

By: Representatives Barnett (92nd), Nettles

To: Judiciary A;
Appropriations

HOUSE BILL NO. 19

1 AN ACT TO PROVIDE FOR DRUG COURT TREATMENT PROGRAMS IN
2 CIRCUIT COURT DISTRICTS; TO SPECIFY THE PURPOSE AND GOALS OF THIS
3 ACT; TO DEFINE CERTAIN TERMS; TO PROVIDE FOR DRUG DIVISION
4 PROBATION PROGRAMS; TO PROVIDE REQUIREMENTS FOR PARTICIPATION IN
5 SUCH PROGRAMS; TO PROVIDE FOR THE ADMINISTRATION OF SUCH PROGRAMS;
6 TO PROVIDE THAT SUCCESSFUL COMPLETION OF A DRUG DIVISION PROBATION
7 PROGRAM MAY RESULT IN DISMISSAL OF CRIMINAL CONVICTION; TO PROVIDE
8 FOR THE PAYMENT FOR PARTICIPATION IN A PROGRAM; TO AMEND SECTIONS
9 41-29-149 AND 41-29-150, MISSISSIPPI CODE OF 1972, IN CONFORMITY
10 THERETO; AND FOR RELATED PURPOSES.

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

12 **SECTION 1.** The Legislature of Mississippi recognizes the
13 critical need for criminal justice system programs to reduce the
14 incidence of alcohol and drug use, alcohol and drug addiction, and
15 crimes committed as a result of alcohol and drug use and alcohol
16 and drug addiction. The Legislature also recognizes that the
17 problem of alcohol and drug abuse among the citizens of
18 Mississippi is excessive and needs to be addressed and corrected
19 not only for the health and welfare of the citizens of this state,
20 but also because alcohol and drug abuse or dependency has been
21 identified as a contributing factor in the commission of many
22 crimes. It is the intent of the Legislature by this act to create
23 a program to facilitate the creation of alcohol and drug treatment
24 divisions in the various district courts of this state.

25 **SECTION 2.** The goals of the alcohol and drug treatment
26 divisions created under this act include the following:

- 27 (a) To reduce alcoholism and drug abuse and dependency
- 28 among offenders.
- 29 (b) To reduce criminal recidivism.
- 30 (c) To reduce the alcohol- and drug-related workload of
- 31 the courts.



32 (d) To increase the personal, familial and societal
33 accountability of offenders.

34 (e) To promote effective interaction and use of
35 resources among criminal justice personnel and community agencies.

36 (f) To reduce the overcrowding of prisons.

37 **SECTION 3.** The following words and phrases shall have the
38 meanings ascribed herein unless the context clearly indicates
39 otherwise:

40 (a) "Alcohol and drug abuse program" means a program
41 licensed by the State of Mississippi to provide education,
42 prevention and treatment directed toward achieving the mental and
43 physical restoration of alcohol and drug abusers or addicts.

44 (b) "Alcohol and drug abuser" means a person whose
45 consumption of alcohol or other drugs, or any combination thereof,
46 interferes with or adversely affects his ability to function
47 socially or economically and endangers the health, safety and
48 welfare of the abuser and others.

49 (c) "Alcohol- or drug-related offense" means an
50 alcohol- or drug-related offense and also an offense in which
51 alcohol or drug abuse or addiction is determined from the evidence
52 to have been a factor in the commission of the offense.

53 (d) "Alcoholic or drug addict" means any person who
54 habitually uses alcohol or other drugs to the extent that the
55 person endangers the health, safety or welfare of that person or
56 any other person or group of persons.

57 (e) "Conditions of probation" means the specification
58 of formal terms and conditions which a defendant must fulfill in
59 order to have the charges against that person dismissed.

60 (f) "Drug division" means the division or divisions of
61 the court to which alcohol- or drug-related offenses are assigned
62 or the employee of the court designated to administer the
63 probation program.



64 (g) "Probation" means referral of a defendant who has
65 entered a plea of guilty in a criminal case charging an alcohol or
66 controlled dangerous substance related offense to a supervised
67 probation program.

68 (h) "Probationer" means a person who has been accepted
69 into a drug division probation program.

