

By: Representative Watson

To: Judiciary A

HOUSE BILL NO. 549

1 AN ACT TO AMEND SECTIONS 41-29-139, 41-29-150, 47-7-33 AND  
2 99-19-25, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT CERTAIN  
3 NONVIOLENT FIRST-TIME OFFENDERS SHALL BE SENTENCED TO  
4 REHABILITATION FOR DRUG AND ALCOHOL OFFENSES; TO BRING FORWARD  
5 SECTION 63-11-30, MISSISSIPPI CODE OF 1972, FOR PURPOSES OF  
6 AMENDMENT; AND FOR RELATED PURPOSES.

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

8 **SECTION 1.** Section 41-29-139, Mississippi Code of 1972, is  
9 amended as follows:

10 41-29-139. (a) Except as authorized by this article, it is  
11 unlawful for any person knowingly or intentionally:

12 (1) To sell, barter, transfer, manufacture, distribute,  
13 dispense or possess with intent to sell, barter, transfer,  
14 manufacture, distribute or dispense, a controlled substance; or

15 (2) To create, sell, barter, transfer, distribute,  
16 dispense or possess with intent to create, sell, barter, transfer,  
17 distribute or dispense, a counterfeit substance.

18 (b) Except as otherwise provided in subsections (f), (g) and  
19 (h) of this section or in Section 41-29-142, any person who  
20 violates subsection (a) of this section shall be sentenced as  
21 follows:

22 (1) In the case of controlled substances classified in  
23 Schedule I or II, as set out in Sections 41-29-113 and 41-29-115,  
24 except thirty (30) grams or less of marihuana, and except a first  
25 offender as defined in Section 41-29-149(e) who violates  
26 subsection (a) of this section with respect to less than one (1)  
27 kilogram but more than thirty (30) grams of marihuana, such person  
28 may, upon conviction, be imprisoned for not more than thirty (30)  
29 years and shall be fined not less than Five Thousand Dollars

30 (\$5,000.00) nor more than One Million Dollars (\$1,000,000.00), or  
31 both;

32 (2) In the case of a first offender who violates  
33 subsection (a) of this section with an amount less than one (1)  
34 kilogram but more than thirty (30) grams of marihuana as  
35 classified in Schedule I, as set out in Section 41-29-113, such  
36 person is guilty of a felony and upon conviction may be imprisoned  
37 for not more than twenty (20) years or fined not more than Thirty  
38 Thousand Dollars (\$30,000.00), or both;

39 (3) In the case of thirty (30) grams or less of  
40 marihuana, such person may, upon conviction, be imprisoned for not  
41 more than three (3) years or fined not more than Three Thousand  
42 Dollars (\$3,000.00), or both;

43 (4) In the case of controlled substances classified in  
44 Schedules III and IV, as set out in Sections 41-29-117 and  
45 41-29-119, such person may, upon conviction, be imprisoned for not  
46 more than twenty (20) years and shall be fined not less than One  
47 Thousand Dollars (\$1,000.00) nor more than Two Hundred Fifty  
48 Thousand Dollars (\$250,000.00), or both; and

49 (5) In the case of controlled substances classified in  
50 Schedule V, as set out in Section 41-29-121, such person may, upon  
51 conviction, be imprisoned for not more than ten (10) years and  
52 shall be fined not less than One Thousand Dollars (\$1,000.00) nor  
53 more than Fifty Thousand Dollars (\$50,000.00), or both.

54 (c) It is unlawful for any person knowingly or intentionally  
55 to possess any controlled substance unless the substance was  
56 obtained directly from, or pursuant to, a valid prescription or  
57 order of a practitioner while acting in the course of his  
58 professional practice, or except as otherwise authorized by this  
59 article. The penalties for any violation of this subsection (c)  
60 with respect to a controlled substance classified in Schedules I,  
61 II, III, IV or V, as set out in Sections 41-29-113, 41-29-115,  
62 41-29-117, 41-29-119 or 41-29-121, including marihuana, shall be

63 based on dosage unit as defined herein or the weight of the  
64 controlled substance as set forth herein as appropriate:

65 "Dosage unit (d.u.)" means a tablet or capsule, or in the  
66 case of a liquid solution, one (1) milliliter. In the case of  
67 lysergic acid diethylamide (LSD) the term, "dosage unit" means a  
68 stamp, square, dot, microdot, tablet or capsule of a controlled  
69 substance.

70 For any controlled substance that does not fall within the  
71 definition of the term "dosage unit," the penalties shall be based  
72 upon the weight of the controlled substance.

73 The weight set forth refers to the entire weight of any  
74 mixture or substance containing a detectable amount of the  
75 controlled substance.

76 If a mixture or substance contains more than one (1)  
77 controlled substance, the weight of the mixture or substance is  
78 assigned to the controlled substance that results in the greater  
79 punishment.

80 Any person who violates this subsection with respect to:

81 (1) A controlled substance classified in Schedule I or  
82 II, except marihuana, in the following amounts shall be charged  
83 and sentenced as follows:

84 (A) Less than one-tenth (0.1) gram or one (1)  
85 dosage unit or less may be charged as a misdemeanor or felony. If  
86 charged by indictment as a felony: by imprisonment not less than  
87 one (1) nor more than four (4) years and a fine not more than Ten  
88 Thousand Dollars (\$10,000.00). If charged as a misdemeanor: by  
89 imprisonment for up to one (1) year and a fine not more than One  
90 Thousand Dollars (\$1,000.00).

