

By: Representative Clarke

To: Judiciary A;  
Appropriations

HOUSE BILL NO. 61

1 AN ACT RELATING TO SUBSTANCE ABUSE TREATMENT PROGRAMS; TO  
 2 PROVIDE GOALS FOR TREATMENT-BASED DRUG COURT PROGRAMS; TO REQUIRE  
 3 CIRCUIT COURT DISTRICTS TO ESTABLISH A MODEL OF TREATMENT-BASED  
 4 DRUG COURT PROGRAMS FOR CERTAIN PURPOSES; TO PROVIDE CRITERIA; TO  
 5 PROVIDE LEGISLATIVE INTENT; TO PROVIDE CERTAIN PRINCIPLES FOR  
 6 OPERATING DRUG COURT PROGRAMS; TO PROVIDE FOR INCLUSION OF CERTAIN  
 7 PROGRAMS IN SUCH DRUG COURT PROGRAMS; TO PROVIDE FOR TRANSFERRING  
 8 PERSONS ELIGIBLE FOR PARTICIPATION IN DRUG COURT TREATMENT  
 9 PROGRAMS TO OTHER JURISDICTIONS UNDER CERTAIN CIRCUMSTANCES; TO  
 10 PROVIDE CRITERIA, REQUIREMENTS AND LIMITATIONS; TO PROVIDE THAT  
 11 PERSONS CHARGED WITH SPECIFIED CRIMES MAY BE ELIGIBLE FOR  
 12 ADMISSION INTO A PRETRIAL SUBSTANCE ABUSE PROGRAM; TO PROVIDE FOR  
 13 A MISDEMEANOR PRETRIAL SUBSTANCE ABUSE EDUCATION AND TREATMENT  
 14 INTERVENTION PROGRAM; TO PROVIDE FOR ADMITTING CERTAIN PERSONS TO  
 15 THE PROGRAM UNDER CERTAIN CIRCUMSTANCES; TO PROVIDE FOR  
 16 DISPOSITION OF PERSONS IN THE PROGRAM; TO PROVIDE CONTRACTING  
 17 REQUIREMENTS FOR ENTITIES PROVIDING SUCH A PROGRAM; TO AMEND  
 18 SECTIONS 41-29-149 AND 41-29-150, MISSISSIPPI CODE OF 1972, IN  
 19 CONFORMITY THERETO; AND FOR RELATED PURPOSES.

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

21 **SECTION 1.** (1) It is the intent of the Legislature to  
 22 implement treatment-based drug court programs in each circuit  
 23 court district in an effort to reduce crime and recidivism, abuse  
 24 and neglect cases, and family dysfunction by breaking the cycle of  
 25 addiction which is the most predominant cause of cases entering  
 26 the justice system. The Legislature recognizes that the  
 27 integration of judicial supervision, treatment, accountability and  
 28 sanctions greatly increases the effectiveness of substance abuse  
 29 treatment. The Legislature also seeks to ensure that there is a  
 30 coordinated, integrated, and multidisciplinary response to the  
 31 substance abuse problem in this state, with special attention  
 32 given to creating partnerships between the public and private  
 33 sectors and to the coordinated, supported and integrated delivery  
 34 of multiple-system services for substance abusers, including a  
 35 multiagency team approach to service delivery.



36           (2) Each circuit court district shall establish a model of a  
37 treatment-based drug court program under which persons in the  
38 justice system assessed with a substance abuse problem will be  
39 processed in such a manner as to appropriately address the  
40 severity of the identified substance abuse problem through  
41 treatment plans tailored to the individual needs of the  
42 participant. It is the intent of the legislature to encourage the  
43 Department of Corrections, the Department of Human Services, the  
44 State Department of Health, the Department of Public Safety, and  
45 such other agencies, local governments, law enforcement agencies  
46 and other interested public or private sources to support the  
47 creation and establishment of these problem-solving court  
48 programs. Participation in the treatment-based drug court  
49 programs does not divest any public or private agency of its  
50 responsibility for a child or adult, but allows these agencies to  
51 better meet their needs through shared responsibility and  
52 resources.

53           (3) The treatment-based drug court programs shall include  
54 therapeutic jurisprudence principles and adhere to the following  
55 ten (10) key components, recognized by the Drug Courts Program  
56 Office of the Office of Justice Programs of the United States  
57 Department of Justice:

58                   (a) Drug court programs integrate alcohol and other  
59 drug treatment services with justice system case processing.

