

By: Representative Arnold

To: Judiciary B

HOUSE BILL NO. 618

1 AN ACT TO CREATE A NEW PENALTY FOR ANY PERSON WHO KILLS
2 ANOTHER PERSON WHILE DRIVING UNDER THE INFLUENCE; TO REQUIRE A
3 PERSON CONVICTED OF DRIVING UNDER THE INFLUENCE TO PAY CHILD
4 SUPPORT TO THE CHILD OF ANY PERSON KILLED AS A RESULT OF THE
5 VIOLATION; TO BRING FORWARD SECTION 63-11-30, MISSISSIPPI CODE OF
6 1972, WHICH PROVIDES THE PENALTIES FOR DRIVING UNDER THE
7 INFLUENCE, FOR PURPOSES OF AMENDMENT; AND FOR RELATED PURPOSES.

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

9 **SECTION 1.** (1) The court shall order a defendant convicted
10 of an offense under Section 63-11-30 that resulted in the death of
11 a person to pay restitution to each child of the deceased victim
12 of the offense who is eighteen (18) years of age or younger.

13 (2) The court shall determine a restitution amount to be
14 paid monthly for the support of the child until the child is above
15 eighteen (18) years of age or has graduated from high school,
16 whichever is later.

17 (3) The defendant may not be required to pay restitution
18 under this act to any person who is nineteen (19) years of age or
19 older.



20 (4) The court shall determine an amount for restitution
21 under this act that is reasonable and necessary to support the
22 child, considering all relevant factors including:

23 (a) The financial needs and resources of the child;

24 (b) The financial needs and resources of the surviving
25 parent or guardian, or other current guardian of the child or, if
26 applicable, the financial resources of the state if Child
27 Protection Services has been appointed as temporary or permanent
28 managing conservator of the child;

29 (c) The standard of living to which the child is
30 accustomed;

31 (d) The physical and emotional condition of the child
32 and the child's educational needs;

33 (e) The child's physical and legal custody
34 arrangements; and

35 (f) The reasonable work-related child care expenses of
36 the surviving parent or guardian or other current guardian, if
37 applicable.

38 (5) The order must require restitution payments to be:

39 (a) Delivered in the manner described by this act; and

40 (b) Directed to the parent or guardian of the child or
41 the Child Protection Services, as applicable.

42 (6) If a defendant ordered to pay restitution under this act
43 is unable to make the required restitution payments because the
44 defendant is confined or imprisoned in a correctional facility,



the defendant shall begin payments not later than the first anniversary of the date of the defendant's release from the facility. The defendant may enter into a payment plan to address any arrearage that exists on the date of the defendant's release. The defendant must pay all arrearages regardless of whether the restitution payments were scheduled to terminate while the defendant was confined or imprisoned in the correctional facility.

(7) The amount of restitution paid under this act shall be deducted from any civil judgment rendered by a court of law against the defendant.

(8) A restitution order issued under this act may be enforced by the state, or by a person or a parent or guardian of the person named in the order to receive the restitution, in the same manner as a judgment in a civil action.

SECTION 2. Section 63-11-30, Mississippi Code of 1972, is brought forward as follows:

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

- (a) Is under the influence of intoxicating liquor;
- (b) Is under the influence of any other substance that has impaired the person's ability to operate a motor vehicle;
- (c) Is under the influence of any drug or controlled substance, the possession of which is unlawful under the Mississippi Controlled Substances Law; or



69 (d) Has an alcohol concentration in the person's blood,
70 based upon grams of alcohol per one hundred (100) milliliters of
71 blood, or grams of alcohol per two hundred ten (210) liters of
72 breath, as shown by a chemical analysis of the person's breath,
73 blood or urine administered as authorized by this chapter, of:

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

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

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

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

84 (a) **First offense DUI.** (i) Upon conviction of any
85 person for the first offense of violating subsection (1) of this
86 section where chemical tests under Section 63-11-5 were given, or
87 where chemical test results are not available, the person shall be
88 fined not less than Two Hundred Fifty Dollars (\$250.00) nor more
89 than One Thousand Dollars (\$1,000.00), or imprisoned for not more
90 than forty-eight (48) hours in jail, or both; the court shall
91 order the person to attend and complete an alcohol safety
92 education program as provided in Section 63-11-32 within six (6)



months of sentencing. The court may substitute attendance at a victim impact panel instead of forty-eight (48) hours in jail.

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

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

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

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

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



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

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

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

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

(d) **Fourth and subsequent offense DUI.** (i) For any fourth or subsequent conviction of a violation of subsection (1) of this section, without regard to the time period within which the violations occurred, the person shall be guilty of a felony



and fined not less than Three Thousand Dollars (\$3,000.00) nor more than Ten Thousand Dollars (\$10,000.00), and shall serve not less than two (2) years nor more than ten (10) years in the custody of the Department of Corrections.

