

**\*\*\*Adopted\*\*\***

**AMENDMENT No. 1 PROPOSED TO**

**Senate Bill NO. 2659**

**By Senator(s) Ross**

15       Amend by striking all after the enacting clause and inserting  
16 in lieu thereof the following:

17  
18       SECTION 1. Section 43-21-105, Mississippi Code of 1972, is  
19 amended as follows:

20       43-21-105. The following words and phrases, for purposes of  
21 this chapter, shall have the meanings ascribed herein unless the  
22 context clearly otherwise requires:

23               (a) "Youth court" means the Youth Court Division.

24               (b) "Judge" means the judge of the Youth Court  
25 Division.

26               (c) "Designee" means any person that the judge appoints  
27 to perform a duty which this chapter requires to be done by the  
28 judge or his designee. The judge may not appoint a person who is  
29 involved in law enforcement to be his designee.

30               (d) "Child" and "youth" are synonymous, and each means  
31 a person who has not reached his eighteenth birthday. A child who  
32 has not reached his eighteenth birthday and is on active duty for  
33 a branch of the armed services or is married is not considered a  
34 "child" or "youth" for the purposes of this chapter.

35               (e) "Parent" means the father or mother to whom the  
36 child has been born, or the father or mother by whom the child has  
37 been legally adopted.

38           (f) "Guardian" means a court-appointed guardian of the  
39 person of a child.

40           (g) "Custodian" means any person having the present  
41 care or custody of a child whether such person be a parent or  
42 otherwise.

43           (h) "Legal custodian" means a court-appointed custodian  
44 of the child.

45           (i) "Delinquent child" means a child who has reached  
46 his tenth birthday and who has committed a delinquent act or,  
47 while being required to attend an alternative school program  
48 provided under Section 37-13-92, willfully and habitually absents  
49 himself therefrom.

50           (j) "Delinquent act" is any act, which if committed by  
51 an adult, is designated as a crime under state or federal law, or  
52 municipal or county ordinance other than offenses punishable by  
53 life imprisonment or death. A delinquent act includes escape from  
54 lawful detention and violations of the Mississippi School  
55 Compulsory Attendance Law, violations of the Uniform Controlled  
56 Substances Law, violations of the Mississippi Implied Consent Law  
57 including Zero Tolerance of Minors, and violent behavior.

58           (k) "Child in need of supervision" means a child who  
59 has reached his seventh birthday and is in need of treatment or  
60 rehabilitation because the child:

61                   (i) Is habitually disobedient of reasonable and  
62 lawful commands of his parent, guardian or custodian and is  
63 ungovernable; or

64                   (ii) While being required to attend school,  
65 willfully and habitually violates the rules thereof or willfully  
66 and habitually absents himself therefrom; or

67                   (iii) Runs away from home without good cause; or

68                   (iv) Has committed a delinquent act or acts.

69           (l) "Neglected child" means a child:

70                   (i) Whose parent, guardian or custodian or any  
71 person responsible for his care or support, neglects or refuses,  
72 when able so to do, to provide for him proper and necessary care

73 or support, or education as required by law, or medical, surgical,  
74 or other care necessary for his well-being; provided, however, a  
75 parent who withholds medical treatment from any child who in good  
76 faith is under treatment by spiritual means alone through prayer  
77 in accordance with the tenets and practices of a recognized church  
78 or religious denomination by a duly accredited practitioner  
79 thereof shall not, for that reason alone, be considered to be  
80 neglectful under any provision of this chapter; or

81 (ii) Who is otherwise without proper care,  
82 custody, supervision or support; or

83 (iii) Who, for any reason, lacks the special care  
84 made necessary for him by reason of his mental condition, whether  
85 said mental condition be mentally retarded or mentally ill; or

86 (iv) Who, for any reason, lacks the care necessary  
87 for his health, morals or well-being.

88 (m) "Abused child" means a child whose parent,  
89 guardian or custodian or any person responsible for his care or  
90 support, whether legally obligated to do so or not, has caused or  
91 allowed to be caused upon said child sexual abuse, sexual  
92 exploitation, emotional abuse, mental injury, nonaccidental  
93 physical injury or other maltreatment. Provided, however, that  
94 physical discipline, including spanking, performed on a child by a  
95 parent, guardian or custodian in a reasonable manner shall not be  
96 deemed abuse under this section.

97 (n) "Sexual abuse" means obscene or pornographic  
98 photographing, filming or depiction of children for commercial  
99 purposes, or the rape, molestation, incest, prostitution or other  
100 such forms of sexual exploitation of children under circumstances  
101 which indicate that the child's health or welfare is harmed or  
102 threatened.

103 (o) "A child in need of special care" means a child  
104 with any mental or physical illness that cannot be treated with  
105 the dispositional alternatives ordinarily available to the youth  
106 court.

107 (p) A "dependent child" means any child who is not a

child in need of supervision, a delinquent child, an abused child or a neglected child, and which child has been voluntarily placed in the custody of the Department of Human Services by his parent, guardian or custodian.