91 (B) One-tenth (0.1) gram but less than two (2)  
92 grams or two (2) dosage units but less than ten (10) dosage units,  
93 by imprisonment for not less than two (2) years nor more than  
94 eight (8) years and a fine of not more than Fifty Thousand Dollars  
95 (\$50,000.00).

96                   (C) Two (2) grams but less than ten (10) grams or  
97 ten (10) dosage units but less than twenty (20) dosage units, by  
98 imprisonment for not less than four (4) years nor more than  
99 sixteen (16) years and a fine of not more than Two Hundred Fifty  
100 Thousand Dollars (\$250,000.00).

101                   (D) Ten (10) grams but less than thirty (30) grams  
102 or twenty (20) dosage units but not more than forty (40) dosage  
103 units, by imprisonment for not less than six (6) years nor more  
104 than twenty-four (24) years and a fine of not more than Five  
105 Hundred Thousand Dollars (\$500,000.00).

106                   (E) Thirty (30) grams or more or forty (40) dosage  
107 units or more, by imprisonment for not less than ten (10) years  
108 nor more than thirty (30) years and a fine of not more than One  
109 Million Dollars (\$1,000,000.00).

110                   (2) Marihuana in the following amounts shall be charged  
111 and sentenced as follows:

112                   (A) Thirty (30) grams or less by a fine of not  
113 less than One Hundred Dollars (\$100.00) nor more than Two Hundred  
114 Fifty Dollars (\$250.00). The provisions of this paragraph shall  
115 be enforceable by summons, provided the offender provides proof of  
116 identity satisfactory to the arresting officer and gives written  
117 promise to appear in court satisfactory to the arresting officer,  
118 as directed by the summons. A second conviction under this  
119 section within two (2) years shall be punished by a fine of Two  
120 Hundred Fifty Dollars (\$250.00) and not less than five (5) days  
121 nor more than sixty (60) days in the county jail and mandatory  
122 participation in a drug education program, approved by the  
123 Division of Alcohol and Drug Abuse of the State Department of  
124 Mental Health, unless the court enters a written finding that such  
125 drug education program is inappropriate. A third or subsequent  
126 conviction under this section within two (2) years is a  
127 misdemeanor punishable by a fine of not less than Two Hundred  
128 Fifty Dollars (\$250.00) nor more than Five Hundred Dollars

129 (\$500.00) and confinement for not less than five (5) days nor more  
130 than six (6) months in the county jail. Upon a first or second  
131 conviction under this section the courts shall forward a report of  
132 such conviction to the Mississippi Bureau of Narcotics which shall  
133 make and maintain a private, nonpublic record for a period not to  
134 exceed two (2) years from the date of conviction. The private,  
135 nonpublic record shall be solely for the use of the courts in  
136 determining the penalties which attach upon conviction under this  
137 section and shall not constitute a criminal record for the purpose  
138 of private or administrative inquiry and the record of each  
139 conviction shall be expunged at the end of the period of two (2)  
140 years following the date of such conviction;

141 (B) Additionally, a person who is the operator of  
142 a motor vehicle, who possesses on his person or knowingly keeps or  
143 allows to be kept in a motor vehicle within the area of the  
144 vehicle normally occupied by the driver or passengers, more than  
145 one (1) gram, but not more than thirty (30) grams, of marihuana is  
146 guilty of a misdemeanor and upon conviction may be fined not more  
147 than One Thousand Dollars (\$1,000.00) and confined for not more  
148 than ninety (90) days in the county jail. For the purposes of  
149 this subsection, such area of the vehicle shall not include the  
150 trunk of the motor vehicle or the areas not normally occupied by  
151 the driver or passengers if the vehicle is not equipped with a  
152 trunk. A utility or glove compartment shall be deemed to be  
153 within the area occupied by the driver and passengers;

154 (C) More than thirty (30) grams but less than two  
155 hundred fifty (250) grams may be fined not more than One Thousand  
156 Dollars (\$1,000.00), or confined in the county jail for not more  
157 than one (1) year, or both; or fined not more than Three Thousand  
158 Dollars (\$3,000.00), or imprisoned in the State Penitentiary for  
159 not more than three (3) years, or both;

160 (D) Two hundred fifty (250) grams but less than  
161 five hundred (500) grams, by imprisonment for not less than two

162 (2) years nor more than eight (8) years and by a fine of not more  
163 than Fifty Thousand Dollars (\$50,000.00);

164 (E) Five hundred (500) grams but less than one (1)  
165 kilogram, by imprisonment for not less than four (4) years nor  
166 more than sixteen (16) years and a fine of less than Two Hundred  
167 Fifty Thousand Dollars (\$250,000.00);

168 (F) One (1) kilogram but less than five (5)  
169 kilograms, by imprisonment for not less than six (6) years nor  
170 more than twenty-four (24) years and a fine of not more than Five  
171 Hundred Thousand Dollars (\$500,000.00);

172 (G) Five (5) kilograms or more, by imprisonment  
173 for not less than ten (10) years nor more than thirty (30) years  
174 and a fine of not more than One Million Dollars (\$1,000,000.00).

175 (3) A controlled substance classified in Schedule III,  
176 IV or V as set out in Sections 41-29-117 through 41-29-121, upon  
177 conviction, may be punished as follows:

178 (A) Less than fifty (50) grams or less than one  
179 hundred (100) dosage units is a misdemeanor and punishable by not  
180 more than one (1) year and a fine of not more than One Thousand  
181 Dollars (\$1,000.00).