70 (i) "Treatment program" means any governmental agency
71 or other entity which is licensed by the State of Mississippi to
72 provide substance abuse or addiction treatment on a residential or
73 outpatient basis.

74 **SECTION 4.** (1) Each circuit court district by rule may
75 designate as a drug division one or more divisions to which
76 alcohol- or drug-related offenses are assigned and may establish a
77 probation program to be administered by the senior judge or judges
78 thereof or by an employee designated by the court.

79 (2) Participation in probation programs shall be subject to
80 the following provisions:

81 (a) The district attorney may propose to the court that
82 an individual defendant be screened for eligibility as a
83 participant in the drug division probation program if all of the
84 following criteria are satisfied:

85 (i) The individual is charged with a violation of
86 a statute of this state relating to the use and possession of any
87 narcotic drugs, coca leaves, marijuana, stimulants, depressants,
88 or hallucinogenic drugs, or where there is a significant
89 relationship between the use of alcohol or drugs, or both, and the
90 crime before the court.

91 (ii) The district attorney has reason to believe
92 that the individual who is charged suffers from alcohol or drug
93 addiction.

94 (iii) It is in the best interest of the community
95 and in the interest of justice to provide the defendant with
96 treatment as opposed to incarceration or other sanctions.



97 (b) Upon receipt of the proposal provided for in
98 paragraph (a) of this subsection, the court shall advise the
99 defendant that he or she may be eligible for enrollment in a
100 court-authorized treatment program through the drug division
101 probation program.

102 (c) In offering a defendant the opportunity to request
103 treatment, the court shall advise the defendant of the following:

104 (i) If the defendant is accepted into the drug
105 division probation program, then the defendant must waive the
106 right to a trial. The defendant must enter a plea of guilty to
107 the charge, with the stipulation that sentencing be deferred or
108 that sentence be imposed, but suspended, and the defendant placed
109 on supervised probation under the usual conditions of probation
110 and under certain special conditions of probation related to the
111 completion of such substance abuse treatment programs as are
112 ordered by the court.

113 (ii) If the defendant requests to undergo
114 treatment and is accepted, the defendant will be placed under the
115 supervision of the drug division probation program for a period of
116 not less than twelve (12) months.

117 (iii) During treatment the defendant may be
118 confined in a treatment facility or, at the discretion of the
119 court, the defendant may be released on a probationary basis for
120 treatment or supervised aftercare in the community.

121 (iv) The court may impose any conditions
122 reasonably related to the complete rehabilitation of the
123 defendant.

124 (v) The defendant shall be required to participate
125 in an alcohol and drug testing program at his own expense, unless
126 the court determines that he is indigent.

127 (vi) If the defendant completes the drug division
128 probation program, and successfully completes all other
129 requirements of his court-ordered probation, the conviction may be



130 set aside and the prosecution dismissed. If the defendant was
131 sentenced at the time of the entry of the plea of guilty, the
132 successful completion of the drug division probation program and
133 the other requirements of probation will result in his discharge
134 from supervision. If the defendant does not successfully complete
135 the drug division probation program, the judge may revoke the
136 probation and impose sentence, or the judge may revoke the
137 probation and order the defendant to serve the sentence previously
138 imposed and suspended, or the court may impose any sanction
139 provided by law, and extend probation and order that the defendant
140 continue treatment for an additional period, or both.

141 (d) The defendant has the right to be represented by
142 counsel at all stages of a criminal prosecution and in any court
143 hearing relating to the drug division probation program. The
144 defendant shall be represented by counsel during the negotiations
145 to determine eligibility to participate in the drug division
146 probation program and shall be represented by counsel at the time
147 of the execution of the probation agreement, and at any hearing to
148 revoke the defendant's probation and discharge him from the
149 program, unless the court finds and the record shows that the
150 defendant has knowingly and intelligently waived his right to
151 counsel.