60                   (b) Using a nonadversarial approach, prosecution and  
61 defense counsel promote public safety while protecting  
62 participants' due process rights.

63                   (c) Eligible participants are identified early and  
64 promptly placed in the drug court program.

65                   (d) Drug court programs provide access to a continuum  
66 of alcohol, drug and other related treatment and rehabilitation  
67 services.



68 (e) Abstinence is monitored by frequent testing for  
69 alcohol and other drugs.

70 (f) A coordinated strategy governs drug court program  
71 responses to participants' compliance.

72 (g) Ongoing judicial interaction with each drug court  
73 program participant is essential.

74 (h) Monitoring and evaluation measure the achievement  
75 of program goals and gauge program effectiveness.

76 (i) Continuing interdisciplinary education promotes  
77 effective drug court program planning, implementation and  
78 operations.

79 (j) Forging partnerships among drug court promotes,  
80 public agencies and community-based organizations generates local  
81 support and enhances drug court program effectiveness.

82 (4) Treatment-based drug court programs may include pretrial  
83 intervention programs.

84 (5) (a) The Mississippi Association of Drug Court Program  
85 Professionals is created. The membership of the association may  
86 consist of drug court program practitioners who comprise the  
87 multidisciplinary drug court program team, including, but not  
88 limited to, judges, district attorneys, defense counsel, drug  
89 court program coordinators, probation officers, law enforcement  
90 officers, members of the academic community and treatment  
91 professionals. Membership in the association shall be voluntary.

92 (b) The association shall annually elect a chair whose  
93 duty is to solicit recommendations from members on issues relating  
94 to the expansion, operation and institutionalization of drug court  
95 programs. The chair is responsible for providing the  
96 association's recommendations to the Administrative Office of  
97 Courts, and shall submit a report each year, on or before October  
98 1, to the Administrative Office of Courts.

99 **SECTION 2.** (1) Any person eligible for participation in a  
100 drug court treatment program pursuant to Section 3 of this act may



101 be eligible to have the case transferred to a county other than  
102 that in which the charge arose if the drug court program agrees  
103 and if the following conditions are met:

104 (a) The authorized representative of the drug court  
105 program of the county requesting to transfer the case shall  
106 consult with the authorized representative of the drug court  
107 program in the county to which transfer is desired.

108 (b) If approval for transfer is received from all  
109 parties, the trial court shall enter a transfer order directing  
110 the clerk to transfer the case to the county which has accepted  
111 the defendant into its drug court program.

112 (c) The transfer order shall include a copy of the  
113 probable cause affidavit, any charging documents in the case, all  
114 reports, witness statements, test results, evidence lists and  
115 other documents in the case, the defendant's mailing address and  
116 phone number and the defendant's written consent to abide by the  
117 rules and procedures of the receiving county's drug court program.

118 (d) After the transfer takes place, the clerk shall set  
119 the matter for a hearing before the drug court program judge and  
120 the court shall ensure the defendant's entry into the drug court  
121 program.

122 (e) The jurisdiction to which the case has been  
123 transferred shall dispose of the case pursuant to Section 3 of  
124 this act. If the defendant does not complete the drug court  
125 program successfully, the case shall be prosecuted as determined  
126 by the state attorneys of the sending and receiving counties.

127 **SECTION 3.** (1) Notwithstanding any provisions of this  
128 section, a person who is charged with purchase or possession of a  
129 controlled substance, tampering with evidence, solicitation for  
130 purchase, obtaining a prescription by fraud and who has not been  
131 charged with a crime, involving violence, including, but not  
132 limited to, murder, sexual battery, robbery, car jacking,  
133 home-invasion robbery, or any other crime involving violence and



134 who has not previously been convicted of a felony nor been  
135 admitted to a felony pretrial program, is eligible for admission  
136 into a pretrial substance abuse education and treatment  
137 intervention program approved by the senior judge of the circuit  
138 court district, for a period of not less than one (1) year in  
139 duration, upon motion of either party or the courts own motion,  
140 except:

141           (a) If a defendant was previously offered admission to  
142 a pretrial substance abuse education and treatment intervention  
143 program at any time prior to trial and the defendant rejected that  
144 offer on the record, then the court or the district attorney may  
145 deny the defendant's admission to such a program.

146           (b) If the district attorney believes that the facts  
147 and circumstances of the case suggest the defendant's involvement  
148 in the dealing and selling of controlled substances, the court  
149 shall hold a preadmission hearing. If the district attorney  
150 establishes, by a preponderance of the evidence at such hearing,  
151 that the defendant was involved in the dealing or selling of  
152 controlled substances, the court shall deny the defendant's  
153 admission into a pretrial intervention program.