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

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

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

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

(3) **Zero tolerance for minors.** (a) This subsection shall be known and may be cited as Zero Tolerance for Minors. The provisions of this subsection shall apply only when a person under



the age of twenty-one (21) years has a blood alcohol concentration of two one-hundredths percent (.02%) or more, but lower than eight one-hundredths percent (.08%). If the person's blood alcohol concentration is eight one-hundredths percent (.08%) or more, the provisions of subsection (2) shall apply.

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

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

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

(d) A person under the age of twenty-one (21) years who is convicted of a third or subsequent violation of subsection (1) 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) (i) Except as otherwise provided
210 in subparagraph (ii) of this paragraph (a), every person who
211 operates any motor vehicle in violation of the provisions of
212 subsection (1) of this section and who in a negligent manner
213 causes the death of another or mutilates, disfigures, permanently
214 disables or destroys the tongue, eye, lip, nose or any other limb,
215 organ or member of another shall, upon conviction, be guilty of a
216 separate felony for each victim who suffers death, mutilation,
217 disfigurement or other injury and shall be committed to the



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

228 (ii) Every person who is below the legal age to
229 purchase alcoholic beverages under state law and has an alcohol
230 concentration in the person's blood, based upon grams of alcohol
231 per one hundred (100) milliliters of blood, or grams of alcohol
232 per two hundred ten (210) liters of breath, as shown by a chemical
233 analysis of the person's breath, blood or urine administered as
234 authorized by this chapter, of eight one-hundredths percent
235 (0.08%) or more and who in a negligent manner causes the death of
236 another or mutilates, disfigures, permanently disables or destroys
237 the tongue, eye, lip, nose or any other limb, organ or member of
238 another shall, upon conviction, be guilty of a separate felony for
239 each victim who suffers death, mutilation, disfigurement or other
240 injury and shall be committed to the custody of the State
241 Department of Corrections for a period of time not less than five
242 (5) years and not to exceed twenty-five (25) years for each death,



243 mutilation, disfigurement or other injury, and the imprisonment
244 for the second or each subsequent conviction, in the discretion of
245 the court, shall commence either at the termination of the
246 imprisonment for the preceding conviction or run concurrently with
247 the preceding conviction. Any such person charged with causing
248 the death of another as described in this subparagraph shall be
249 required to post bail before being released after arrest.

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

256 (c) The court shall order an ignition-interlock
257 restriction on the offender's privilege to drive as a condition of
258 probation or post-release supervision not to exceed five (5) years
259 unless a longer restriction is required under other law. The
260 ignition-interlock restriction shall not be applied to commercial
261 license privileges until the driver serves the full
262 disqualification period required by Section 63-1-216.

263 (6) **DUI citations.** (a) Upon conviction of a violation of
264 subsection (1) of this section, the trial judge shall sign in the
265 place provided on the traffic ticket, citation or affidavit
266 stating that the person arrested either employed an attorney or
267 waived his right to an attorney after having been properly



268 advised. If the person arrested employed an attorney, the name,
269 address and telephone number of the attorney shall be written on
270 the ticket, citation or affidavit. The court clerk must
271 immediately send a copy of the traffic ticket, citation or
272 affidavit, and any other pertinent documents concerning the
273 conviction or other order of the court, to the Department of
274 Public Safety as provided in Section 63-11-37.

275 (b) A copy of the traffic ticket, citation or affidavit
276 and any other pertinent documents, having been attested as true
277 and correct by the Commissioner of Public Safety, or his designee,
278 shall be sufficient proof of the conviction for purposes of
279 determining the enhanced penalty for any subsequent convictions of
280 violations of subsection (1) of this section. The Department of
281 Public Safety shall maintain a central database for verification
282 of prior offenses and convictions.

283 (7) **Out-of-state prior convictions.** Convictions in another
284 state, territory or possession of the United States, or under the
285 law of a federally recognized Native American tribe, of violations
286 for driving or operating a vehicle while under the influence of an
287 intoxicating liquor or while under the influence of any other
288 substance that has impaired the person's ability to operate a
289 motor vehicle occurring within five (5) years before an offense
290 shall be counted for the purposes of determining if a violation of
291 subsection (1) of this section is a second, third, fourth or



subsequent offense and the penalty that shall be imposed upon conviction for a violation of subsection (1) of this section.

(8) **Charging of subsequent offenses.** (a) For the purposes of determining how to impose the sentence for a second, third, fourth or subsequent conviction under this section, the affidavit or indictment shall not be required to enumerate previous convictions. It shall only be necessary that the affidavit or indictment states the number of times that the defendant has been convicted and sentenced within the past five (5) years for a second or third offense, or without a time limitation for a fourth or subsequent offense, under this section to determine if an enhanced penalty shall be imposed. The amount of fine and imprisonment imposed in previous convictions shall not be considered in calculating offenses to determine a second, third, fourth or subsequent offense of this section.

(b) Before a defendant enters a plea of guilty to an offense under this section, law enforcement must submit certification to the prosecutor that the defendant's driving record, the confidential registry and National Crime Information Center record have been searched for all prior convictions, nonadjudications, pretrial diversions and arrests for driving or operating a vehicle while under the influence of an intoxicating liquor or while under the influence of any other substance that has impaired the person's ability to operate a motor vehicle. The results of the search must be included in the certification.