152 (e) The defendant must agree to the drug division
153 probation program. If the defendant elects to undergo treatment
154 and participate in the drug division probation program, the court
155 shall order an examination of the defendant by one (1) of the
156 court's designated licensed treatment programs. Treatment
157 programs shall possess sufficient experience in working with
158 criminal justice clients with alcohol or drug addictions, or both,
159 and shall be certified and approved by the State of Mississippi.
160 The designated treatment program shall utilize standardized
161 testing and evaluation procedures to determine whether or not the



162 defendant is an appropriate candidate for a treatment program and
163 shall report such findings to the court and the district attorney.

164 (f) The designated treatment program shall examine the
165 defendant, using standardized testing and evaluation procedures,
166 and shall report to the court and the district attorney the
167 results of the examination and evaluation along with its
168 recommendation as to whether or not the individual is a suitable
169 candidate for the drug division probation program. Only those
170 defendants who suffer from alcoholism or a drug addiction, or
171 both, or who are in danger of becoming dependent on alcohol or
172 drugs and who are likely to be rehabilitated through treatment
173 shall be considered for treatment.

174 (g) The court shall inform the defendant that the
175 treatment program examiner or district attorney may request that
176 the defendant provide the following information to the court:

177 (i) Information regarding prior criminal charges.

178 (ii) Education, work experience and training.

179 (iii) Family history, including residence in the
180 community.

181 (iv) Medical and mental history, including any
182 psychiatric or psychological treatment or counseling.

183 (v) Any other information reasonably related to
184 the success of the treatment program.

185 (h) The designated program shall recommend to the court
186 a preliminary length of stay and level of care for the defendant.

187 (i) Besides the report submitted by the examiner, the
188 judge and district attorney shall consider the following factors
189 in determining whether drug court probation would be in the
190 interests of justice and of benefit to the defendant and the
191 community:

192 (i) The nature of the crime charged and the
193 circumstances surrounding the crime.



194 (ii) Any special characteristics or circumstances
195 of the defendant.

196 (iii) Whether the defendant is a first-time
197 offender of an alcohol- or drug-related offense, and, if the
198 defendant has previously participated in this or a similar
199 program, the degree of success attained.

200 (iv) Whether there is a probability that the
201 defendant will cooperate with and benefit from probation and
202 treatment through the drug division probation program.

203 (v) Whether the available drug division probation
204 program is appropriate to meet the needs of the defendant.

205 (vi) The impact of the defendant's probation and
206 treatment upon the community.

207 (vii) Recommendations, if any, of the involved law
208 enforcement agency.

209 (viii) Recommendations, if any, of the victim.

210 (ix) Provisions for and the likelihood of
211 obtaining restitution from the defendant over the course of his
212 probation.

213 (x) Any mitigating circumstances.

214 (xi) Any other circumstances reasonably related to
215 the individual defendant's case.

216 (j) In order to be eligible for the drug division
217 probation program, the defendant must satisfy each of the
218 following criteria:

219 (i) The defendant cannot have any prior felony
220 convictions for any offenses which are crimes of violence.

221 (ii) The crime before the court cannot be a crime
222 of violence, including domestic violence.

223 (iii) Other criminal proceedings alleging
224 commission of a crime of violence cannot be pending against the
225 defendant.



226 (iv) The defendant cannot have been convicted of
227 burglary of an inhabited dwelling if the defendant has a record of
228 one or more prior felony convictions.

229 (v) The crime before the court cannot be a charge
230 of driving under the influence of alcohol or any other drug or
231 drugs that resulted in the death of a person.

232 (vi) The crime charged cannot be one of multiple
233 counts of distribution, possession with intent to distribute,
234 production, manufacture or cultivation of controlled dangerous
235 substances.

236 (k) (i) The judge shall make the final determination
237 of eligibility. If, based on the examiner's report and the
238 recommendations of the district attorney and the defense counsel,
239 the judge determines that the defendant should be enrolled in the
240 drug division probation program, the court shall accept the
241 defendant's guilty plea and suspend or defer the imposition of
242 sentence and place the defendant on probation under the terms and
243 conditions of the drug division probation program. The court also
244 may impose sentence and suspend the execution thereof, placing the
245 defendant on probation under the terms and conditions of the drug
246 division probation program.

247 (ii) If the judge determines that the defendant is
248 not qualified for enrollment, the judge shall state for the record
249 the reasons for that determination.

