

By: Representative Scott

To: Juvenile Justice;  
Corrections

## HOUSE BILL NO. 1441

1 AN ACT TO AMEND SECTION 43-21-605, MISSISSIPPI CODE OF 1972,  
2 TO PROVIDE THAT JUVENILE OFFENDERS MAY BE SENTENCED TO THE  
3 INTENSIVE SUPERVISION PROGRAM ADMINISTERED BY THE DEPARTMENT OF  
4 CORRECTIONS; TO PROVIDE THAT THE MINIMUM SENTENCE UNDER THIS  
5 PROGRAM SHALL BE SIX MONTHS FOR JUVENILE OFFENDERS; TO REQUIRE  
6 JUVENILE OFFENDERS TO BE TESTED FOR ALCOHOL AND DRUGS; TO REQUIRE  
7 JUVENILE OFFENDERS TO PAY TEN DOLLARS FOR THE TEST; TO PROVIDE  
8 THAT IF A JUVENILE OFFENDER TESTS POSITIVE FOR ALCOHOL OR DRUGS HE  
9 OR SHE SHALL BE REQUIRED TO ATTEND AN ALCOHOL AND DRUG  
10 REHABILITATION PROGRAM; AN ACT TO REENACT SECTIONS 47-5-1001,  
11 47-5-1003, 47-5-1005, 47-5-1007, 47-5-1009, 47-5-1011, 47-5-1013  
12 AND 47-5-1015, MISSISSIPPI CODE OF 1972, WHICH ESTABLISH THE  
13 INTENSIVE SUPERVISION PROGRAM AND PERMIT A COURT TO PLACE AN  
14 OFFENDER IN THE PROGRAM AS AN ALTERNATIVE TO INCARCERATION,  
15 PROVIDE RULES AND GUIDELINES FOR OPERATION OF THE PROGRAM,  
16 PROVIDE PAYMENT OF FEES BY PARTICIPANTS OF THE PROGRAM AND WHICH  
17 WERE REPEALED BY OPERATION OF LAW ON JULY 1, 2004; TO AMEND  
18 REENACTED SECTION 47-5-1007, MISSISSIPPI CODE OF 1972, TO PROVIDE  
19 THAT JUVENILE OFFENDERS SENTENCED TO THE INTENSIVE SUPERVISION  
20 PROGRAM SHALL PAY A MONTHLY FEE TO OFFSET THE COST OF THE  
21 INTENSIVE SUPERVISION PROGRAM; TO AMEND REENACTED SECTION  
22 47-5-1013, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT JUVENILE  
23 OFFENDERS SHALL NOT PAY A PROGRAM FEE BUT SHALL PAY A MONTHLY FEE;  
24 TO AMEND REENACTED SECTIONS 47-5-1003, MISSISSIPPI CODE OF 1972,  
25 IN CONFORMITY THERETO; TO AMEND REENACTED SECTION 47-5-1015,  
26 MISSISSIPPI CODE OF 1972, TO EXTEND THE DATE OF REPEAL ON THE  
27 REENACTED SECTIONS FROM JUNE 30, 2004, TO JUNE 30, 2006; AND FOR  
28 RELATED PURPOSES.

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

30 **SECTION 1.** Section 43-21-605, Mississippi Code of 1972, is  
31 amended as follows:

32 43-21-605. (1) In delinquency cases, the disposition order  
33 may include any of the following alternatives:

34 (a) Release the child without further action;

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

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

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

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

52           (f) Suspend the child's driver's license by taking and  
53 keeping it in custody of the court for not more than one (1) year;

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

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

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

62                 (iii) The Department of Human Services for  
63 placement in a wilderness training program or a state-supported  
64 training school, except that no child under the age of ten (10)  
65 years shall be committed to a state training school. The training  
66 school may retain custody of the child until the child's twentieth  
67 birthday but for no longer. The superintendent of a state  
68 training school may parole a child at any time he may deem it in  
69 the best interest and welfare of such child. Twenty (20) days  
70 prior to such parole, the training school shall notify the  
71 committing court of the pending release. The youth court may then

72 arrange subsequent placement after a reconvened disposition  
73 hearing except that the youth court may not recommit the child to  
74 the training school or any other secure facility without an  
75 adjudication of a new offense or probation or parole violation.  
76 Prior to assigning the custody of any child to any private  
77 institution or agency, the youth court through its designee shall  
78 first inspect the physical facilities to determine that they  
79 provide a reasonable standard of health and safety for the child.  
80 The youth court shall not place a child in the custody of a state  
81 training school for truancy, unless such child has been  
82 adjudicated to have committed an act of delinquency in addition to  
83 truancy;

84 (h) Recommend to the child and the child's parents or  
85 guardian that the child attend and participate in the Youth  
86 Challenge Program under the Mississippi National Guard, as created  
87 in Section 43-27-203, subject to the selection of the child for  
88 the program by the National Guard; however, the child must  
89 volunteer to participate in the program. The youth court may not  
90 order any child to apply or attend the program;

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

97 (ii) The severity of the crime, whether or not the  
98 juvenile is a repeat offender or is a felony offender will be  
99 taken into consideration by the judge when adjudicating a juvenile  
100 to the work program. The juveniles adjudicated to the work  
101 program will be supervised by police officers or reserve officers.  
102 The term of service will be from twenty-four (24) to one hundred  
103 twenty (120) hours of community service. A juvenile will work the  
104 hours to which he was adjudicated on the weekends during school

