

By: Representatives Gipson, Miles, Monsour,  
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Baker

To: Judiciary B

HOUSE BILL NO. 1089  
(As Sent to Governor)

1 AN ACT TO AUTHORIZE MENTAL HEALTH DIVERSION PILOT PROGRAMS;  
2 TO SPECIFY THE PURPOSE AND GOALS OF MENTAL HEALTH DIVERSION PILOT  
3 PROGRAMS; TO PROVIDE CERTAIN DEFINITIONS; TO SPECIFY MINIMUM  
4 STANDARDS FOR MENTAL HEALTH INTERVENTION SERVICES; TO PROVIDE  
5 CERTAIN MENTAL HEALTH INTERVENTION SERVICES; TO SET FORTH  
6 ALTERNATIVE SENTENCING ELIGIBILITY CRITERIA AND CONDITIONS; TO  
7 DESIGNATE THE POWERS OF THE ADMINISTRATIVE OFFICE OF COURTS  
8 REGARDING MENTAL HEALTH DIVERSION PILOT PROGRAMS; TO AUTHORIZE  
9 MENTAL HEALTH DIVERSION PILOT PROGRAMS TO RECEIVE FUNDS AND ASSESS  
10 REASONABLE FEES; TO PROVIDE IMMUNITY TO PERSONS WHO PERFORM THEIR  
11 MENTAL HEALTH DUTIES IN GOOD FAITH; TO PROVIDE THAT PERSONS WHO  
12 COMPLETE ALL REQUIREMENTS IMPOSED BY THE MENTAL HEALTH DIVERSION  
13 PILOT PROGRAMS WILL HAVE THEIR RECORDS EXPUNGED; TO CREATE NEW  
14 SECTION 99-3-45, MISSISSIPPI CODE OF 1972, TO REQUIRE THAT CERTAIN  
15 NOTICES BE GIVEN TO A MINOR WHO IS ARRESTED AND RELEASED; AND FOR  
16 RELATED PURPOSES.

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

18 **SECTION 1.** This chapter shall be known and may be cited as  
19 the Rivers McGraw Mental Health Diversion Pilot Program Act.

20 **SECTION 2.** (1) The Legislature recognizes the critical need  
21 for judicial intervention to establish court processes and  
22 procedures that are more responsive to the needs of defendants  
23 with mental illnesses, while maintaining public safety and the  
24 integrity of the court process. It is the intent of the  
25 Legislature to facilitate pilot programs for local mental health



26 diversion program alternatives in several pilot circuit court  
27 districts that will be adaptable to chancery, circuit, county,  
28 youth, municipal and justice courts.

29 (2) The goals of the mental health diversion pilot programs  
30 under this chapter include the following:

31 (a) Reduce the number of future criminal justice  
32 contacts among offenders with mental illnesses;

33 (b) Reduce the inappropriate institutionalization of  
34 people with mental illnesses;

35 (c) Improve the mental health and well-being of  
36 defendants who come in contact with the criminal justice system;

37 (d) Improve linkages between the criminal justice  
38 system and the mental health system;

39 (e) Expedite case processing;

40 (f) Protect public safety;

41 (g) Establish linkages with other state and local  
42 agencies and programs that target people with mental illnesses in  
43 order to maximize the delivery of services; and

44 (h) To use corrections resources more effectively by  
45 redirecting prison-bound offenders whose criminal conduct is  
46 driven in part by mental illnesses to intensive supervision and  
47 clinical treatment available in the mental health diversion pilot  
48 program.



49           **SECTION 3.** For the purposes of this chapter, the following  
50 words and phrases shall have the meanings ascribed unless the  
51 context clearly requires otherwise:

52           (a) "Chemical tests" means the analysis of an  
53 individual's: (i) blood, (ii) breath, (iii) hair, (iv) sweat, (v)  
54 saliva, (vi) urine, or (vii) other bodily substance to determine  
55 the presence of alcohol or a controlled substance.

56           (b) "Mental health diversion program" means an  
57 immediate and highly structured intervention process for mental  
58 health treatment of eligible defendants or juveniles that:

59           (i) Brings together mental health professionals,  
60 local social programs and intensive judicial monitoring; and

61           (ii) Follows the key components of the mental  
62 health court curriculum published by the Bureau of Justice of the  
63 United States Department of Justice.

64           (c) "Evidence-based practices" means supervision  
65 policies, procedures and practices that scientific research  
66 demonstrates reduce recidivism.

67           (d) "Risk and needs assessment" means the use of an  
68 actuarial assessment tool validated on a Mississippi corrections  
69 population to determine a person's risk to reoffend and the  
70 characteristics that, if addressed, reduce the risk to reoffend.

71           **SECTION 4.** (1) The Administrative Office of Courts is the  
72 repository for reports filed by pilot programs established under  
73 this act. The goal of the pilot programs is to support effective



74 and proven practices that reduce recidivism and provide treatment  
75 for participants.

76 (2) Pilot programs must adhere to the standards established  
77 in this chapter.