182 (B) Fifty (50) grams but less than one hundred  
183 fifty (150) grams or one hundred (100) dosage units but less than  
184 five hundred (500) dosage units, by imprisonment for not less than  
185 one (1) year nor more than four (4) years and a fine of not more  
186 than Ten Thousand Dollars (\$10,000.00).

187 (C) One hundred fifty (150) grams but less than  
188 three hundred (300) grams or five hundred (500) dosage units but  
189 less than one thousand (1,000) dosage units, by imprisonment for  
190 not less than two (2) years nor more than eight (8) years and a  
191 fine of not more than Fifty Thousand Dollars (\$50,000.00).

192 (D) Three hundred (300) grams but less than five  
193 hundred (500) grams or one thousand (1,000) dosage units but less  
194 than two thousand five hundred (2,500) dosage units, by

195 imprisonment for not less than four (4) years nor more than  
196 sixteen (16) years and a fine of not more than Two Hundred Fifty  
197 Thousand Dollars (\$250,000.00).

198           (E) Five hundred (500) grams or more or two  
199 thousand five hundred (2,500) dosage units or more, by  
200 imprisonment for not less than six (6) years nor more than  
201 twenty-four (24) years and a fine of not more than Five Hundred  
202 Thousand Dollars (\$500,000.00).

203           (d) (1) It is unlawful for a person who is not authorized  
204 by the State Board of Medical Licensure, State Board of Pharmacy,  
205 or other lawful authority to use, or to possess with intent to  
206 use, paraphernalia to plant, propagate, cultivate, grow, harvest,  
207 manufacture, compound, convert, produce, process, prepare, test,  
208 analyze, pack, repack, store, contain, conceal, inject, ingest,  
209 inhale or otherwise introduce into the human body a controlled  
210 substance in violation of the Uniform Controlled Substances Law.  
211 Any person who violates this subsection is guilty of a misdemeanor  
212 and upon conviction may be confined in the county jail for not  
213 more than six (6) months, or fined not more than Five Hundred  
214 Dollars (\$500.00), or both; however, no person shall be charged  
215 with a violation of this subsection when such person is also  
216 charged with the possession of one (1) ounce or less of marihuana  
217 under subsection (c)(2)(A) of this section.

218           (2) It is unlawful for any person to deliver, sell,  
219 possess with intent to deliver or sell, or manufacture with intent  
220 to deliver or sell, paraphernalia, knowing, or under circumstances  
221 where one reasonably should know, that it will be used to plant,  
222 propagate, cultivate, grow, harvest, manufacture, compound,  
223 convert, produce, process, prepare, test, analyze, pack, repack,  
224 store, contain, conceal, inject, ingest, inhale, or otherwise  
225 introduce into the human body a controlled substance in violation  
226 of the Uniform Controlled Substances Law. Any person who violates  
227 this subsection is guilty of a misdemeanor and upon conviction may

228 be confined in the county jail for not more than six (6) months,  
229 or fined not more than Five Hundred Dollars (\$500.00), or both.

230 (3) Any person eighteen (18) years of age or over who  
231 violates subsection (d)(2) of this section by delivering or  
232 selling paraphernalia to a person under eighteen (18) years of age  
233 who is at least three (3) years his junior is guilty of a  
234 misdemeanor and upon conviction may be confined in the county jail  
235 for not more than one (1) year, or fined not more than One  
236 Thousand Dollars (\$1,000.00), or both.

237 (4) It is unlawful for any person to place in any  
238 newspaper, magazine, handbill, or other publication any  
239 advertisement, knowing, or under circumstances where one  
240 reasonably should know, that the purpose of the advertisement, in  
241 whole or in part, is to promote the sale of objects designed or  
242 intended for use as paraphernalia. Any person who violates this  
243 subsection is guilty of a misdemeanor and upon conviction may be  
244 confined in the county jail for not more than six (6) months, or  
245 fined not more than Five Hundred Dollars (\$500.00), or both.

246 (e) It shall be unlawful for any physician practicing  
247 medicine in this state to prescribe, dispense or administer any  
248 amphetamine or amphetamine-like anorectics and/or central nervous  
249 system stimulants classified in Schedule II, pursuant to Section  
250 41-29-115, for the exclusive treatment of obesity, weight control  
251 or weight loss. Any person who violates this subsection, upon  
252 conviction, is guilty of a misdemeanor and may be confined for a  
253 period not to exceed six (6) months, or fined not more than One  
254 Thousand Dollars (\$1,000.00), or both.

255 (f) Except as otherwise authorized in this article, any  
256 person twenty-one (21) years of age or older who knowingly sells,  
257 barter, transfers, manufactures, distributes or dispenses during  
258 any twelve (12) consecutive month period: (i) ten (10) pounds or  
259 more of marihuana; (ii) two (2) ounces or more of heroin; (iii)  
260 two (2) or more ounces of cocaine or of any mixture containing

261 cocaine as described in Section 41-29-105(s), Mississippi Code of  
262 1972; or (iv) one hundred (100) or more dosage units of morphine,  
263 Demerol or Dilaudid, shall be guilty of a felony and, upon  
264 conviction thereof, shall be sentenced to life imprisonment and  
265 such sentence shall not be reduced or suspended nor shall such  
266 person be eligible for probation or parole, the provisions of  
267 Sections 41-29-149, 47-5-139, 47-7-3 and 47-7-33, Mississippi Code  
268 of 1972, to the contrary notwithstanding. The provisions of this  
269 subsection shall not apply to any person who furnishes information  
270 and assistance to the bureau or its designee which, in the opinion  
271 of the trial judge objectively should or would have aided in the  
272 arrest or prosecution of others who violate this subsection. The  
273 accused shall have adequate opportunity to develop and make a  
274 record of all information and assistance so furnished.