(q) "Custody" means the physical possession of the child by any person.

(r) "Legal custody" means the legal status created by a court order which gives the legal custodian the responsibilities of physical possession of the child and the duty to provide him with food, shelter, education and reasonable medical care, all subject to residual rights and responsibilities of the parent or guardian of the person.

(s) "Detention" means the care of children in physically restrictive facilities.

(t) "Shelter" means care of children in physically nonrestrictive facilities.

(u) "Records involving children" means any of the following from which the child can be identified:

(i) All youth court records as defined in Section 43-21-251;

(ii) All social records as defined in Section 43-21-253;

(iii) All law enforcement records as defined in Section 43-21-255;

(iv) All agency records as defined in Section 43-21-257; and

(v) All other documents maintained by any representative of the state, county, municipality or other public agency insofar as they relate to the apprehension, custody, adjudication or disposition of a child who is the subject of a youth court cause.

(v) "Any person responsible for care or support" means the person who is providing for the child at a given time. This term shall include, but is not limited to, stepparents, foster parents, relatives, nonlicensed babysitters or other similar

persons responsible for a child and staff of residential care facilities and group homes that are licensed by the Department of Human Services.

(w) The singular includes the plural, the plural the singular and the masculine the feminine when consistent with the intent of this chapter.

(x) "Out-of-home" setting means the temporary supervision or care of children by the staff of licensed day care centers, the staff of public, private and state schools, the staff of juvenile detention facilities, the staff of unlicensed residential care facilities and group homes and the staff of, or individuals representing, churches, civic or social organizations.

(y) "Durable legal custody" means the legal status created by a court order which gives the durable legal custodian the responsibilities of physical possession of the child and the duty to provide him with care, nurture, welfare, food, shelter, education and reasonable medical care. All these duties as enumerated are subject to the residual rights and responsibilities of the natural parent(s) or guardian(s) of the child or children.

SECTION 2. Section 43-21-151, Mississippi Code of 1972, is amended as follows:

43-21-151. (1) The youth court shall have exclusive original jurisdiction in all proceedings concerning a delinquent child, a child in need of supervision, a neglected child, an abused child or a dependent child except in the following circumstances:

(a) Any act attempted or committed by a child, which if committed by an adult would be punishable under state or federal law by life imprisonment or death, will be in the original jurisdiction of the circuit court;

(b) Any act attempted or committed by a child with the use of a deadly weapon, the carrying of which concealed is prohibited by Section 97-37-1, or a shotgun or a rifle, which would be a felony if committed by an adult, will be in the original jurisdiction of the circuit court; and

178           (c) When a charge of abuse of a child first arises in  
179 the course of a custody action between the parents of the child  
180 already pending in the chancery court and no notice of such abuse  
181 was provided prior to such chancery proceedings, the chancery  
182 court may proceed with the investigation, hearing and  
183 determination of such abuse charge as a part of its hearing and  
184 determination of the custody issue as between the parents,  
185 notwithstanding the other provisions of the Youth Court Law. The  
186 proceedings in chancery court on the abuse charge shall be  
187 confidential in the same manner as provided in youth court  
188 proceedings.

189           When a child is expelled from the public schools, the youth  
190 court shall be notified of the act of expulsion and the act or  
191 acts constituting the basis for expulsion.

192           (2) Jurisdiction of the child in the cause shall attach at  
193 the time of the offense and shall continue thereafter for that  
194 offense until the child's twentieth birthday, unless sooner  
195 terminated by order of the youth court. The youth court shall not  
196 have jurisdiction over offenses committed by a child on or after  
197 his eighteenth birthday, or over offenses committed by a child on  
198 or after his seventeenth birthday where such offenses would be a  
199 felony if committed by an adult.

200           (3) No child who has not reached his thirteenth birthday  
201 shall be held criminally responsible or criminally prosecuted for  
202 a misdemeanor or felony; however, the parent, guardian or  
203 custodian of such child may be civilly liable for any criminal  
204 acts of such child. No child under the jurisdiction of the youth  
205 court shall be held criminally responsible or criminally  
206 prosecuted by any court for any act designated as a delinquent  
207 act, unless jurisdiction is transferred to another court under  
208 Section 43-21-157.

209           (4) The youth court shall also have jurisdiction of offenses  
210 committed by a child which have been transferred to the youth  
211 court by an order of a circuit court of this state having original  
212 jurisdiction of the offense, as provided by Section 43-21-159.

(5) The youth court shall have jurisdiction over offenses committed by a child under the Mississippi Implied Consent Law, including Zero Tolerance for Minors.

(6) The youth court shall regulate and approve the use of teen court as provided in Section 43-21-753.

SECTION 3. Section 43-21-159, Mississippi Code of 1972, is amended as follows:

43-21-159. (1) When a person appears before a court other than the youth court, and it is determined that the person is a child under jurisdiction of the youth court, such court shall, unless the jurisdiction of the offense has been transferred to such court as provided in this chapter, or unless the child has previously been the subject of a transfer from the youth court to the circuit court for trial as an adult and was convicted, immediately dismiss the proceeding without prejudice and forward all documents pertaining to the cause to the youth court; and all entries in permanent records shall be expunged. The youth court shall have the power to order and supervise the expunction or the destruction of such records in accordance with Section 43-21-265.