250 (iii) A treatment program may petition the court
251 to reject a referral through the drug division probation program
252 if the treatment program administrator deems the defendant to be
253 inappropriate for admission to the treatment program.
254 Additionally, a treatment program may petition the court for
255 immediate discharge of any individual who fails to comply with
256 treatment program rules and treatment expectations or who refuses
257 to constructively engage in the treatment process.



258 (3) (a) The terms of each probation agreement shall be
259 decided by the judge. The defendant must agree to enter the
260 program and sign a probation agreement stating the terms and
261 conditions of his program. The defendant must plead guilty to the
262 charge in order to be eligible for the drug division probation
263 program.

264 (b) Any probation agreement entered into pursuant to
265 this section shall include the following:

266 (i) The terms of the agreement, which shall
267 provide that if the defendant fulfills the obligations of the
268 agreement, as determined by the court, then the criminal charges
269 may be dismissed and the prosecution set aside, or, if the
270 defendant has been sentenced following the plea of guilty, then
271 the successful completion of the drug division probation program
272 may result in the discharge of the defendant from continued
273 supervision.

274 (ii) A waiver by the defendant of the right to
275 trial by jury under the laws and Constitution of Mississippi and
276 the United States.

277 (iii) The defendant's full name.

278 (iv) The defendant's full name at the time the
279 complaint was filed, if different from the defendant's current
280 name.

281 (v) The defendant's sex and date of birth.

282 (vi) The crime before the court.

283 (vii) The date the complaint was filed.

284 (viii) The court in which the agreement was filed.

285 (ix) A stipulation of the facts upon which the
286 charge was based, as agreed to by the defendant and the district
287 attorney.

288 (x) A provision that the defendant will be
289 required to pay a probation supervision fee.



290 (xi) A provision in cases where applicable that
291 the defendant will be required to pay restitution to the victim.

292 (xii) A provision that once the defendant is
293 receiving treatment as an outpatient or living in a halfway house
294 he will participate in appropriate job training or schooling or
295 seek gainful employment.

296 (xiii) A copy of the plea agreement.

297 (c) A defendant who is placed under the supervision of
298 the drug division probation program shall pay the cost of the
299 treatment program to which he is assigned and the cost of any
300 additional supervision that may be required, to the extent of his
301 financial resources, as determined by the drug division.

302 (d) If the probationer does not have the financial
303 resources to pay all the related costs of the probation program:

304 (i) The court, to the extent practicable, shall
305 arrange for the probationer to be assigned to a treatment program
306 funded by the state or federal government.

307 (ii) The court, with the recommendation of the
308 treatment program, may order the probationer to perform supervised
309 work for the benefit of the community in lieu of paying all or a
310 part of the costs relating to his treatment and supervision. The
311 work must be performed for and under the supervising authority of
312 a county, municipality, or other political subdivision or agency
313 of the State of Mississippi or a charitable organization that
314 renders service to the community or its residents.

315 (4) (a) When appropriate, the imposition or execution of a
316 sentence shall be postponed while the defendant is enrolled in the
317 treatment program. As long as the probationer follows the
318 conditions of his agreement, he or she shall remain on probation.
319 At the conclusion of the period of probation, the district
320 attorney, on advice of the person providing the probationer's
321 treatment and the probation officer, may recommend that the drug
322 division take one (1) of the following courses of action:



323 (i) That the probationer's probation be revoked
324 and the probationer be sentenced because the probationer has not
325 successfully completed the treatment and has violated one or more
326 conditions of probation; or, if already sentenced, that the
327 probation be revoked and the probationer be remanded to the
328 appropriate custodian for service of that sentence.

329 (ii) That the period of probation be extended so
330 that the probationer may continue the program.

331 (iii) That the probationer's conviction be set
332 aside and the prosecution dismissed because the probationer has
333 successfully completed all the conditions of his or her probation
334 and treatment agreement.

335 (b) The district attorney shall make the final
336 determination on whether to request revocation, extension or
337 dismissal.