275 (g) (1) Any person trafficking in controlled substances  
276 shall be guilty of a felony and upon conviction shall be  
277 imprisoned for a term of thirty (30) years and such sentence shall  
278 not be reduced or suspended nor shall such person be eligible for  
279 probation or parole, the provisions of Sections 41-29-149,  
280 47-5-139, 47-7-3 and 47-7-33, Mississippi Code of 1972, to the  
281 contrary notwithstanding and shall be fined not less than Five  
282 Thousand Dollars (\$5,000.00) nor more than One Million Dollars  
283 (\$1,000,000.00).

284 (2) "Trafficking in controlled substances" as used  
285 herein means to engage in three (3) or more component offenses  
286 within any twelve (12) consecutive month period where at least two  
287 (2) of the component offenses occurred in different counties. A  
288 component offense is any act which would constitute a violation of  
289 subsection (a) of this section. Prior convictions shall not be  
290 used as component offenses to establish the charge of trafficking  
291 in controlled substances.

292 (3) The charge of trafficking in controlled substances  
293 shall be set forth in one (1) count of an indictment with each of

294 the component offenses alleged therein and it may be charged and  
295 tried in any county where a component offense occurred. An  
296 indictment for trafficking in controlled substances may also be  
297 returned by the State Grand Jury of Mississippi provided at least  
298 two (2) of the component offenses occurred in different circuit  
299 court districts.

300 (h) Any person who is a first offender of subsection  
301 (a) of this section which does not involve the sale, distribution,  
302 manufacture or other nonpossession offense of controlled  
303 substances shall be sentenced to rehabilitation if the court  
304 determines that such rehabilitation is in the best interest of the  
305 offender.

306 **SECTION 2.** Section 41-29-150, Mississippi Code of 1972, is  
307 amended as follows:

308 41-29-150. (a) Except as otherwise provided for first-time  
309 nonviolent offenders in Section 41-29-139(h), any person convicted  
310 under Section 41-29-139 may be required, in the discretion of the  
311 court, as a part of the sentence otherwise imposed, or in lieu of  
312 imprisonment in cases of probation or suspension of sentence, to  
313 attend a course of instruction conducted by the bureau, the State  
314 Board of Health, or any similar agency, on the effects, medically,  
315 psychologically and socially, of the misuse of controlled  
316 substances. Said course may be conducted at any correctional  
317 institution, detention center or hospital, or at any center or  
318 treatment facility established for the purpose of education and  
319 rehabilitation of those persons committed because of abuse of  
320 controlled substances.

321 (b) Any person convicted under Section 41-29-139 who is  
322 found to be dependent upon or addicted to any controlled substance  
323 shall be required, as a part of the sentence otherwise imposed, or  
324 in lieu of imprisonment in cases of parole, probation or  
325 suspension of sentence, to receive medical treatment for such  
326 dependency or addiction. The regimen of medical treatment may

327 include confinement in a medical facility of any correctional  
328 institution, detention center or hospital, or at any center or  
329 facility established for treatment of those persons committed  
330 because of a dependence or addiction to controlled substances.

331 (c) Those persons previously convicted of a felony under  
332 Section 41-29-139 and who are now confined at the Mississippi  
333 State Hospital at Whitfield, Mississippi, or at the East  
334 Mississippi State Hospital at Meridian, Mississippi, for the term  
335 of their sentence shall remain under the jurisdiction of the  
336 Mississippi Department of Corrections and shall be required to  
337 abide by all reasonable rules and regulations promulgated by the  
338 director and staff of said institutions and of the Department of  
339 Corrections. Any persons so confined who shall refuse to abide by  
340 said rules or who attempt an escape or who shall escape shall be  
341 transferred to the State Penitentiary or to a county jail, where  
342 appropriate, to serve the remainder of the term of imprisonment;  
343 this provision shall not preclude prosecution and conviction for  
344 escape from said institutions.

345 (d) (1) If any person who has not previously been convicted  
346 of violating Section 41-29-139, or the laws of the United States  
347 or of another state relating to narcotic drugs, stimulant or  
348 depressant substances, other controlled substances or marihuana is  
349 found to be guilty of a violation of subsection (c) or (d) of  
350 Section 41-29-139, after trial or upon a plea of guilty, the court  
351 may, without entering a judgment of guilty and with the consent of  
352 such person, defer further proceedings and place him on probation  
353 upon such reasonable conditions as it may require and for such  
354 period, not to exceed three (3) years, as the court may prescribe.  
355 Upon violation of a condition of the probation, the court may  
356 enter an adjudication of guilt and proceed as otherwise provided.  
357 The court may, in its discretion, dismiss the proceedings against  
358 such person and discharge him from probation before the expiration  
359 of the maximum period prescribed for such person's probation. If

360 during the period of his probation such person does not violate  
361 any of the conditions of the probation, then upon expiration of  
362 such period the court shall discharge such person and dismiss the  
363 proceedings against him. Discharge and dismissal under this  
364 subsection shall be without court adjudication of guilt, but a  
365 nonpublic record thereof shall be retained by the bureau solely  
366 for the purpose of use by the courts in determining whether or  
367 not, in subsequent proceedings, such person qualifies under this  
368 subsection. Such discharge or dismissal shall not be deemed a  
369 conviction for purposes of disqualifications or disabilities  
370 imposed by law upon conviction of a crime, including the penalties  
371 prescribed under this article for second or subsequent conviction,  
372 or for any other purpose. Discharge and dismissal under this  
373 subsection may occur only once with respect to any person; and