The youth court is authorized to expunge the record of any case within its jurisdiction in which an arrest was made, the person arrested was released and the case was dismissed or the charges were dropped or there was no disposition of such case. In cases where the child is charged with a hunting or fishing violation or a traffic violation, except for offenses under the Mississippi Implied Consent Law, whether it be any state or federal law \* \* \* or municipal ordinance or county resolution, or where the child is charged with a violation of Section 67-3-70, the appropriate criminal court may proceed to dispose of the same in the same manner as for other \* \* \* offenders and it shall not be necessary to transfer the case to the youth court of the county. Unless the cause has been transferred, or unless the child has previously been the subject of a transfer from the youth court to the circuit court for trial as an adult \* \* \* and was convicted, the youth court shall have power on its own motion to remove jurisdiction

from any criminal court of any offense including a hunting or fishing violation, a traffic violation, or a violation of Section 67-3-70, committed by a child in a matter under the jurisdiction of the youth court and proceed therewith in accordance with the provisions of this chapter.

(2) After conviction and sentence of any child by any other court having original jurisdiction on a misdemeanor charge, and within the time allowed for an appeal of such conviction and sentence, the youth court of the county shall have the full power to stay the execution of the sentence and to release the child on good behavior or on other order as the youth court may see fit to make unless the child has previously been the subject of a transfer from the youth court to the circuit court for trial as an adult and was convicted. When a child is convicted of a misdemeanor and is committed to, incarcerated in or imprisoned in a jail or other place of detention by a criminal court having proper jurisdiction of such charge, such court shall notify the youth court judge or the judge's designee of the conviction and sentence prior to the commencement of such incarceration. The youth court shall have the power to order and supervise the destruction of any records involving children maintained by the criminal court in accordance with Section 43-21-265. However, the youth court shall have the power to set aside a judgment of any other court rendered in any matter over which the youth court has exclusive original jurisdiction, to expunge or destroy the records thereof in accordance with Section 43-21-265, and to order a refund of fines and costs.

(3) Nothing in subsection (1) or (2) shall apply to a youth who has a pending charge or a conviction for any crime over which circuit court has original jurisdiction.

(4) In any case wherein the defendant is a child as defined in this chapter and of which the circuit court has original jurisdiction, the circuit judge, upon a finding that it would be in the best interest of such child and in the interest of justice, may at any stage of the proceedings prior to the attachment of



jeopardy transfer such proceedings to the youth court for further proceedings unless the child has previously been the subject of a transfer from the youth court to the circuit court for trial as an adult and was convicted or has previously been convicted of a crime which was in original circuit court jurisdiction, and the youth court shall, upon acquiring jurisdiction, proceed as provided in this chapter for the adjudication and disposition of delinquent child proceeding proceedings. If the case is not transferred to the youth court and the youth is convicted of a crime by any circuit court, the trial judge shall sentence the youth as though such youth was an adult. The circuit court shall not have the authority to commit such child to the custody of the Department of Youth Services for placement in a state-supported training school.

(5) In no event shall a court sentence an offender over the age of eighteen (18) to the custody of the Division of Youth Services for placement in a state-supported training school.

(6) When a child's driver's license is suspended by the youth court for any reason, the clerk of the youth court shall report the suspension, without a court order under Section 43-21-261, to the Commissioner of Public Safety in the same manner as such suspensions are reported in cases involving adults.

(7) No offense involving the use or possession of a firearm by a child who has reached his fifteenth birthday and which, if committed by an adult would be a felony, shall be transferred to the youth court.

SECTION 4. Section 43-21-261, Mississippi Code of 1972, is amended as follows:

43-21-261. (1) Except as otherwise provided in this section, records involving children shall not be disclosed, other than to necessary staff of the youth court, except pursuant to an order of the youth court specifying the person or persons to whom the records may be disclosed, the extent of the records which may be disclosed and the purpose of the disclosure. Such court orders for disclosure shall be limited to those instances in which the

youth court concludes, in its discretion, that disclosure is required for the best interests of the child, the public safety or the functioning of the youth court and then only to the following persons:

(a) The judge of another youth court or member of another youth court staff;

(b) The court of the parties in a child custody or adoption cause in another court;

(c) A judge of any other court or members of another court staff;

(d) Representatives of a public or private agency providing supervision or having custody of the child under order of the youth court;

(e) Any person engaged in a bona fide research purpose, provided that no information identifying the subject of the records shall be made available to the researcher unless it is absolutely essential to the research purpose and the judge gives prior written approval, and the child, through his or her representative, gives permission to release the information;

(f) The Mississippi Employment Security Commission, or its duly authorized representatives, for the purpose of a child's enrollment into the Job Corps Training Program as authorized by Title IV of the Comprehensive Employment Training Act of 1973 (29 USCS Section 923 et seq.). However, no records, reports, investigations or information derived therefrom pertaining to child abuse or neglect shall be disclosed; and

(g) To any person pursuant to a finding by a judge of the youth court of compelling circumstances affecting the health or safety of a child and that such disclosure is in the best interests of the child.