338 (c) (i) If an individual who has enrolled in a program
339 violates any of the conditions of his probation or his treatment
340 agreement or appears to be performing unsatisfactorily in the
341 assigned program, or if it appears that the probationer is not
342 benefiting from education, treatment or rehabilitation, the
343 treatment supervisor, probation officer or the district attorney
344 may move the court for a hearing to determine if the probationer
345 should remain in the program or whether the probation should be
346 revoked and the probationer removed from the program and sentenced
347 or ordered to serve any sentence previously imposed. If at the
348 hearing the moving party can show sufficient proof that the
349 probationer has violated his probation or his treatment agreement
350 and has not shown a willingness to submit to rehabilitation, the
351 probationer may be removed from the program or his treatment
352 agreement may be changed to meet the probationer's specific needs.

353 (ii) If the court finds that the probationer has
354 violated a condition of his or her probation or a provision of his
355 or her probation agreement and that the probationer should be



356 removed from the probation program, then the court may revoke the
357 probation and sentence the individual in accordance with his or
358 her guilty plea or, if the individual has been sentenced and the
359 sentence suspended, order the individual to begin serving the
360 sentence.

361 (iii) If a defendant who has been admitted to the
362 probation program fails to complete the program and is thereafter
363 sentenced to jail time for the offense, he shall be entitled to
364 credit for the time served in any correctional facility in
365 connection with the charge before the court.

366 (iv) At any time and for any appropriate reason,
367 the probationer, his probation officer, the district attorney or
368 his treatment provider may petition the court to reconsider,
369 suspend or modify its order for rehabilitation or treatment
370 concerning that probationer.

371 (v) The burden of proof at all such hearings shall
372 be the burden of proof required to revoke probation as provided by
373 law.

374 (5) The appropriate alcohol and drug treatment program shall
375 report the following changes or conditions to the district
376 attorney at any periodic reporting period specified by the court:

377 (a) The probationer is changed from an inpatient to an
378 outpatient.

379 (b) The probationer is transferred to another treatment
380 center or program.

381 (c) The probationer fails to comply with program rules
382 and treatment expectations.

383 (d) The probationer refuses to engage constructively in
384 the treatment process.

385 (e) The probationer terminates his or her participation
386 in the treatment program.

387 (f) The probationer is rehabilitated or obtains the
388 maximum benefits of rehabilitation or treatment.



389 (6) Upon successful completion of the drug division
390 probation program and its terms and conditions, the judge, after
391 receiving the recommendation from the district attorney, may
392 vacate the judgment of conviction and dismiss the criminal
393 proceedings against the probationer or may discharge the defendant
394 from probation.

395 (7) Discharge and dismissal under this act shall have the
396 same effect as acquittal, except that the conviction may be
397 considered in order to provide the basis for subsequent
398 prosecution of the party as a multiple offender and shall be
399 considered as an offense for the purposes of any other law or laws
400 relating to cumulation of offenses. Dismissal under this act
401 shall occur only once with respect to any person. Nothing herein
402 shall be construed as a basis for the destruction of records of
403 the arrest and prosecution of the person.

404 (8) Nothing contained in this act shall confer a right or an
405 expectation of a right to treatment for a defendant or offender
406 within the criminal justice system.

407 (9) Each defendant shall contribute to the cost of substance
408 abuse treatment received in the drug treatment program based upon
409 guidelines developed by the drug division.

410 (10) Each circuit court district that establishes a drug
411 division shall adopt written policies and guidelines for the
412 implementation of a probation program in accordance with this act.
413 The policies and guidelines shall include provisions concerning
414 the following:

415 (a) How to examine the defendant initially to determine
416 if he or she is qualified for enrollment.

417 (b) How to advise the defendant of the program if the
418 court has reason to believe the defendant may suffer from alcohol
419 or drug addiction.

420 (c) What licensed treatment programs are certified by
421 the court.



422 (11) Each drug division shall develop a method of evaluation
423 so that its effectiveness can be measured. These evaluations
424 shall be compiled annually and transmitted to the Administrative
425 Office of Courts.

426 (12) (a) Except as otherwise provided for by law, the
427 registration and other records of a treatment facility are
428 confidential and shall not be disclosed to any person not
429 connected with the treatment facility or the drug division and
430 district attorney without the consent of the patient.