78 (a) These standards shall include, but are not limited  
79 to:

80 (i) The use of evidence-based practices including,  
81 but not limited to, the use of a valid and reliable risk and needs  
82 assessment tool to identify participants and deliver appropriate  
83 treatments;

84 (ii) Targeting medium- to high-risk offenders for  
85 participation;

86 (iii) The use of current, evidence-based  
87 interventions proven to provide mental health treatment;

88 (iv) Coordinated strategy between all mental  
89 health diversion pilot program personnel;

90 (v) Ongoing judicial interaction with each  
91 participant; and

92 (vi) Monitoring and evaluation of mental health  
93 diversion pilot program implementation and outcomes through data  
94 collection and reporting.

95 (b) Pilot programs must implement a data collection  
96 plan, which shall include collecting the following data:

97 (i) Total number of participants;

98 (ii) Total number of successful participants;



99 (iii) Total number of unsuccessful participants  
100 and the reason why each participant did not complete the program;

101 (iv) Total number of participants who were  
102 arrested for a new criminal offense while in the program;

103 (v) Total number of participants who were  
104 convicted of a new felony or misdemeanor offense while in the  
105 program;

106 (vi) Total number of participants who committed at  
107 least one (1) violation while in the program and the resulting  
108 sanction(s);

109 (vii) Results of the initial risk and needs  
110 assessment or other clinical assessment conducted on each  
111 participant; and

112 (viii) Any other data or information as required  
113 by the Administrative Office of Courts.

114 (3) All mental health diversion pilot programs must measure  
115 successful completion of the program based on those participants  
116 who complete the program without a new criminal conviction.

117 (4) (a) Pilot programs must collect and submit to the  
118 Administrative Office of Courts each month, the following data:

119 (i) Total number of participants at the beginning  
120 of the month;

121 (ii) Total number of participants at the end of  
122 the month;



123 (iii) Total number of participants who began the  
124 program in the month;

125 (iv) Total number of participants who successfully  
126 completed the program in the month;

127 (v) Total number of participants who left the  
128 program in the month;

129 (vi) Total number of participants who were  
130 arrested for a new criminal offense while in the program in the  
131 month;

132 (vii) Total number of participants who were  
133 convicted for a new criminal arrest while in the program in the  
134 month; and

135 (viii) Total number of participants who committed  
136 at least one (1) violation while in the program and any resulting  
137 sanction(s).

138 (b) By August 1, 2018, and each year thereafter, the  
139 Administrative Office of Courts shall report to the PEER Committee  
140 the information in subsection (4)(a) of this section in a  
141 sortable, electronic format.

142 (5) Mental health diversion pilot programs may individually  
143 establish rules and may make special orders and rules as necessary  
144 that do not conflict with rules promulgated by the Supreme Court  
145 or the Administrative Office of Courts.

146 (6) A mental health diversion pilot program may appoint the  
147 full or part-time employees it deems necessary for the work of the



148 mental health diversion pilot program and shall fix the  
149 compensation of those employees, who shall serve at the will and  
150 pleasure of the senior circuit court judge.

151 (7) A mental health diversion pilot program established  
152 under this chapter is subject to the regulatory powers of the  
153 Administrative Office of Courts as set forth in Section 7 of this  
154 act.

155 **SECTION 5.** (1) A mental health diversion pilot program's  
156 mental health intervention component shall provide for eligible  
157 individuals, either directly or through referrals, a range of  
158 necessary court treatment services, including, but not limited to,  
159 the following:

160 (a) Screening using a valid and reliable assessment  
161 tool effective for identifying persons affected by mental health  
162 issues for eligibility and appropriate services;

163 (b) Clinical assessment;

164 (c) Education;

165 (d) Referral;

166 (e) Service coordination and case management; and

167 (f) Counseling and rehabilitative care.

168 (2) Any inpatient treatment ordered by the court shall be  
169 certified by the Department of Mental Health, other appropriate  
170 state agency or the equivalent agency of another state.



171           **SECTION 6.** (1) In order to be eligible for alternative  
172 sentencing through a local mental health diversion pilot program,  
173 the participant must satisfy each of the following criteria:

174           (a) The participant cannot have any felony convictions  
175 for any offenses that are crimes of violence as defined in Section  
176 97-3-2, other than burglary under Section 97-17-23(1), within the  
177 previous ten (10) years.

178           (b) The crime before the court cannot be a crime of  
179 violence as defined in Section 97-3-2, other than burglary under  
180 Section 97-17-23(1).

181           (c) Other criminal proceedings alleging commission of a  
182 crime of violence other than burglary under Section 97-17-23(1)  
183 cannot be pending against the participant.

184           (d) The crime before the court cannot be a charge of  
185 driving under the influence of alcohol or any other substance that  
186 resulted in the death of a person. In addition, persons who are  
187 ineligible for nonadjudication under Section 63-11-30 shall be  
188 ineligible to participate in a mental health diversion program.

189           (e) The crime charged cannot be one of trafficking in  
190 controlled substances under Section 41-29-139(f), nor can the  
191 participant have a prior conviction for same.