Law enforcement agencies may disclose information to the public concerning the taking of a child into custody for the commission of a delinquent act without the necessity of an order from the youth court. The information released shall not identify the child or his address unless the information involves a child

convicted as an adult.

(2) Any records involving children which are disclosed under an order of the youth court and the contents thereof shall be kept confidential by the person or agency to whom the record is disclosed except as provided in the order. Any further disclosure of any records involving children shall be made only under an order of the youth court as provided in this section.

(3) Upon request, the parent, guardian or custodian of the child who is the subject of a youth court cause or any attorney for such parent, guardian or custodian, shall have the right to inspect any record, report or investigation which is to be considered by the youth court at a hearing, except that the identity of the reporter shall not be released, nor the name of any other person where the person or agency making the information available finds that disclosure of the information would be likely to endanger the life or safety of such person.

(4) Upon request, the child who is the subject of a youth court cause shall have the right to have his counsel inspect and copy any record, report or investigation which is filed with the youth court.

(5) (a) The youth court prosecutor or prosecutors, the county attorney, the district attorney, the youth court defender or defenders, or any attorney representing a child shall have the right to inspect any law enforcement record involving children.

(b) The Department of Human Services shall disclose to a county prosecuting attorney or district attorney any and all records resulting from an investigation into suspected child abuse or neglect when the case has been referred by the Department of Human Services to the county prosecuting attorney or district attorney for criminal prosecution.

(c) Agency records made confidential under the provisions of this section may be disclosed to a court of competent jurisdiction.

(6) Information concerning an investigation into a report of child abuse or child neglect may be disclosed by the Department of

Human Services without order of the youth court to any attorney, physician, dentist, intern, resident, nurse, psychologist, social worker, child care giver, minister, law enforcement officer, public or private school employee making that report pursuant to Section 43-21-353(1) if the reporter has a continuing professional relationship with the child and a need for such information in order to protect or treat the child.

(7) Information concerning an investigation into a report of child abuse or child neglect may be disclosed without further order of the youth court to any interagency child abuse task force established in any county or municipality by order of the youth court of that county or municipality.

(8) Names and addresses of juveniles twice adjudicated as delinquent for an act which would be a felony if committed by an adult or for the unlawful possession of a firearm shall not be held confidential and shall be made available to the public.

(9) Names and addresses of juveniles adjudicated as delinquent for murder, manslaughter, burglary, arson, armed robbery, aggravated assault, any sex offense as defined in Section 45-33-23, or for any violation of Section 41-29-139(a)(1) \* \* \* shall not be held confidential and shall be made available to the public.

(10) The adjudication hearing for any juvenile alleged delinquent for any violation of Section 63-11-30 shall be open. The name, address and an abstract of the disposition order demonstrating compliance with Section 63-11-30 of any juvenile adjudicated delinquent for a violation of Section 63-11-30 shall not be held confidential and shall be made available to the public.

(11) The judges of the circuit and county courts, and presentence investigators for the circuit courts, as provided in Section 47-7-9, shall have the right to inspect any youth court records of a person convicted of a crime for sentencing purposes only.

(12) The victim of an offense committed by a child who is

the subject of a youth court cause shall have the right to be informed of the child's disposition by the youth court.

(13) The Classification Committee of the State Department of Corrections, as provided in Section 47-5-103, shall have the right to inspect any youth court records, excluding abuse and neglect records, of any offender in the custody of the department who as a child or minor was a juvenile offender or was the subject of a youth court cause of action, and the State Parole Board, as provided in Section 47-7-17, shall have the right to inspect such records when said offender becomes eligible for parole.

(14) The youth court shall notify the Department of Public Safety of the name, and any other identifying information such department may require, of any child who is adjudicated delinquent as a result of a violation of the Uniform Controlled Substances Law.

(15) The Administrative Office of Courts shall have the right to inspect any youth court records in order that the number of youthful offenders, abused, neglected, truant and dependent children, as well as children in need of special care and children in need of supervision, may be tracked with specificity through the youth court and adult justice system, and to utilize tracking forms for such purpose.

(16) Upon a request by a youth court, the Administrative Office of Courts shall disclose all information at its disposal concerning any previous youth court intakes alleging that a child was a delinquent child, child in need of supervision, child in need of special care, truant child, abused child or neglected child, as well as any previous youth court adjudications for the same and all dispositional information concerning a child who at the time of such request comes under the jurisdiction of the youth court making such request.

(17) In every case where an abuse or neglect allegation has been made, the confidentiality provisions of this section shall not apply to prohibit access to a child's records by any state regulatory agency, any state or local prosecutorial agency or law

enforcement agency; provided, however, that no identifying information concerning the child in question may be released to the public by such agency except as otherwise provided herein.