431 (b) The provisions of paragraph (a) of this subsection
432 shall not restrict the use of patients' records for the purpose of
433 research into the cause and treatment of alcoholism and drug
434 addiction, provided that such information shall not be published
435 in a way that discloses the patient's name and identifying
436 information.

437 (13) No statement, or any information procured therefrom,
438 with respect to the specific offenses with which the defendant is
439 charged, which is made to any probation officer or alcohol and
440 drug treatment worker subsequent to the granting of probation,
441 shall be admissible in any civil or criminal action or proceeding,
442 except a drug division probation revocation proceeding.

443 (14) A record of the fact that an individual has
444 participated in a drug division probation program shall be sent to
445 the Office of the Attorney General and shall be made available
446 upon request to any district attorney for the purpose of
447 determining if an individual has previously participated in a drug
448 division probation program.

449 **SECTION 5.** Section 41-29-149, Mississippi Code of 1972, is
450 amended as follows:

451 41-29-149. (a) Regardless of the penalties provided
452 heretofore for the violation of any section or portion of this
453 article, the judge of the court of jurisdiction of any defendant
454 may, in his discretion, suspend such penalty, penalties, or



455 portions thereof, or place such defendant in a program as provided
456 in Sections 1 through 4 of House Bill No. _____, 2002 Regular
457 Session, for any person charged with a first offense.

458 (b) A person convicted under this article or under any prior
459 law superseded by this article for a violation of the law
460 regarding controlled substances shall be eligible for parole just
461 as in any other criminal conviction as provided by Section 47-7-3.

462 (c) Any person who was convicted and/or who is still serving
463 a sentence in the Mississippi State Penitentiary for a first
464 offense under any prior law superseded by this article may
465 petition the court of original jurisdiction for resentencing under
466 the provisions of this article.

467 (d) Any person previously indicted under a prior law for
468 violation of any law regarding controlled substances but not yet
469 sentenced shall be sentenced under the provisions of this article
470 provided that the sentence imposed is not greater than that
471 provided under said prior law.

472 (e) For the purposes of the sentencing provisions of this
473 article, a first offense shall be deemed to be and include any
474 offense, offenses, act or acts prohibited by said law, or any
475 prior law superseded by said law, committed prior to a first
476 indictment under said law or under prior law superseded by said
477 law.

478 **SECTION 6.** Section 41-29-150, Mississippi Code of 1972, is
479 amended as follows:

480 41-29-150. (a) Any person convicted under Section 41-29-139
481 may be required, in the discretion of the court, as a part of the
482 sentence otherwise imposed, or in lieu of imprisonment in cases of
483 probation or suspension of sentence, to attend a course of
484 instruction conducted by the bureau, the State Board of Health, or
485 any similar agency, on the effects, medically, psychologically and
486 socially, of the misuse of controlled substances or successfully
487 complete a treatment program as provided in Sections 1 through 4



488 of House Bill No. _____, 2002 Regular Session. Said course may be
489 conducted at any correctional institution, detention center or
490 hospital, or at any center or treatment facility established for
491 the purpose of education and rehabilitation of those persons
492 committed because of abuse of controlled substances.

493 (b) Any person convicted under Section 41-29-139 who is
494 found to be dependent upon or addicted to any controlled substance
495 shall be required, as a part of the sentence otherwise imposed, or
496 in lieu of imprisonment in cases of parole, probation or
497 suspension of sentence, to receive medical treatment for such
498 dependency or addiction or successfully complete a treatment
499 program as provided in Sections 1 through 4 of House Bill No.

500 _____, 2002 Regular Session. The regimen of medical treatment may
501 include confinement in a medical facility of any correctional
502 institution, detention center or hospital, or at any center or
503 facility established for treatment of those persons committed
504 because of a dependence or addiction to controlled substances.

505 (c) Those persons previously convicted of a felony under
506 Section 41-29-139 and who are now confined at the Mississippi
507 State Hospital at Whitfield, Mississippi, or at the East
508 Mississippi State Hospital at Meridian, Mississippi, for the term
509 of their sentence shall remain under the jurisdiction of the
510 Mississippi Department of Corrections and shall be required to
511 abide by all reasonable rules and regulations promulgated by the
512 director and staff of said institutions and of the Department of
513 Corrections. Any persons so confined who shall refuse to abide by
514 said rules or who attempt an escape or who shall escape shall be
515 transferred to the State Penitentiary or to a county jail, where
516 appropriate, to serve the remainder of the term of imprisonment;
517 this provision shall not preclude prosecution and conviction for
518 escape from said institutions.