154           (2) The senior judge in each circuit court district may  
155 appoint an advisory committee for the pretrial intervention  
156 program composed of the senior judge, or his or her designee, who  
157 shall serve as chair; the district attorney, the public defendant  
158 and the program administrator, or their designees; and such other  
159 persons as the chair deems appropriate. The advisory committee  
160 may not designate any defendant eligible for a pretrial  
161 intervention program for any offense not listed under subsection  
162 (1) of this section without the district attorney's recommendation  
163 and approval. The committee may also include persons representing  
164 any other agencies to which persons released to the pretrial  
165 intervention program may be referred.



166           SECTION 4. (1) A person who is charged with a misdemeanor  
167 for possession of a controlled substance or drug paraphernalia,  
168 and who has not previously been convicted of a felony nor been  
169 admitted to a pretrial program, is eligible for admission into a  
170 misdemeanor pretrial substance abuse education and treatment  
171 intervention program approved by the senior judge of the circuit  
172 court district, for a period based on the program requirements and  
173 the treatment plan for the offender, upon motion of either party  
174 or the court's own motion, except, if the district attorney  
175 believes the facts and circumstances of the case suggest the  
176 defendant is involved in dealing and selling controlled  
177 substances, the court shall hold a preadmission hearing. If the  
178 district attorney establishes, by a preponderance of the evidence  
179 at such hearing, that the defendant was involved in dealing or  
180 selling controlled substances, the court shall deny the  
181 defendant's admission into the pretrial intervention program.

182           (2) At the end of the pretrial intervention period, the  
183 court shall consider the recommendation of the treatment program  
184 and the recommendation of the district attorney as to disposition  
185 of the pending charges. The court shall determine, by written  
186 finding, whether the defendant successfully completed the pretrial  
187 intervention program.

188           (a) If the court finds that the defendant has not  
189 successfully completed the pretrial intervention program, the  
190 court may order the person to continue in education and treatment  
191 or return the charges to the criminal docket for prosecution.

192           (b) The court shall dismiss the charges upon finding  
193 that the defendant has successfully completed the pretrial  
194 intervention program.

195           (3) Any public or private entity providing a pretrial  
196 substance abuse education and treatment program under this section  
197 shall contract with the county or appropriate governmental entity.



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

200           41-29-149. (a) Regardless of the penalties provided  
201 heretofore for the violation of any section or portion of this  
202 article, the judge of the court of jurisdiction of any defendant  
203 may, in his discretion, suspend such penalty, penalties, or  
204 portions thereof, or place such defendant in a treatment-based  
205 drug court program as provided by Sections 1 through 4 of House  
206 Bill No. \_\_\_\_\_, 2002 Regular Session, for any person charged with a  
207 first offense.

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

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

217           (d) Any person previously indicted under a prior law for  
218 violation of any law regarding controlled substances but not yet  
219 sentenced shall be sentenced under the provisions of this article  
220 provided that the sentence imposed is not greater than that  
221 provided under said prior law.

222           (e) For the purposes of the sentencing provisions of this  
223 article, a first offense shall be deemed to be and include any  
224 offense, offenses, act or acts prohibited by said law, or any  
225 prior law superseded by said law, committed prior to a first  
226 indictment under said law or under prior law superseded by said  
227 law.

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



230 41-29-150. (a) Any person convicted under Section 41-29-139  
231 may be required, in the discretion of the court, as a part of the  
232 sentence otherwise imposed, or in lieu of imprisonment in cases of  
233 probation or suspension of sentence, to attend a course of  
234 instruction conducted by the bureau, the State Board of Health, or  
235 any similar agency, on the effects, medically, psychologically and  
236 socially, of the misuse of controlled substances or a  
237 treatment-based drug court program as provided by Sections 1  
238 through 4 of House Bill No. , 2002 Regular Session. Said  
239 course may be conducted at any correctional institution, detention  
240 center or hospital, or at any center or treatment facility  
241 established for the purpose of education and rehabilitation of  
242 those persons committed because of abuse of controlled substances.

243 (b) Any person convicted under Section 41-29-139 who is  
244 found to be dependent upon or addicted to any controlled substance  
245 shall be required, as a part of the sentence otherwise imposed, or  
246 in lieu of imprisonment in cases of parole, probation or  
247 suspension of sentence, to receive medical treatment for such  
248 dependency or addiction or attend a treatment-based drug court  
249 program. The regimen of medical treatment may include confinement  
250 in a medical facility of any correctional institution, detention  
251 center or hospital, or at any center or facility established for  
252 treatment of those persons committed because of a dependence or  
253 addiction to controlled substances.