(18) In every case where there is any indication or suggestion of either abuse or neglect and a child's physical condition is medically labeled as medically "serious" or "critical" or a child dies, the confidentiality provisions of this section shall not apply.

(19) Any member of a foster care review board designated by the Department of Human Services shall have the right to inspect youth court records relating to the abuse, neglect or child in need of supervision cases assigned to such member for review.

SECTION 5. Section 43-21-605, Mississippi Code of 1972, is amended as follows:

43-21-605. (1) In delinquency cases, except as otherwise required by law, the disposition order may include any of the following alternatives:

(a) Release the child without further action;

(b) Place the child in the custody of the parents, a relative or other persons subject to any conditions and limitations, including restitution, as the youth court may prescribe;

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

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

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

(f) Suspend the child's driver's license by taking and keeping it in custody of the court for not more than one (1) year unless a longer period of suspension is required by law;

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

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

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

(iii) The Department of Human Services for placement in a wilderness training program or a state-supported training school, except that no child under the age of ten (10) years shall be committed to a state training school. The training school may retain custody of the child until the child's twentieth birthday but for no longer. The superintendent of a state training school may parole a child at any time he may deem it in the best interest and welfare of such child. Twenty (20) days prior to such parole, the training school shall notify the committing court of the pending release. The youth court may then 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. Prior to 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. The youth court shall not place a child in the custody of a state training school for truancy, unless such child has been adjudicated to have committed an act of delinquency in addition to truancy;

(h) Recommend to the child and the child's parents or guardian that the child attend and participate in the Youth

Challenge Program under the Mississippi National Guard, as created in Section 43-27-203, subject to the selection of the child for the program by the National Guard; however, the child must volunteer to participate in the program. The youth court may not order any child to apply or attend the program;

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

(ii) The severity of the crime, whether or not the 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 was adjudicated on the weekends during school and week days during the summer. Parents are responsible for a juvenile reporting for work. Noncompliance with an order to perform community service will result in a heavier adjudication. A juvenile may be adjudicated to the community service program only two (2) times;

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

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

(k) Order the child into a juvenile detention center operated by the county or into a juvenile detention center operated by any county with which the county in which the court is located has entered into a contract for the purpose of housing



delinquents. The time period for such detention cannot exceed ninety (90) days. The youth court judge may order that the number of days specified in the detention order be served either throughout the week or on weekends only.

(2) 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 subsection (9) of Section 63-11-30, and the youth court shall follow without exception all applicable provisions of Section 63-11-30 in making its disposition.

(3) 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.

(4) 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.

(5) 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.

SECTION 6. Section 63-11-30, Mississippi Code of 1972, is amended as follows:

63-11-30. (1) It is unlawful for any person to drive or otherwise operate a vehicle within this state who (a) is under the influence of intoxicating liquor; (b) is under the influence of any other substance which has impaired such person's ability to operate a motor vehicle; (c) has an alcohol concentration of ten one-hundredths percent (.10%) or more for persons who are above the legal age to purchase alcoholic beverages under state law, or two one-hundredths percent (.02%) or more for persons who are

below the legal age to purchase alcoholic beverages under state law, in the person's blood based upon grams of alcohol per one hundred (100) milliliters of blood or grams of alcohol per two hundred ten (210) liters of breath as shown by a chemical analysis of such person's breath, blood or urine administered as authorized by this chapter; (d) is under the influence of any drug or controlled substance, the possession of which is unlawful under the Mississippi Controlled Substances Law; or (e) has an alcohol concentration of four one-hundredths percent (.04%) or more in the person's blood, based upon grams of alcohol per one hundred (100) milliliters of blood or grams of alcohol per two hundred ten (210) liters of breath as shown by a chemical analysis of such person's blood, breath or urine, administered as authorized by this chapter for persons operating a commercial motor vehicle.

(2) (a) Except as otherwise provided in subsection (3), upon conviction of any person 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, such person shall be fined not less than Two Hundred Fifty Dollars (\$250.00) nor more than One Thousand Dollars (\$1,000.00), or imprisoned for not more than forty-eight (48) hours in jail or both; and the court shall order such person to attend and complete an alcohol safety education program as provided in Section 63-11-32. The court may substitute attendance at a victim impact panel instead of forty-eight (48) hours in jail. In addition, the Department of Public Safety, the Commissioner of Public Safety or his duly authorized agent shall, after conviction and upon receipt of the court abstract, suspend the driver's license and driving privileges of such person for a period of not less than ninety (90) days and until such person attends and successfully completes an alcohol safety education program as herein provided; provided, however, in no event shall such period of suspension exceed one (1) year. Commercial driving privileges shall be suspended as provided in Section 63-1-83.

