

By: Representative Dixon

To: Youth and Family
Affairs; Judiciary B

HOUSE BILL NO. 1536

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 THE YOUTH SHALL BE
4 ORDERED BY A YOUTH COURT JUDGE TO PARTICIPATE IN A DRUG COURT
5 PROGRAM; TO AMEND SECTIONS 43-21-605, AND 9-23-23, MISSISSIPPI
6 CODE OF 1972, IN CONFORMITY TO THE PREVIOUS SECTION; AND FOR
7 RELATED PURPOSES.

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

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

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

14 (a) The participant cannot have any felony convictions
15 for any offenses that are crimes of violence as defined in Section
16 97-3-2 within the previous ten (10) years.

17 (b) The crime before the court cannot be a crime of
18 violence as defined in Section 97-3-2.

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



21 (d) The participant cannot be currently charged with
22 burglary of a dwelling under Section 97-17-23(2) or 97-17-37.

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

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

29 (2) Participation in the services of an alcohol and drug
30 intervention component shall be open only to the individuals over
31 whom the court has jurisdiction, except that the court may agree
32 to provide the services for individuals referred from another drug
33 court; however, the court shall provide such services to a youth
34 described under subsection (5) of this section. In cases
35 transferred from another jurisdiction, the receiving judge shall
36 act as a special master and make recommendations to the sentencing
37 judge.

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



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

(4) Except for any youth described under 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 such program, the youth's record pertaining to such drugs or drug paraphernalia shall be expunged automatically by the youth court. As used under this subsection, "paraphernalia" shall have the meaning prescribed under Section 41-29-105.

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



71 limitations, including restitution, as the youth court may
72 prescribe;

73 (c) Place the child on probation subject to any
74 reasonable and appropriate conditions and limitations, including
75 restitution, as the youth court may prescribe;

76 (d) Order terms of treatment calculated to assist the
77 child and the child's parents or guardian which are within the
78 ability of the parent or guardian to perform and which are not in
79 conflict with a provider's determination of medical necessity;

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

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

89 (g) Give legal custody of the child to any of the
90 following:

91 (i) The Department of Human Services for
92 appropriate placement; or

93 (ii) Any public or private organization,
94 preferably community-based, able to assume the education, care and



95 maintenance of the child, which has been found suitable by the
96 court; or

97 (iii) The Division of Youth Services for placement
98 in the least restrictive environment, except that no child under
99 the age of ten (10) years shall be committed to the state training
100 school. Only a child who has been adjudicated delinquent for a
101 felony may be committed to the training school. In the event a
102 child is committed to the Oakley Youth Development Center by the
103 court, the child shall be deemed to be committed to the custody of
104 the Department of Human Services which may place the child in the
105 Oakley Youth Development Center or another appropriate facility.

106 The training school may retain custody of the child until the
107 child's twentieth birthday but for no longer. When the child is
108 committed to the training school, the child shall remain in the
109 legal custody of the training school until the child has made
110 sufficient progress in treatment and rehabilitation and it is in
111 the best interest of the child to release the child. However, the
112 superintendent of the state training school, in consultation with
113 the treatment team, may parole a child at any time he or she may
114 deem it in the best interest and welfare of such child. Ten (10)
115 business days before the parole, the training school shall notify
116 the committing court of the pending release. This notice may be
117 made in less than ten (10) days if Oakley Youth Development Center
118 needs to manage population limitations. The youth court may then
119 arrange subsequent placement after a reconvened disposition



hearing, except that the youth court may not recommit the child to the training school or any other secure facility without an adjudication of a new offense or probation or parole violation. 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;



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

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

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

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

167 (i) The severity of the crime, whether or not the
168 juvenile is a repeat offender or is a felony offender will be



taken into consideration by the judge when adjudicating a juvenile to the work program. The juveniles adjudicated to the work program will be supervised by police officers or reserve officers. The term of service will be from twenty-four (24) to one hundred 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;