374 (2) Upon the dismissal of such person and discharge of  
375 proceedings against him under paragraph (1) of this subsection, or  
376 with respect to a person who has been convicted and adjudged  
377 guilty of an offense under subsection (c) or (d) of Section  
378 41-29-139, or for possession of narcotics, stimulants,  
379 depressants, hallucinogens, marihuana, other controlled substances  
380 or paraphernalia under prior laws of this state, such person, if  
381 he had not reached his twenty-sixth birthday at the time of the  
382 offense, may apply to the court for an order to expunge from all  
383 official records, other than the nonpublic records to be retained  
384 by the bureau under paragraph (1) of this subsection, all  
385 recordation relating to his arrest, indictment, trial, finding of  
386 guilty, and dismissal and discharge pursuant to this section. If  
387 the court determines, after hearing, that such person was  
388 dismissed and the proceedings against him discharged and that he  
389 had not reached his twenty-sixth birthday at the time of the  
390 offense, or that such person had satisfactorily served his  
391 sentence or period of probation and parole, and that he had not  
392 reached his twenty-sixth birthday at the time of the offense, it

393 shall enter such order. The effect of such order shall be to  
394 restore such person, in the contemplation of the law, to the  
395 status he occupied before such arrest or indictment. No person as  
396 to whom such order has been entered shall be held thereafter under  
397 any provision of any law to be guilty of perjury or otherwise  
398 giving a false statement by reason of his failures to recite or  
399 acknowledge such arrest, or indictment or trial in response to any  
400 inquiry made of him for any purpose.

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

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

410 (g) It is the intent and purpose of the Legislature to  
411 promote the rehabilitation of persons convicted of offenses under  
412 the Uniform Controlled Substances Law.

413 **SECTION 3.** Section 47-7-33, Mississippi Code of 1972, is  
414 amended as follows:

415 47-7-33. (1) When it appears to the satisfaction of any  
416 circuit court or county court in the State of Mississippi, having  
417 original jurisdiction over criminal actions, or to the judge  
418 thereof, that the ends of justice and the best interest of the  
419 public, as well as the defendant, will be served thereby, such  
420 court, in termtime or in vacation, shall have the power, after  
421 conviction or a plea of guilty, except in a case where a death  
422 sentence or life imprisonment is the maximum penalty which may be  
423 imposed or where the defendant has been convicted of a felony on a  
424 previous occasion in any court or courts of the United States and  
425 of any state or territories thereof, to suspend the imposition or

426 execution of sentence, and place the defendant on probation as  
427 herein provided or require rehabilitation for first-time  
428 nonviolent offenders of the Implied Consent Law or first-time  
429 offenders of violations of the Controlled Substances Law not  
430 involving sale, distribution or manufacture, except that the court  
431 shall not suspend the execution of a sentence of imprisonment  
432 after the defendant shall have begun to serve such sentence. In  
433 placing any defendant on probation, the court, or judge, shall  
434 direct that such defendant be under the supervision of the  
435 Department of Corrections.

436 (2) When any circuit or county court places an offender on  
437 probation, the court shall give notice to the Mississippi  
438 Department of Corrections within fifteen (15) days of the court's  
439 decision to place the offender on probation. Notice shall be  
440 delivered to the central office of the Mississippi Department of  
441 Corrections and to the regional office of the department which  
442 will be providing supervision to the offender on probation.

443 (3) When any circuit court or county court places a person  
444 on probation in accordance with the provisions of this section and  
445 that person is ordered to make any payments to his family, if any  
446 member of his family whom he is ordered to support is receiving  
447 public assistance through the State Department of Public Welfare,  
448 the court shall order him to make such payments to the county  
449 welfare officer of the county rendering public assistance to his  
450 family, for the sole use and benefit of said family.

451 **SECTION 4.** Section 99-19-25, Mississippi Code of 1972, is  
452 amended as follows:

453 99-19-25. The circuit courts and the county courts, in  
454 misdemeanor cases, are hereby authorized to suspend a sentence and  
455 to suspend the execution of a sentence, or any part thereof, on  
456 such terms as may be imposed by the judge of the court. The court  
457 shall sentence first-time nonviolent offenders of the Implied  
458 Consent Law or first-time nonviolent offenders of the Controlled

459 Substances Law not involving sale, distribution or manufacture to  
460 rehabilitation. Provided, the suspension of imposition or  
461 execution of a sentence hereunder may not be revoked after a  
462 period of five (5) years.

463 The justice courts, in misdemeanor cases, are hereby  
464 authorized to suspend sentence and to suspend the execution of a  
465 sentence, or any part thereof, on such terms as may be imposed by  
466 the judge of the court. Provided, the suspension of imposition or  
467 execution of a sentence hereunder may not be revoked after a  
468 period of two (2) years. Provided, however, the justice courts in  
469 cases arising under Sections 49-7-81, 49-7-95 and the Implied  
470 Consent Law shall not suspend any fine.