The circuit court having jurisdiction in the county in which

the conviction was had or the circuit court of the person's county of residence may reduce the suspension of driving privileges under Section 63-11-30(2)(a) if the denial of which would constitute a hardship on the offender, except that no court may issue such an order reducing the suspension of driving privileges under this subsection until thirty (30) days have elapsed from the effective date of the suspension. Hardships shall only apply to first offenses under Section 63-11-30(1), and shall not apply to second, third or subsequent convictions of any person violating subsection (1) of this section. A reduction of suspension on the basis of hardship shall not be available to any person who refused to submit to a chemical test upon the request of a law enforcement officer as provided in Section 63-11-5. When the petition is filed, such person shall pay to the circuit clerk of the court where the petition is filed a fee of Fifty Dollars (\$50.00), which shall be deposited into the State General Fund to the credit of a special fund hereby created in the State Treasury to be used for alcohol or drug abuse treatment and education, upon appropriation by the Legislature. This fee shall be in addition to any other court costs or fees required for the filing of petitions.

The petition filed under the provisions of this subsection shall contain the specific facts which the petitioner alleges to constitute a hardship and the driver's license number of the petitioner. A hearing may be held on any petition filed under this subsection only after ten (10) days' prior written notice to the Commissioner of Public Safety, or his designated agent, or the attorney designated to represent the state. At such hearing, the court may enter an order reducing the period of suspension.

The order entered under the provisions of this subsection shall contain the specific grounds upon which hardship was determined, and shall order the petitioner to attend and complete an alcohol safety education program as provided in Section 63-11-32. A certified copy of such order shall be delivered to the Commissioner of Public Safety by the clerk of the court within five (5) days of the entry of the order. The certified copy of

668 such order shall contain information which will identify the  
669 petitioner, including, but not limited to, the name, mailing  
670 address, street address, Social Security number and driver's  
671 license number of the petitioner.

672 At any time following at least thirty (30) days of suspension  
673 for a first offense violation of this section, the court may grant  
674 the person hardship driving privileges upon written petition of  
675 the defendant, if it finds reasonable cause to believe that  
676 revocation would hinder the person's ability to:

677 (i) Continue his employment;

678 (ii) Continue attending school or an educational  
679 institution; or

680 (iii) Obtain necessary medical care.

681 Proof of the hardship shall be established by clear and  
682 convincing evidence which shall be supported by independent  
683 documentation.

684 (b) Except as otherwise provided in subsection (3),  
685 upon any second conviction of any person violating subsection (1)  
686 of this section, the offenses being committed within a period of  
687 five (5) years, such person shall be fined not less than Six  
688 Hundred Dollars (\$600.00) nor more than One Thousand Five Hundred  
689 Dollars (\$1,500.00) and shall be imprisoned not less than ten (10)  
690 days nor more than one (1) year and sentenced to community service  
691 work for not less than ten (10) days nor more than one (1) year.  
692 Except as may otherwise be provided by paragraph (e) of this  
693 subsection, the Commissioner of Public Safety shall suspend the  
694 driver's license of such person for two (2) years. Suspension of  
695 a commercial driver's license shall be governed by Section  
696 63-1-83. Upon any second conviction as described in this  
697 paragraph, the court shall ascertain whether the defendant is  
698 married, and if the defendant is married shall obtain the name and  
699 address of the defendant's spouse; the clerk of the court shall  
700 submit this information to the Department of Public Safety.  
701 Further, the commissioner shall notify in writing, by certified  
702 mail, return receipt requested, the owner of the vehicle and the

spouse, if any, of the person convicted of the second violation of the possibility of forfeiture of the vehicle if such person is convicted of a third violation of subsection (1) of this section.

The owner of the vehicle and the spouse shall be considered notified under this paragraph if the notice is deposited in the United States mail and any claim that the notice was not in fact received by the addressee shall not affect a subsequent forfeiture proceeding.

(c) Except as otherwise provided in subsection (3), for any third or subsequent conviction of any person violating subsection (1) of this section, the offenses being committed within a period of five (5) years, such 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 be imprisoned not less than one (1) year nor more than five (5) years in the State Penitentiary. The law enforcement agency shall seize the vehicle operated by any person charged with a third or subsequent violation of subsection (1) of this section, if such convicted person was driving the vehicle at the time the offense was committed. Such vehicle may be forfeited in the manner provided by Sections 63-11-49 through 63-11-53. Except as may otherwise be provided by paragraph (e) of this subsection, the Commissioner of Public Safety shall suspend the driver's license of such person for five (5) years. The suspension of a commercial driver's license shall be governed by Section 63-1-83.

(d) Except as otherwise provided in subsection (3), any person convicted of a second violation of subsection (1) of this section, may have the period that his driver's license is suspended reduced if such person receives an in-depth diagnostic assessment, and as a result of such assessment is determined to be in need of treatment of his alcohol and/or drug abuse problem and successfully completes treatment of his alcohol and/or drug abuse problem at a program site certified by the Department of Mental Health. Such person shall be eligible for reinstatement of his driving privileges upon the successful completion of such

treatment after a period of one (1) year after such person's driver's license is suspended. Each person who receives a diagnostic assessment shall pay a fee representing the cost of such assessment. Each person who participates in a treatment program shall pay a fee representing the cost of such treatment.