(ii) 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



194 created in the intensive supervision program for juveniles. Any
195 youth ordered into the intensive home-based supervision program
196 shall receive comprehensive strength-based needs assessments and
197 individualized treatment plans. Based on the assessment, an
198 individualized treatment plan shall be developed that defines the
199 supervision and programming that is needed by a youth. The
200 treatment plan shall be developed by a multidisciplinary team that
201 includes the family of the youth whenever possible. The juvenile
202 shall pay Ten Dollars (\$10.00) to offset the cost of administering
203 the alcohol and drug test. The juvenile must attend school,
204 alternative school or be in the process of working toward a High
205 School Equivalency Diploma certificate;

206 (1) (i) Order the child into a juvenile detention
207 center operated by the county or into a juvenile detention center
208 operated by any county with which the county in which the court is
209 located has entered into a contract for the purpose of housing
210 delinquents. The time period for detention cannot exceed ninety
211 (90) days, and any detention exceeding forty-five (45) days shall
212 be administratively reviewed by the youth court no later than
213 forty-five (45) days after the entry of the order. At that time
214 the youth court counselor shall review the status of the youth in
215 detention and shall report any concerns to the court. The youth
216 court judge may order that the number of days specified in the
217 detention order be served either throughout the week or on
218 weekends only. No first-time nonviolent youth offender shall be



committed to a detention center for a period in excess of ninety (90) days until all other options provided for in this section have been considered and the court makes a specific finding of fact by a preponderance of the evidence by assessing what is in 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.

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

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

2. 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

3. 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; * * *

(o) Place the child on electronic monitoring subject to any conditions and limitations as the youth court may prescribe * * *; or

(p) Shall order the child to participate in a drug court program if she or he is found in possession of illegal drugs or drug paraphernalia on school property. The court may expunge the record of the youth if the child successfully completes the requirements of a drug court program.

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

(3) In addition to any of the disposition alternatives authorized under subsection (1) of this section, the disposition order in any case in which the child is adjudicated delinquent for an offense under Section 63-11-30 shall include an order denying



the driver's license and driving privileges of the child as required under Section 63-11-30(9).

(4) If the youth court places a child in a state-supported training school, the court may order the parents or guardians of the child and other persons living in the child's household to receive counseling and parenting classes for rehabilitative purposes while the child is in the legal custody of the training school. A youth court entering an order under this subsection (4) shall utilize appropriate services offered either at no cost or for a fee calculated on a sliding scale according to income unless 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 training schools by the youth courts. The purpose of the program is to promote good citizenship, self-reliance, leadership and respect for constituted authority, teamwork, cognitive abilities and appreciation of our national heritage. The program must use evidenced-based practices and gender-specific programming and must develop an individualized and specific treatment plan for each youth. The Division of Youth Services shall issue credit towards academic promotions and high school completion. The Division of Youth Services may award credits to each student who meets the requirements for a general education development certification. The Division of Youth Services must also provide to each special education eligible youth the services required by that youth's individualized education plan.



317 **SECTION 3.** Section 9-23-23, Mississippi Code of 1972, is
318 amended as follows:

319 9-23-23. (a) If the participant completes all requirements
320 imposed upon him by the drug court, including the payment of fines
321 and fees assessed, the charge and prosecution shall be dismissed.
322 If the defendant or participant was sentenced at the time of entry
323 of plea of guilty, the successful completion of the drug court
324 order and other requirements of probation or suspension of
325 sentence will result in the record of the criminal conviction or
326 adjudication being expunged. However, no expunction of any
327 implied consent violation shall be allowed.

328 (b) In cases where a youth, as described under Section
329 9-23-15 (5), successfully completes all requirements imposed upon
330 him or her by the drug court, the youth court judge shall expunge
331 the record of the youth.

332 **SECTION 4.** This act shall take effect and be in force from
333 and after July 1, 2019.