471 **SECTION 5.** Section 63-11-30, Mississippi Code of 1972, is  
472 brought forward as follows:

473 63-11-30. (1) It is unlawful for any person to drive or  
474 otherwise operate a vehicle within this state who (a) is under the  
475 influence of intoxicating liquor; (b) is under the influence of  
476 any other substance which has impaired such person's ability to  
477 operate a motor vehicle; (c) has an alcohol concentration of eight  
478 one-hundredths percent (.08%) or more for persons who are above  
479 the legal age to purchase alcoholic beverages under state law, or  
480 two one-hundredths percent (.02%) or more for persons who are  
481 below the legal age to purchase alcoholic beverages under state  
482 law, in the person's blood based upon grams of alcohol per one  
483 hundred (100) milliliters of blood or grams of alcohol per two  
484 hundred ten (210) liters of breath as shown by a chemical analysis  
485 of such person's breath, blood or urine administered as authorized  
486 by this chapter; (d) is under the influence of any drug or  
487 controlled substance, the possession of which is unlawful under  
488 the Mississippi Controlled Substances Law; or (e) has an alcohol  
489 concentration of four one-hundredths percent (.04%) or more in the  
490 person's blood, based upon grams of alcohol per one hundred (100)  
491 milliliters of blood or grams of alcohol per two hundred ten (210)

492 liters of breath as shown by a chemical analysis of such person's  
493 blood, breath or urine, administered as authorized by this chapter  
494 for persons operating a commercial motor vehicle.

495 (2) (a) Except as otherwise provided in subsection (3),  
496 upon conviction of any person for the first offense of violating  
497 subsection (1) of this section where chemical tests provided for  
498 under Section 63-11-5 were given, or where chemical test results  
499 are not available, such person shall be fined not less than Two  
500 Hundred Fifty Dollars (\$250.00) nor more than One Thousand Dollars  
501 (\$1,000.00), or imprisoned for not more than forty-eight (48)  
502 hours in jail or both; and the court shall order such person to  
503 attend and complete an alcohol safety education program as  
504 provided in Section 63-11-32. The court may substitute attendance  
505 at a victim impact panel instead of forty-eight (48) hours in  
506 jail. In addition, the Department of Public Safety, the  
507 Commissioner of Public Safety or his duly authorized agent shall,  
508 after conviction and upon receipt of the court abstract, suspend  
509 the driver's license and driving privileges of such person for a  
510 period of not less than ninety (90) days and until such person  
511 attends and successfully completes an alcohol safety education  
512 program as herein provided; provided, however, in no event shall  
513 such period of suspension exceed one (1) year. Commercial driving  
514 privileges shall be suspended as provided in Section 63-1-83.

515 The circuit court having jurisdiction in the county in which  
516 the conviction was had or the circuit court of the person's county  
517 of residence may reduce the suspension of driving privileges under  
518 Section 63-11-30(2)(a) if the denial of which would constitute a  
519 hardship on the offender, except that no court may issue such an  
520 order reducing the suspension of driving privileges under this  
521 subsection until thirty (30) days have elapsed from the effective  
522 date of the suspension. Hardships shall only apply to first  
523 offenses under Section 63-11-30(1), and shall not apply to second,  
524 third or subsequent convictions of any person violating subsection

525 (1) of this section. A reduction of suspension on the basis of  
526 hardship shall not be available to any person who refused to  
527 submit to a chemical test upon the request of a law enforcement  
528 officer as provided in Section 63-11-5. When the petition is  
529 filed, such person shall pay to the circuit clerk of the court  
530 where the petition is filed a fee of Fifty Dollars (\$50.00), which  
531 shall be deposited into the State General Fund to the credit of a  
532 special fund hereby created in the State Treasury to be used for  
533 alcohol or drug abuse treatment and education, upon appropriation  
534 by the Legislature. This fee shall be in addition to any other  
535 court costs or fees required for the filing of petitions.

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

544 The order entered under the provisions of this subsection  
545 shall contain the specific grounds upon which hardship was  
546 determined, and shall order the petitioner to attend and complete  
547 an alcohol safety education program as provided in Section  
548 63-11-32. A certified copy of such order shall be delivered to  
549 the Commissioner of Public Safety by the clerk of the court within  
550 five (5) days of the entry of the order. The certified copy of  
551 such order shall contain information which will identify the  
552 petitioner, including, but not limited to, the name, mailing  
553 address, street address, social security number and driver's  
554 license number of the petitioner.

555 At any time following at least thirty (30) days of suspension  
556 for a first offense violation of this section, the court may grant  
557 the person hardship driving privileges upon written petition of

558 the defendant, if it finds reasonable cause to believe that  
559 revocation would hinder the person's ability to:

560 (i) Continue his employment;

561 (ii) Continue attending school or an educational  
562 institution; or

563 (iii) Obtain necessary medical care.

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

567 (b) Except as otherwise provided in subsection (3),  
568 upon any second conviction of any person violating subsection (1)  
569 of this section, the offenses being committed within a period of  
570 five (5) years, such person shall be fined not less than Six  
571 Hundred Dollars (\$600.00) nor more than One Thousand Five Hundred  
572 Dollars (\$1,500.00), shall be imprisoned not less than five (5)  
573 days nor more than one (1) year and sentenced to community service  
574 work for not less than ten (10) days nor more than one (1) year.  
575 The minimum penalties shall not be suspended or reduced by the  
576 court and no prosecutor shall offer any suspension or sentence  
577 reduction as part of a plea bargain. Except as may otherwise be  
578 provided by paragraph (d) of this subsection, the Commissioner of  
579 Public Safety shall suspend the driver's license of such person  
580 for two (2) years. Suspension of a commercial driver's license  
581 shall be governed by Section 63-1-83. Upon any second conviction  
582 as described in this paragraph, the court shall ascertain whether  
583 the defendant is married, and if the defendant is married shall  
584 obtain the name and address of the defendant's spouse; the clerk  
585 of the court shall submit this information to the Department of  
586 Public Safety. Further, the commissioner shall notify in writing,  
587 by certified mail, return receipt requested, the owner of the  
588 vehicle and the spouse, if any, of the person convicted of the  
589 second violation of the possibility of forfeiture of the vehicle  
590 if such person is convicted of a third violation of subsection (1)

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

596 For any second or subsequent conviction of any person under  
597 this section, the person shall also be subject to the penalties  
598 set forth in Section 63-11-31.