(e) Except as otherwise provided in subsection (3), any person convicted of a third or subsequent violation of subsection (1) of this section may enter an alcohol and/or drug abuse program approved by the Department of Mental Health for treatment of such person's alcohol and/or drug abuse problem. If such person successfully completes such treatment, such person shall be eligible for reinstatement of his driving privileges after a period of three (3) years after such person's driver's license is suspended.

(3) (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 two one-hundredths percent (.02%) or more, but lower than eight one-hundredths percent (.08%). If such person's blood alcohol concentration is eight one-hundredths percent (.08%) or more, the provisions of subsection (2) shall apply. A youth court exercising jurisdiction over a child for a violation of this subsection (3) shall strictly apply the provisions of Zero Tolerance for Minors and enforce the minimum penalties thereof in addition to all other dispositions available to the court.

(b) 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, such person shall have his driver's license suspended for ninety (90) days and shall be fined Two Hundred Fifty Dollars (\$250.00); and the court shall order such person to attend and complete either an alcohol safety education program as provided in Section 63-11-32 or a court-sponsored or

773 court-approved teen alcohol safety program. The court may also  
774 require attendance at a victim impact panel.

775       The circuit court having jurisdiction in the county in which  
776 the conviction was had or the circuit court of the person's county  
777 of residence may reduce the suspension of driving privileges under  
778 Section 63-11-30(2)(a) if the denial of which would constitute a  
779 hardship on the offender, except that no court may issue such an  
780 order reducing the suspension of driving privileges under this  
781 subsection until thirty (30) days have elapsed from the effective  
782 date of the suspension. Hardships shall only apply to first  
783 offenses under Section 63-11-30(1), and shall not apply to second,  
784 third or subsequent convictions of any person violating subsection  
785 (1) of this section. A reduction of suspension on the basis of  
786 hardship shall not be available to any person who refused to  
787 submit to a chemical test upon the request of a law enforcement  
788 officer as provided in Section 63-11-5. When the petition is  
789 filed, such person shall pay to the circuit clerk of the court  
790 where the petition is filed a fee of Fifty Dollars (\$50.00), which  
791 shall be deposited into the State General Fund to the credit of a  
792 special fund hereby created in the State Treasury to be used for  
793 alcohol or drug abuse treatment and education, upon appropriation  
794 by the Legislature. This fee shall be in addition to any other  
795 court costs or fees required for the filing of petitions.

796       The petition filed under the provisions of this subsection  
797 shall contain the specific facts which the petitioner alleges to  
798 constitute a hardship and the driver's license number of the  
799 petitioner. A hearing may be held on any petition filed under  
800 this subsection only after ten (10) days' prior written notice to  
801 the Commissioner of Public Safety, or his designated agent, or the  
802 attorney designated to represent the state. At such hearing, the  
803 court may enter an order reducing the period of suspension.

804       The order entered under the provisions of this subsection  
805 shall contain the specific grounds upon which hardship was  
806 determined, and shall order the petitioner to attend and complete  
807 an alcohol safety education program as provided in Section

63-11-32. A certified copy of such order shall be delivered to the Commissioner of Public Safety by the clerk of the court within five (5) days of the entry of the order. The certified copy of such order shall contain information which will identify the petitioner, including, but not limited to, the name, mailing address, street address, Social Security number and driver's license number of the petitioner.

At any time following at least thirty (30) days of suspension for a first offense violation of this section, the court may grant the person hardship driving privileges upon written petition of the defendant, if it finds reasonable cause to believe that revocation would hinder the person's ability to:

- (i) Continue his employment;
- (ii) Continue attending school or an educational institution; or
- (iii) Obtain necessary medical care.

Proof of the hardship shall be established by clear and convincing evidence which shall be supported by independent documentation.

(c) Upon any second conviction of any person under the age of twenty-one (21) years violating subsection (1) of this section, the offenses being committed within a period of five (5) years, such person shall be fined not more than Five Hundred Dollars (\$500.00) and shall have his driver's license suspended for one (1) year.

(d) For any third or subsequent conviction of any person under the age of twenty-one (21) years violating subsection (1) of this section, the offenses being committed within a period of five (5) years, such person shall be fined not more than One Thousand Dollars (\$1,000.00) and shall have his driver's license suspended until he reaches the age of twenty-one (21) or for two (2) years, whichever is longer.

(e) Any person under the age of twenty-one (21) years convicted of a second violation of subsection (1) of this section, may have the period that his driver's license is suspended reduced



if such person receives an in-depth diagnostic assessment, and as a result of such assessment is determined to be in need of treatment of his alcohol and/or drug abuse problem and successfully completes treatment of his alcohol and/or drug abuse problem at a program site certified by the Department of Mental Health. Such person shall be eligible for reinstatement of his driving privileges upon the successful completion of such treatment after a period of six (6) months after such person's driver's license is suspended. Each person who receives a diagnostic assessment shall pay a fee representing the cost of such assessment. Each person who participates in a treatment program shall pay a fee representing the cost of such treatment.

