorney, the name,



242 address and telephone number of the attorney shall be written on
243 the ticket, citation or affidavit. The court clerk must
244 immediately send a copy of the traffic ticket, citation or
245 affidavit, and any other pertinent documents concerning the
246 conviction or other order of the court, to the Department of
247 Public Safety as provided in Section 63-11-37.

248 (b) A copy of the traffic ticket, citation or affidavit
249 and any other pertinent documents, having been attested as true
250 and correct by the Commissioner of Public Safety, or his designee,
251 shall be sufficient proof of the conviction for purposes of
252 determining the enhanced penalty for any subsequent convictions of
253 violations of subsection (1) of this section. The Department of
254 Public Safety shall maintain a central database for verification
255 of prior offenses and convictions.

256 (7) **Out-of-state prior convictions.** Convictions in another
257 state, territory or possession of the United States, or under the
258 law of a federally recognized Native American tribe, of violations
259 for driving or operating a vehicle while under the influence of an
260 intoxicating liquor or while under the influence of any other
261 substance that has impaired the person's ability to operate a
262 motor vehicle occurring within five (5) years before an offense
263 shall be counted for the purposes of determining if a violation of
264 subsection (1) of this section is a second, third, fourth or
265 subsequent offense and the penalty that shall be imposed upon
266 conviction for a violation of subsection (1) of this section.



267 (8) **Charging of subsequent offenses.** For the purposes of
268 determining how to impose the sentence for a second, third, fourth
269 or subsequent conviction under this section, the affidavit or
270 indictment shall not be required to enumerate previous
271 convictions. It shall only be necessary that the affidavit or
272 indictment states the number of times that the defendant has been
273 convicted and sentenced within the past five (5) years under this
274 section to determine if an enhanced penalty shall be imposed. The
275 amount of fine and imprisonment imposed in previous convictions
276 shall not be considered in calculating offenses to determine a
277 second, third, fourth or subsequent offense of this section.

278 (9) **License eligibility for underage offenders.** A person
279 who is under the legal age to obtain a license to operate a motor
280 vehicle at the time of the offense and who is convicted under this
281 section shall not be eligible to receive a driver's license until
282 the person reaches the age of eighteen (18) years.

283 (10) **License suspensions and restrictions to run**
284 **consecutively.** Suspension or restriction of driving privileges
285 for any person convicted of or nonadjudicated for violations of
286 subsection (1) of this section shall run consecutively to and not
287 concurrently with any other administrative license suspension.

288 (11) **Ignition interlock.** If the court orders installation
289 and use of an ignition-interlock device as provided in Section
290 63-11-31 for every vehicle operated by a person convicted or



291 nonadjudicated under this section, each device shall be installed,
292 maintained and removed as provided in Section 63-11-31.

293 (12) **DUI child endangerment.** A person over the age of
294 twenty-one (21) who violates subsection (1) of this section while
295 transporting in a motor vehicle a child under the age of sixteen
296 (16) years is guilty of the separate offense of endangering a
297 child by driving under the influence of alcohol or any other
298 substance which has impaired the person's ability to operate a
299 motor vehicle. The offense of endangering a child by driving
300 under the influence of alcohol or any other substance which has
301 impaired the person's ability to operate a motor vehicle shall not
302 be merged with an offense of violating subsection (1) of this
303 section for the purposes of prosecution and sentencing. An
304 offender who is convicted of a violation of this subsection shall
305 be punished as follows:

306 (a) A person who commits a violation of this subsection
307 which does not result in the serious injury or death of a child
308 and which is a first conviction shall be guilty of a misdemeanor
309 and, upon conviction, shall be fined not more than One Thousand
310 Dollars (\$1,000.00) or shall be imprisoned for not more than
311 twelve (12) months, or both;

312 (b) A person who commits a violation of this subsection
313 which does not result in the serious injury or death of a child
314 and which is a second conviction shall be guilty of a misdemeanor
315 and, upon conviction, shall be fined not less than One Thousand



316 Dollars (\$1,000.00) nor more than Five Thousand Dollars
317 (\$5,000.00) or shall be imprisoned for one (1) year, or both;

318 (c) A person who commits a violation of this subsection
319 which does not result in the serious injury or death of a child
320 and which is a third or subsequent conviction shall be guilty of a
321 felony and, upon conviction, shall be fined not less than Ten
322 Thousand Dollars (\$10,000.00) or shall be imprisoned for not less
323 than one (1) year nor more than five (5) years, or both; and

324 (d) A person who commits a violation of this subsection
325 which results in the serious injury or death of a child, without
326 regard to whether the offense was a first, second, third or
327 subsequent offense, shall be guilty of a felony and, upon
328 conviction, shall be punished by a fine of not less than Ten
329 Thousand Dollars (\$10,000.00) and shall be imprisoned for not less
330 than five (5) years nor more than twenty-five (25) years.

331 (13) **Expunction.** (a) Any person convicted under subsection
332 (2) or (3) of this section of a first offense of driving under the
333 influence and who was not the holder of a commercial driver's
334 license or a commercial learning permit at the time of the offense
335 may petition the circuit court of the county in which the
336 conviction was had for an order to expunge the record of the
337 conviction at least five (5) years after successful completion of
338 all terms and conditions of the sentence imposed for the
339 conviction. Expunction under this subsection will only be
340 available to a person:



341 (i) Who has successfully completed all terms and
342 conditions of the sentence imposed for the conviction;

343 (ii) Who did not refuse to submit to a test of his
344 blood or breath;

345 (iii) Whose blood alcohol concentration tested
346 below sixteen one-hundredths percent (.16%) if test results are
347 available;

348 (iv) Who has not been convicted of and does not
349 have pending any other offense of driving under the influence;

350 (v) Who has provided the court with justification
351 as to why the conviction should be expunged; and

352 (vi) Who has not previously had a nonadjudication
353 or expunction of a violation of this section.