599 (c) Except as otherwise provided in subsection (3), for  
600 any third or subsequent conviction of any person violating  
601 subsection (1) of this section, the offenses being committed  
602 within a period of five (5) years, such person shall be guilty of  
603 a felony and fined not less than Two Thousand Dollars (\$2,000.00)  
604 nor more than Five Thousand Dollars (\$5,000.00), shall serve not  
605 less than one (1) year nor more than five (5) years in the custody  
606 of the Department of Corrections; provided, however, that for any  
607 such offense which does not result in serious injury or death to  
608 any person, any sentence of incarceration may be served in the  
609 county jail rather than in the State Penitentiary at the  
610 discretion of the circuit court judge. The minimum penalties  
611 shall not be suspended or reduced by the court and no prosecutor  
612 shall offer any suspension or sentence reduction as part of a plea  
613 bargain. The law enforcement agency shall seize the vehicle  
614 operated by any person charged with a third or subsequent  
615 violation of subsection (1) of this section, if such convicted  
616 person was driving the vehicle at the time the offense was  
617 committed. Such vehicle may be forfeited in the manner provided  
618 by Sections 63-11-49 through 63-11-53. Except as may otherwise be  
619 provided by paragraph (e) of this subsection, the Commissioner of  
620 Public Safety shall suspend the driver's license of such person  
621 for five (5) years. The suspension of a commercial driver's  
622 license shall be governed by Section 63-1-83.

623           (d) Except as otherwise provided in subsection (3), any  
624 person convicted of a second violation of subsection (1) of this  
625 section shall receive an in-depth diagnostic assessment, and if as  
626 a result of such assessment is determined to be in need of  
627 treatment of his alcohol and/or drug abuse problem, such person  
628 shall successfully complete treatment of his alcohol and/or drug  
629 abuse problem at a program site certified by the Department of  
630 Mental Health. Such person shall be eligible for reinstatement of  
631 his driving privileges upon the successful completion of such  
632 treatment after a period of one (1) year after such person's  
633 driver's license is suspended. Each person who receives a  
634 diagnostic assessment shall pay a fee representing the cost of  
635 such assessment. Each person who participates in a treatment  
636 program shall pay a fee representing the cost of such treatment.

637           (e) Except as otherwise provided in subsection (3), any  
638 person convicted of a third or subsequent violation of subsection  
639 (1) of this section shall receive an in-depth diagnostic  
640 assessment, and if as a result of such assessment is determined to  
641 be in need of treatment of his alcohol and/or drug abuse problem,  
642 such person shall enter an alcohol and/or drug abuse program  
643 approved by the Department of Mental Health for treatment of such  
644 person's alcohol and/or drug abuse problem. If such person  
645 successfully completes such treatment, such person shall be  
646 eligible for reinstatement of his driving privileges after a  
647 period of three (3) years after such person's driver's license is  
648 suspended.

649           (f) The Department of Public Safety shall promulgate  
650 rules and regulations for the use of interlock ignition devices as  
651 provided in Section 63-11-31 and consistent with the provisions  
652 therein. Such rules and regulations shall provide for the  
653 calibration of such devices and shall provide that the cost of the  
654 use of such systems shall be borne by the offender. The

655 Department of Public Safety shall approve which vendors of such  
656 devices shall be used to furnish such systems.

657 (3) (a) This subsection shall be known and may be cited as  
658 Zero Tolerance for Minors. The provisions of this subsection  
659 shall apply only when a person under the age of twenty-one (21)  
660 years has a blood alcohol concentration of two one-hundredths  
661 percent (.02%) or more, but lower than eight one-hundredths  
662 percent (.08%). If such person's blood alcohol concentration is  
663 eight one-hundredths percent (.08%) or more, the provisions of  
664 subsection (2) shall apply.

665 (b) Upon conviction of any person under the age of  
666 twenty-one (21) years for the first offense of violating  
667 subsection (1) of this section where chemical tests provided for  
668 under Section 63-11-5 were given, or where chemical test results  
669 are not available, such person shall have his driver's license  
670 suspended for ninety (90) days and shall be fined Two Hundred  
671 Fifty Dollars (\$250.00); and the court shall order such person to  
672 attend and complete an alcohol safety education program as  
673 provided in Section 63-11-32. The court may also require  
674 attendance at a victim impact panel.

675 The court in the county in which the conviction was had or  
676 the circuit court of the person's county of residence may reduce  
677 the suspension of driving privileges under Section 63-11-30(2)(a)  
678 if the denial of which would constitute a hardship on the  
679 offender, except that no court may issue such an order reducing  
680 the suspension of driving privileges under this subsection until  
681 thirty (30) days have elapsed from the effective date of the  
682 suspension. Hardships shall only apply to first offenses under  
683 Section 63-11-30(1), and shall not apply to second, third or  
684 subsequent convictions of any person violating subsection (1) of  
685 this section. A reduction of suspension on the basis of hardship  
686 shall not be available to any person who refused to submit to a  
687 chemical test upon the request of a law enforcement officer as

688 provided in Section 63-11-5. When the petition is filed, such  
689 person shall pay to the circuit clerk of the court where the  
690 petition is filed a fee of Fifty Dollars (\$50.00), which shall be  
691 deposited into the State General Fund to the credit of a special  
692 fund hereby created in the State Treasury to be used for alcohol  
693 or drug abuse treatment and education, upon appropriation by the  
694 Legislature. This fee shall be in addition to any other court  
695 costs or fees required for the filing of petitions.