519 (d) (1) If any person who has not previously been convicted
520 of violating Section 41-29-139, or the laws of the United States



521 or of another state relating to narcotic drugs, stimulant or
522 depressant substances, other controlled substances or marihuana is
523 found to be guilty of a violation of subsection (c) or (d) of
524 Section 41-29-139, after trial or upon a plea of guilty, the court
525 may, without entering a judgment of guilty and with the consent of
526 such person, defer further proceedings and place him on probation
527 upon such reasonable conditions as it may require and for such
528 period, not to exceed three (3) years, as the court may prescribe.
529 Upon violation of a condition of the probation, the court may
530 enter an adjudication of guilt and proceed as otherwise provided.
531 The court may, in its discretion, dismiss the proceedings against
532 such person and discharge him from probation before the expiration
533 of the maximum period prescribed for such person's probation. If
534 during the period of his probation such person does not violate
535 any of the conditions of the probation, then upon expiration of
536 such period the court shall discharge such person and dismiss the
537 proceedings against him. Discharge and dismissal under this
538 subsection shall be without court adjudication of guilt, but a
539 nonpublic record thereof shall be retained by the bureau solely
540 for the purpose of use by the courts in determining whether or
541 not, in subsequent proceedings, such person qualifies under this
542 subsection. Such discharge or dismissal shall not be deemed a
543 conviction for purposes of disqualifications or disabilities
544 imposed by law upon conviction of a crime, including the penalties
545 prescribed under this article for second or subsequent conviction,
546 or for any other purpose. Discharge and dismissal under this
547 subsection may occur only once with respect to any person; and

548 (2) Upon the dismissal of such person and discharge of
549 proceedings against him under paragraph (1) of this subsection, or
550 with respect to a person who has been convicted and adjudged
551 guilty of an offense under subsection (c) or (d) of Section
552 41-29-139, or for possession of narcotics, stimulants,
553 depressants, hallucinogens, marihuana, other controlled substances



554 or paraphernalia under prior laws of this state, such person, if
555 he had not reached his twenty-sixth birthday at the time of the
556 offense, may apply to the court for an order to expunge from all
557 official records, other than the nonpublic records to be retained
558 by the bureau under paragraph (1) of this subsection, all
559 recordation relating to his arrest, indictment, trial, finding of
560 guilty, and dismissal and discharge pursuant to this section. If
561 the court determines, after hearing, that such person was
562 dismissed and the proceedings against him discharged and that he
563 had not reached his twenty-sixth birthday at the time of the
564 offense, or that such person had satisfactorily served his
565 sentence or period of probation and parole, and that he had not
566 reached his twenty-sixth birthday at the time of the offense, it
567 shall enter such order. The effect of such order shall be to
568 restore such person, in the contemplation of the law, to the
569 status he occupied before such arrest or indictment. No person as
570 to whom such order has been entered shall be held thereafter under
571 any provision of any law to be guilty of perjury or otherwise
572 giving a false statement by reason of his failures to recite or
573 acknowledge such arrest, or indictment or trial in response to any
574 inquiry made of him for any purpose.

575 (e) Every person who has been or may hereafter be convicted
576 of a felony offense under Section 41-29-139 and sentenced under
577 Section 41-29-150(c) shall be under the jurisdiction of the
578 Mississippi Department of Corrections.

579 (f) It shall be unlawful for any person confined under the
580 provisions of subsection (b) or (c) of this section to escape or
581 attempt to escape from said institution, and upon conviction said
582 person shall be guilty of a felony and shall be imprisoned for a
583 term not to exceed two (2) years.

584 (g) It is the intent and purpose of the Legislature to
585 promote the rehabilitation of persons convicted of offenses under
586 the Uniform Controlled Substances Law.



587 **SECTION 7.** This act shall take effect and be in force from
588 and after July 1, 2002.