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

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

(11) **Ignition interlock.** If the court orders installation and use of an ignition-interlock device as provided in Section 63-11-31 for every vehicle operated by a person convicted or nonadjudicated under this section, each device shall be installed, maintained and removed as provided in Section 63-11-31.

(12) **DUI child endangerment.** A person over the age of twenty-one (21) who violates subsection (1) of this section while transporting in a motor vehicle a child under the age of sixteen (16) years is guilty of the separate offense of endangering a child by driving under the influence of alcohol or any other substance which has impaired the person's ability to operate a motor vehicle. The offense of endangering a child by driving under the influence of alcohol or any other substance which has impaired the person's ability to operate a motor vehicle shall not be merged with an offense of violating subsection (1) of this



section for the purposes of prosecution and sentencing. An offender who is convicted of a violation of this subsection shall be punished as follows:

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

(b) A person who commits a violation of this subsection which does not result in the serious injury or death of a child and which is a second conviction shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than One Thousand Dollars (\$1,000.00) nor more than Five Thousand Dollars (\$5,000.00) or shall be imprisoned for one (1) year, or both;

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

(d) A person who commits a violation of this subsection which results in the serious injury or death of a child, without regard to whether the offense was a first, second, third or subsequent offense, shall be guilty of a felony and, upon



conviction, shall be punished by a fine of not less than Ten Thousand Dollars (\$10,000.00) and shall be imprisoned for not less than five (5) years nor more than twenty-five (25) years.

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

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

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

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

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

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



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

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

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

(14) **Nonadjudication.** (a) For the purposes of this chapter, "nonadjudication" means that the court withholds adjudication of guilt and sentencing, either at the conclusion of a trial on the merits or upon the entry of a plea of guilt by a defendant, and places the defendant in a nonadjudication program conditioned upon the successful completion of the requirements imposed by the court under this subsection.

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



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

417 (ii) Who was not the holder of a commercial
418 driver's license or a commercial learning permit at the time of
419 the offense;

420 (iii) Who has not previously been convicted of and
421 does not have pending any former or subsequent charges under this
422 section; and

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

425 (c) Nonadjudication may be initiated upon the filing of
426 a petition for nonadjudication or at any stage of the proceedings
427 in the discretion of the court; the court may withhold
428 adjudication of guilt, defer sentencing, and upon the agreement of
429 the offender to participate in a nonadjudication program, enter an
430 order imposing requirements on the offender for a period of court
431 supervision before the order of nonadjudication is entered.
432 Failure to successfully complete a nonadjudication program
433 subjects the person to adjudication of the charges against him and
434 to imposition of all penalties previously withheld due to entrance
435 into a nonadjudication program. The court shall immediately
436 inform the commissioner of the conviction as required in Section
437 63-11-37.

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



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

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

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

446 4. a. If the court determines that the
447 person violated this section with respect to alcohol or
448 intoxicating liquor, the person must install an ignition-interlock
449 device on every motor vehicle operated by the person, obtain an
450 interlock-restricted license, and maintain that license for one
451 hundred twenty (120) days or suffer a one-hundred-twenty-day
452 suspension of the person's regular driver's license, during which
453 time the person must not operate any vehicle.

454 b. If the court determines that the
455 person violated this section by operating a vehicle when under the
456 influence of a substance other than alcohol that has impaired the
457 person's ability to operate a motor vehicle, including any drug or
458 controlled substance which is unlawful to possess under the
459 Mississippi Controlled Substances Law, the person must submit to a
460 one-hundred-twenty-day period of a nonadjudication program that
461 includes court-ordered drug testing at the person's own expense
462 not less often than every thirty (30) days, during which time the
463 person may drive if compliant with the terms of the program, or



suffer a one-hundred-twenty-day suspension of the person's regular driver's license, during which time the person will not operate any vehicle.

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

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

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

(ii) Judges, clerks and prosecutors involved in the trial of implied consent violations and law enforcement officers involved in the issuance of citations for implied consent violations shall have secure online access to the confidential



489 registry for the purpose of determining whether a person has
490 previously been the subject of a nonadjudicated case and 1. is
491 therefore ineligible for another nonadjudication; 2. is ineligible
492 as a first offender for a violation of this section; or 3. is
493 ineligible for expunction of a conviction of a violation of this
494 section.

495 (iii) The Driver Services Bureau of the department
496 shall have access to the confidential registry for the purpose of
497 determining whether a person is eligible for a form of license not
498 restricted to operating a vehicle equipped with an
499 ignition-interlock device.

500 (iv) The Mississippi Alcohol Safety Education
501 Program shall have secure online access to the confidential
502 registry for research purposes only.

503 (15) The provisions of this section are fully applicable to
504 any person who is under the influence of medical cannabis that is
505 lawful under the Mississippi Medical Cannabis Act and in
506 compliance with rules and regulations adopted thereunder which has
507 impaired the person's ability to operate a motor vehicle.

508 **SECTION 3.** This act shall take effect and be in force from
509 and after July 1, 2024.