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

(g) The court shall have the discretion to rule that a first offense of this subsection by a person under the age of twenty-one (21) years shall be nonadjudicated. Such person shall be eligible for nonadjudication only once. The Department of Public Safety shall maintain a confidential registry of all cases which are nonadjudicated as provided in this paragraph. A judge who rules that a case is nonadjudicated shall forward such ruling to the Department of Public Safety. Judges and prosecutors involved in implied consent violations shall have access to the confidential registry for the purpose of determining nonadjudication eligibility. A record of a person who has been nonadjudicated shall be maintained for five (5) years or until such person reaches the age of twenty-one (21) years. Any person whose confidential record has been disclosed in violation of this paragraph shall have a civil cause of action against the person and/or agency responsible for such disclosure.

(4) Every person convicted of operating a vehicle while under the influence of intoxicating liquor or any other substance

which has impaired such person's ability to operate a motor vehicle where the person (a) refused a law enforcement officer's request to submit to a chemical test of his breath as provided in this chapter, or (b) was unconscious at the time of a chemical test and refused to consent to the introduction of the results of such test in any prosecution, shall be punished consistent with the penalties prescribed herein for persons submitting to the test, except that there shall be an additional suspension of driving privileges as follows:

The Commissioner of Public Safety or his authorized agent shall suspend the driver's license or permit to drive or deny the issuance of a license or permit to such person as provided for first, second and third or subsequent offenders in subsection (2) of this section. Such suspension shall be in addition to any suspension imposed pursuant to subsection (1) of Section 63-11-23.

(5) Every person who operates any motor vehicle in violation of the provisions of subsection (1) of this section and who in a negligent manner causes the death of another or mutilates, disfigures, permanently disables or destroys the tongue, eye, lip, nose or any other limb, organ or member of another shall, upon conviction, be guilty of a felony and shall be committed to the custody of the State Department of Corrections for a period of time not to exceed twenty-five (25) years.

(6) Upon conviction of any violation of subsection (1) of this section, the trial judge shall sign in the place provided on the traffic ticket, citation or affidavit stating that the person arrested either employed an attorney or waived his right to an attorney after having been properly advised. If the person arrested employed an attorney, the name, address and telephone number of the attorney shall be written on the ticket, citation or affidavit. The judge shall cause a copy of the traffic ticket, citation or affidavit, and any other pertinent documents concerning the conviction, to be sent to the Commissioner of Public Safety. A copy of the traffic ticket, citation or affidavit and any other pertinent documents, having been attested

as true and correct by the Commissioner of Public Safety, or his designee, shall be sufficient proof of the conviction for purposes of determining the enhanced penalty for any subsequent convictions of violations of subsection (1) of this section.

(7) Convictions in other states of violations 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 occurring after July 1, 1992, shall be counted for the purposes of determining if a violation of subsection (1) of this section is a first, second, third or subsequent offense and the penalty that shall be imposed upon conviction for a violation of subsection (1) of this section.

(8) For the purposes of determining how to impose the sentence for a second, third or subsequent conviction under this section, the indictment shall not be required to enumerate previous convictions. It shall only be necessary that the indictment state the number of times that the defendant has been convicted and sentenced within the past five (5) years 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 or subsequent offense of this section.

(9) Any person under the legal age to obtain a license to operate a motor vehicle convicted under this section shall not be eligible to receive such license until the person reaches the age of eighteen (18) years.

(10) Suspension of driving privileges for any person convicted of violations of Section 63-11-30(1) shall run consecutively.

SECTION 7. This act shall take effect and be in force from and after July 1, 2000.

**Further, amend by striking the title in its entirety and inserting in lieu thereof the following:**

1       AN ACT TO AMEND SECTION 41-21-105, MISSISSIPPI CODE OF 1972,  
2TO REVISE THE DEFINITION OF DELINQUENT ACT TO INCLUDE DUI  
3VIOLATIONS; TO AMEND SECTION 43-21-151, MISSISSIPPI CODE OF 1972,  
4TO REVISE THE JURISDICTION OF THE YOUTH COURT TO INCLUDE DUI  
5VIOLATIONS; TO AMEND SECTION 43-21-159, MISSISSIPPI CODE OF 1972,  
6TO REVISE YOUTH COURT JURISDICTION OVER DUI VIOLATIONS; TO AMEND  
7SECTION 43-21-261, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT THE  
8NAME, ADDRESS, AND DISPOSITION IN YOUTH COURT FOR A DUI VIOLATION  
9ARE NOT CONFIDENTIAL BUT SHALL BE OPEN TO THE PUBLIC; TO AMEND  
10SECTION 43-21-605, MISSISSIPPI CODE OF 1972, TO REQUIRE THE YOUTH  
11COURT TO STRICTLY FOLLOW ZERO TOLERANCE FOR MINORS IN DUI CASES;  
12TO AMEND SECTION 63-11-30, MISSISSIPPI CODE OF 1972, TO CONFORM;  
13AND FOR RELATED PURPOSES.