254 (c) Those persons previously convicted of a felony under  
255 Section 41-29-139 and who are now confined at the Mississippi  
256 State Hospital at Whitfield, Mississippi, or at the East  
257 Mississippi State Hospital at Meridian, Mississippi, for the term  
258 of their sentence shall remain under the jurisdiction of the  
259 Mississippi Department of Corrections and shall be required to  
260 abide by all reasonable rules and regulations promulgated by the  
261 director and staff of said institutions and of the Department of  
262 Corrections. Any persons so confined who shall refuse to abide by





263 said rules or who attempt an escape or who shall escape shall be  
264 transferred to the State Penitentiary or to a county jail, where  
265 appropriate, to serve the remainder of the term of imprisonment;  
266 this provision shall not preclude prosecution and conviction for  
267 escape from said institutions.

268 (d) (1) If any person who has not previously been convicted  
269 of violating Section 41-29-139, or the laws of the United States  
270 or of another state relating to narcotic drugs, stimulant or  
271 depressant substances, other controlled substances or marihuana is  
272 found to be guilty of a violation of subsection (c) or (d) of  
273 Section 41-29-139, after trial or upon a plea of guilty, the court  
274 may, without entering a judgment of guilty and with the consent of  
275 such person, defer further proceedings and place him on probation  
276 upon such reasonable conditions as it may require and for such  
277 period, not to exceed three (3) years, as the court may prescribe.  
278 Upon violation of a condition of the probation, the court may  
279 enter an adjudication of guilt and proceed as otherwise provided.  
280 The court may, in its discretion, dismiss the proceedings against  
281 such person and discharge him from probation before the expiration  
282 of the maximum period prescribed for such person's probation. If  
283 during the period of his probation such person does not violate  
284 any of the conditions of the probation, then upon expiration of  
285 such period the court shall discharge such person and dismiss the  
286 proceedings against him. Discharge and dismissal under this  
287 subsection shall be without court adjudication of guilt, but a  
288 nonpublic record thereof shall be retained by the bureau solely  
289 for the purpose of use by the courts in determining whether or  
290 not, in subsequent proceedings, such person qualifies under this  
291 subsection. Such discharge or dismissal shall not be deemed a  
292 conviction for purposes of disqualifications or disabilities  
293 imposed by law upon conviction of a crime, including the penalties  
294 prescribed under this article for second or subsequent conviction,



295 or for any other purpose. Discharge and dismissal under this  
296 subsection may occur only once with respect to any person; and

297           (2) Upon the dismissal of such person and discharge of  
298 proceedings against him under paragraph (1) of this subsection, or  
299 with respect to a person who has been convicted and adjudged  
300 guilty of an offense under subsection (c) or (d) of Section  
301 41-29-139, or for possession of narcotics, stimulants,  
302 depressants, hallucinogens, marihuana, other controlled substances  
303 or paraphernalia under prior laws of this state, such person, if  
304 he had not reached his twenty-sixth birthday at the time of the  
305 offense, may apply to the court for an order to expunge from all  
306 official records, other than the nonpublic records to be retained  
307 by the bureau under paragraph (1) of this subsection, all  
308 recordation relating to his arrest, indictment, trial, finding of  
309 guilty, and dismissal and discharge pursuant to this section. If  
310 the court determines, after hearing, that such person was  
311 dismissed and the proceedings against him discharged and that he  
312 had not reached his twenty-sixth birthday at the time of the  
313 offense, or that such person had satisfactorily served his  
314 sentence or period of probation and parole, and that he had not  
315 reached his twenty-sixth birthday at the time of the offense, it  
316 shall enter such order. The effect of such order shall be to  
317 restore such person, in the contemplation of the law, to the  
318 status he occupied before such arrest or indictment. No person as  
319 to whom such order has been entered shall be held thereafter under  
320 any provision of any law to be guilty of perjury or otherwise  
321 giving a false statement by reason of his failures to recite or  
322 acknowledge such arrest, or indictment or trial in response to any  
323 inquiry made of him for any purpose.

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



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

333           (g) It is the intent and purpose of the Legislature to  
334 promote the rehabilitation of persons convicted of offenses under  
335 the Uniform Controlled Substances Law.

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