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

704 The order entered under the provisions of this subsection  
705 shall contain the specific grounds upon which hardship was  
706 determined, and shall order the petitioner to attend and complete  
707 an alcohol safety education program as provided in Section  
708 63-11-32. A certified copy of such order shall be delivered to  
709 the Commissioner of Public Safety by the clerk of the court within  
710 five (5) days of the entry of the order. The certified copy of  
711 such order shall contain information which will identify the  
712 petitioner, including, but not limited to, the name, mailing  
713 address, street address, social security number and driver's  
714 license number of the petitioner.

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

720 (i) Continue his employment;

721                   (ii) Continue attending school or an educational  
722 institution; or

723                   (iii) Obtain necessary medical care.

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

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

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

740           (e) Any person under the age of twenty-one (21) years  
741 convicted of a second violation of subsection (1) of this section,  
742 may have the period that his driver's license is suspended reduced  
743 if such person receives an in-depth diagnostic assessment, and as  
744 a result of such assessment is determined to be in need of  
745 treatment of his alcohol and/or drug abuse problem and  
746 successfully completes treatment of his alcohol and/or drug abuse  
747 problem at a program site certified by the Department of Mental  
748 Health. Such person shall be eligible for reinstatement of his  
749 driving privileges upon the successful completion of such  
750 treatment after a period of six (6) months after such person's  
751 driver's license is suspended. Each person who receives a  
752 diagnostic assessment shall pay a fee representing the cost of

753 such assessment. Each person who participates in a treatment  
754 program shall pay a fee representing the cost of such treatment.

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

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

776 (4) In addition to the other penalties provided in this  
777 section, every person refusing a law enforcement officer's request  
778 to submit to a chemical test of his breath as provided in this  
779 chapter, or who was unconscious at the time of a chemical test and  
780 refused to consent to the introduction of the results of such test  
781 in any prosecution, shall suffer an additional suspension of  
782 driving privileges as follows:

783 The Commissioner of Public Safety or his authorized agent  
784 shall suspend the driver's license or permit to drive or deny the  
785 issuance of a license or permit to such person as provided for

786 first, second and third or subsequent offenders in subsection (2)  
787 of this section. Such suspension shall be in addition to any  
788 suspension imposed pursuant to subsection (1) of Section 63-11-23.  
789 The minimum suspension imposed under this subsection shall not be  
790 reduced and no prosecutor is authorized to offer a reduction of  
791 such suspension as part of a plea bargain.

792 (5) Every person who operates any motor vehicle in violation  
793 of the provisions of subsection (1) of this section and who in a  
794 negligent manner causes the death of another or mutilates,  
795 disfigures, permanently disables or destroys the tongue, eye, lip,  
796 nose or any other limb, organ or member of another shall, upon  
797 conviction, be guilty of a separate felony for each such death,  
798 mutilation, disfigurement or other injury and shall be committed  
799 to the custody of the State Department of Corrections for a period  
800 of time of not less than five (5) years and not to exceed  
801 twenty-five (25) years for each such death, mutilation,  
802 disfigurement or other injury, and the imprisonment for the second  
803 or each subsequent conviction, in the discretion of the court,  
804 shall commence either at the termination of the imprisonment for  
805 the preceding conviction or run concurrently with the preceding  
806 conviction. Any person charged with causing the death of another  
807 as described in this subsection shall be required to post bail  
808 before being released after arrest.

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

819 Public Safety. A copy of the traffic ticket, citation or  
820 affidavit and any other pertinent documents, having been attested  
821 as true and correct by the Commissioner of Public Safety, or his  
822 designee, shall be sufficient proof of the conviction for purposes  
823 of determining the enhanced penalty for any subsequent convictions  
824 of violations of subsection (1) of this section.

825 (7) Convictions in other states of violations for driving or  
826 operating a vehicle while under the influence of an intoxicating  
827 liquor or while under the influence of any other substance that  
828 has impaired the person's ability to operate a motor vehicle  
829 occurring after July 1, 1992, shall be counted for the purposes of  
830 determining if a violation of subsection (1) of this section is a  
831 first, second, third or subsequent offense and the penalty that  
832 shall be imposed upon conviction for a violation of subsection (1)  
833 of this section.

834 (8) For the purposes of determining how to impose the  
835 sentence for a second, third or subsequent conviction under this  
836 section, the indictment shall not be required to enumerate  
837 previous convictions. It shall only be necessary that the  
838 indictment state the number of times that the defendant has been  
839 convicted and sentenced within the past five (5) years under this  
840 section to determine if an enhanced penalty shall be imposed. The  
841 amount of fine and imprisonment imposed in previous convictions  
842 shall not be considered in calculating offenses to determine a  
843 second, third or subsequent offense of this section.

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

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

851           (11) The court may order the use of any ignition interlock  
852 device as provided in Section 63-11-31.

853           **SECTION 6.** This act shall take effect and be in force from  
854 and after July 1, 2005.