354 (b) A person is eligible for only one (1) expunction
355 under this subsection, and the Department of Public Safety shall
356 maintain a permanent confidential registry of all cases of
357 expunction under this subsection for the sole purpose of
358 determining a person's eligibility for expunction, for
359 nonadjudication, or as a first offender under this section.

360 (c) The court in its order of expunction shall state in
361 writing the justification for which the expunction was granted and
362 forward the order to the Department of Public Safety within five
363 (5) days of the entry of the order.

364 (14) **Nonadjudication.** (a) For the purposes of this
365 chapter, "nonadjudication" means that the court withholds



366 adjudication of guilt and sentencing, either at the conclusion of
367 a trial on the merits or upon the entry of a plea of guilt by a
368 defendant, and places the defendant in a nonadjudication program
369 conditioned upon the successful completion of the requirements
370 imposed by the court under this subsection.

371 (b) A person is eligible for nonadjudication of an
372 offense under this Section 63-11-30 only one (1) time under any
373 provision of a law that authorizes nonadjudication and only for an
374 offender:

375 (i) Who has successfully completed all terms and
376 conditions imposed by the court after placement of the defendant
377 in a nonadjudication program;

378 (ii) Who was not operating a commercial vehicle at
379 the time of the offense;

380 (iii) Who has not previously been convicted of and
381 does not have pending any former or subsequent charges under this
382 section; and

383 (iv) Who has provided the court with justification
384 as to why nonadjudication is appropriate.

385 (c) Nonadjudication may be initiated upon the filing of
386 a petition for nonadjudication or at any stage of the proceedings
387 in the discretion of the court; the court may withhold
388 adjudication of guilt, defer sentencing, and upon the agreement of
389 the offender to participate in a nonadjudication program, enter an
390 order imposing requirements on the offender for a period of court



391 supervision before the order of nonadjudication is entered.
392 Failure to successfully complete a nonadjudication program
393 subjects the person to adjudication of the charges against him and
394 to imposition of all penalties previously withheld due to entrance
395 into a nonadjudication program. The court shall immediately
396 inform the commissioner of the conviction as required in Section
397 63-11-37.

398 (i) The court shall order the person to:

399 1. Pay the nonadjudication fee imposed under
400 Section 63-11-31 if applicable;

401 2. Pay all fines, penalties and assessments
402 that would have been imposed for conviction;

403 3. Attend and complete an alcohol safety
404 education program as provided in Section 63-11-32 within six (6)
405 months of the date of the order;

406 4. a. If the court determines that the
407 person violated this section with respect to alcohol or
408 intoxicating liquor, the person must install an ignition-interlock
409 device on every motor vehicle operated by the person, obtain an
410 interlock-restricted license, and maintain that license for one
411 hundred twenty (120) days or suffer a one-hundred-twenty-day
412 suspension of the person's regular driver's license, during which
413 time the person must not operate any vehicle.

414 b. If the court determines that the
415 person violated this section by operating a vehicle when under the



416 influence of a substance other than alcohol that has impaired the
417 person's ability to operate a motor vehicle, including any drug or
418 controlled substance which is unlawful to possess under the
419 Mississippi Controlled Substances Law, the person must submit to a
420 one-hundred-twenty-day period of a nonadjudication program that
421 includes court-ordered drug testing at the person's own expense
422 not less often than every thirty (30) days, during which time the
423 person may drive if compliant with the terms of the program, or
424 suffer a one-hundred-twenty-day suspension of the person's regular
425 driver's license, during which time the person will not operate
426 any vehicle.

427 (ii) Other conditions that may be imposed by the
428 court include, but are not limited to, alcohol or drug screening,
429 or both, proof that the person has not committed any other traffic
430 violations while under court supervision, proof of immobilization
431 or impoundment of vehicles owned by the offender if required, and
432 attendance at a victim-impact panel.

433 (d) The court may enter an order of nonadjudication
434 only if the court finds, after a hearing or after ex parte
435 examination of reliable documentation of compliance, that the
436 offender has successfully completed all conditions imposed by law
437 and previous orders of the court. The court shall retain
438 jurisdiction over cases involving nonadjudication for a period of
439 not more than two (2) years.



440 (e) (i) The clerk shall immediately forward a record
441 of every person placed in a nonadjudication program and of every
442 nonadjudication order to the Department of Public Safety for
443 inclusion in the permanent confidential registry of all cases that
444 are nonadjudicated under this subsection (14).

445 (ii) Judges, clerks and prosecutors involved in
446 the trial of implied consent violations and law enforcement
447 officers involved in the issuance of citations for implied consent
448 violations shall have access to the confidential registry for the
449 purpose of determining whether a person has previously been the
450 subject of a nonadjudicated case and 1. is therefore ineligible
451 for another nonadjudication; 2. is ineligible as a first offender
452 for a violation of this section; or 3. is ineligible for
453 expunction of a conviction of a violation of this section.

454 (iii) The Driver Services Bureau of the department
455 shall have access to the confidential registry for the purpose of
456 determining whether a person is eligible for a form of license not
457 restricted to operating a vehicle equipped with an
458 ignition-interlock device.

459 (iv) The Mississippi Alcohol Safety Education
460 Program shall have access to the confidential registry for
461 research purposes only.

462 **SECTION 4.** This act shall take effect and be in force from
463 and after July 1, 2017.