192           (2) Participation in the services of a mental health  
193 treatment component shall be open only to the individuals over  
194 whom the court has jurisdiction, except that the court may agree  
195 to provide the services for individuals referred from another





196 mental health diversion program. In cases transferred from  
197 another jurisdiction, the receiving judge shall act as a special  
198 master and make recommendations to the sentencing judge.

199 (3) (a) As a condition of participation in a mental health  
200 diversion program, a participant may be required to undergo a  
201 chemical test or a series of chemical tests as specified by the  
202 program. A participant is liable for the costs of all chemical  
203 tests required under this section, regardless of whether the costs  
204 are paid to the mental health diversion program or the laboratory;  
205 however, if testing is available from other sources or the program  
206 itself, the judge may waive any fees for testing.

207 (b) A laboratory that performs a chemical test under  
208 this section shall report the results of the test to the mental  
209 health diversion program.

210 (4) A person does not have a right to participate in a  
211 mental health diversion program under this chapter. The court  
212 having jurisdiction over a person for a matter before the court  
213 shall have the final determination about whether the person may  
214 participate in the mental health diversion program under this  
215 chapter.

216 **SECTION 7.** With regard to any mental health diversion pilot  
217 program established under this chapter, the Administrative Office  
218 of Courts shall do the following:

219 (a) Collect monthly data reports submitted by all  
220 mental health diversion pilot programs, compile an annual report



221 summarizing the data collected and the outcomes achieved by all  
222 mental health diversion pilot programs and submit the annual  
223 report to the PEER Committee.

224 (b) After three (3) years, contract with an external  
225 evaluator to conduct an evaluation of the effectiveness of the  
226 mental health diversion pilot programs in complying with the key  
227 components of the mental health diversion pilot programs.

228 (c) Adopt rules to implement this chapter.

229 **SECTION 8.** (1) All monies received from any source by a  
230 mental health diversion pilot program shall be accumulated in a  
231 local fund to be used only for mental health diversion pilot  
232 program purposes. Any funds remaining in a local fund at the end  
233 of a fiscal year shall not lapse into any general fund, but shall  
234 be retained in the mental health diversion pilot program fund for  
235 the funding of further activities by the mental health diversion  
236 pilot program. Any funds remaining in a local fund at the time of  
237 repeal of this chapter shall lapse into the appropriate county's  
238 general fund.

239 (2) A mental health diversion pilot program may apply for  
240 and receive the following:

241 (a) Gifts, bequests and donations from private sources.

242 (b) Grant and contract monies from governmental  
243 sources.



244 (c) Other forms of financial assistance approved by the  
245 court to supplement the budget of the mental health diversion  
246 pilot program.

247 (3) The costs of participation in a mental health treatment  
248 program required by the mental health diversion pilot program may  
249 be paid by the participant or out of user fees or such other  
250 state, federal or private funds that may, from time to time, be  
251 made available.

252 (4) The court may assess reasonable and appropriate fees to  
253 be paid to the local mental health diversion pilot program fund  
254 for participation in a mental health treatment program.

255 **SECTION 9.** The director and members of the professional and  
256 administrative staff of the mental health diversion pilot program  
257 who perform duties in good faith under this chapter are immune  
258 from civil liability for:

259 (a) Acts or omissions in providing services under this  
260 chapter; and

261 (b) The reasonable exercise of discretion in  
262 determining eligibility to participate in the mental health  
263 diversion pilot program.

264 **SECTION 10.** If the participant completes all requirements  
265 imposed upon him by the mental health diversion pilot program,  
266 including the payment of fines and fees assessed, the charge and  
267 prosecution shall be dismissed. If the defendant or participant  
268 was sentenced at the time of entry of a plea of guilty, the



269 successful completion of the mental health diversion pilot program  
270 order and other requirements of probation or suspension of  
271 sentence will result in the record of the criminal conviction or  
272 adjudication being expunged.

273       **SECTION 11.** The following circuit court districts may  
274 establish a mental health diversion pilot program: Second, Third,  
275 Eighth, Twelfth, Seventeenth and Twentieth Circuit Court  
276 Districts. The purpose of a pilot program is to implement  
277 procedures to meet the goals listed in Section 2 of this act on a  
278 trial basis and is conditioned upon the availability of funds  
279 obtained for that purpose from public or private sources other  
280 than funds appropriated by the Legislature. Any drug court in the  
281 Second, Third, Eighth or Twentieth Circuit Court Districts shall  
282 render such assistance as is authorized by the senior circuit  
283 judge.

284       **SECTION 12.** The following shall be codified as Section  
285 99-3-45, Mississippi Code of 1972:

286       99-3-45. A person under the age of twenty-one (21) who is  
287 released under either Section 99-3-17 or 99-3-18 following arrest  
288 must be given notice:

289               (a) That the person is allowed to call a parent,  
290 guardian or custodian in addition to any other opportunity to call  
291 that has been afforded to such person; and

292               (b) That drug court and other pretrial diversion  
293 programs may be available for many offenses.



294           **SECTION 13.** Sections 1 through 11 of this act shall be  
295 codified as a new chapter in Title 9, Mississippi Code of 1972.

296           **SECTION 14.** This act shall take effect and be in force from  
297 and after its passage.