105 and week days during the summer. Parents are responsible for a  
106 juvenile reporting for work. Noncompliance with an order to  
107 perform community service will result in a heavier adjudication.  
108 A juvenile may be adjudicated to the community service program  
109 only two (2) times;

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

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

117 (k) Order terms of house arrest under the intensive  
118 supervision program as created in Sections 47-5-1001 through  
119 47-5-1015. The Department of Corrections shall take bids for the  
120 program provided by this act. The Department of Human Services  
121 shall promulgate rules regarding the supervision of juveniles  
122 placed in the intensive supervision program. There shall be one  
123 thousand five hundred (1,500) slots created in the intensive  
124 supervision program for juveniles. Any juvenile sentenced to  
125 house arrest shall be tested for alcohol and drugs, and if the  
126 juvenile tests positive for alcohol or drugs, the juvenile shall  
127 be ordered to participate in an alcohol and drug rehabilitation  
128 program. The juvenile shall pay Ten Dollars (\$10.00) to offset  
129 the cost of administering the alcohol and drug test. The  
130 juveniles must attend school, alternative school or be in the  
131 process of working toward a general educational development (GED)  
132 certificate; or

133 (l) Order the child into a juvenile detention center  
134 operated by the county or into a juvenile detention center  
135 operated by any county with which the county in which the court is  
136 located has entered into a contract for the purpose of housing  
137 delinquents. The time period for such detention cannot exceed

138 ninety (90) days. The youth court judge may order that the number  
139 of days specified in the detention order be served either  
140 throughout the week or on weekends only.

141 (2) In addition to any of the disposition alternatives  
142 authorized under subsection (1) of this section, the disposition  
143 order in any case in which the child is adjudicated delinquent for  
144 an offense under Section 63-11-30 shall include an order denying  
145 the driver's license and driving privileges of the child as  
146 required under subsection (8) of Section 63-11-30.

147 (3) If the youth court places a child in a state-supported  
148 training school, the court may order the parents or guardians of  
149 the child and other persons living in the child's household to  
150 receive counseling and parenting classes for rehabilitative  
151 purposes while the child is in the legal custody of the training  
152 school. A youth court entering an order under this subsection (3)  
153 shall utilize appropriate services offered either at no cost or  
154 for a fee calculated on a sliding scale according to income unless  
155 the person ordered to participate elects to receive other  
156 counseling and classes acceptable to the court at the person's  
157 sole expense.

158 (4) Fines levied under this chapter shall be paid into the  
159 general fund of the county but, in those counties wherein the  
160 youth court is a branch of the municipal government, it shall be  
161 paid into the municipal treasury.

162 (5) Any institution or agency to which a child has been  
163 committed shall give to the youth court any information concerning  
164 the child as the youth court may at any time require.

165 (6) The youth court shall not place a child in another  
166 school district who has been expelled from a school district for  
167 the commission of a violent act. For the purpose of this  
168 subsection, "violent act" means any action which results in death  
169 or physical harm to another or an attempt to cause death or  
170 physical harm to another.

171           (7) The youth court may require drug testing as part of a  
172 disposition order. If a child tests positive, the court may  
173 require treatment, counseling and random testing, as it deems  
174 appropriate. The costs of such tests shall be paid by the parent,  
175 guardian or custodian of the child unless the court specifically  
176 finds that the parent, guardian or custodian is unable to pay.

177           **SECTION 2.** Section 47-5-1001, Mississippi Code of 1972, is  
178 reenacted as follows:

179           47-5-1001. For purposes of Sections 47-5-1001 through  
180 47-5-1015, the following words shall have the meaning ascribed  
181 herein unless the context shall otherwise require:

182           (a) "Approved electronic monitoring device" means a  
183 device approved by the department which is primarily intended to  
184 record and transmit information regarding the offender's presence  
185 or nonpresence in the home.

186           (b) "Correctional field officer" means the supervising  
187 probation and parole officer in charge of supervising the  
188 offender.

189           (c) "Court" means a circuit court having jurisdiction  
190 to place an offender to the intensive supervision program.

191           (d) "Department" means the Department of Corrections.

192           (e) "House arrest" means the confinement of a person  
193 convicted or charged with a crime to his place of residence under  
194 the terms and conditions established by the department or court.

195           (f) "Operating capacity" means the total number of  
196 state offenders which can be safely and reasonably housed in  
197 facilities operated by the department and in local or county jails  
198 or other facilities authorized to house state offenders as  
199 certified by the department, subject to applicable federal and  
200 state laws and rules and regulations.

201           (g) "Participant" means an offender placed into an  
202 intensive supervision program.

203           **SECTION 3.** Section 47-5-1003, Mississippi Code of 1972, is  
204 reenacted and amended as follows:

205           47-5-1003. (1) An intensive supervision program may be used  
206 as an alternative to incarceration for offenders who are low risk  
207 and nonviolent as selected by the department or court and for  
208 juvenile offenders as provided in Section 43-21-605 (k). Any  
209 offender convicted of a sex crime or a felony violation of Section  
210 41-29-139(a)(1) shall not be placed in the program.

211           (2) The court placing an offender in the intensive  
212 supervision program may, acting upon the advice and consent of the  
213 commissioner and not later than one (1) year after the defendant  
214 has been delivered to the custody of the department, suspend the  
215 further execution of the sentence and place the defendant on  
216 intensive supervision, except when a death sentence or life  
217 imprisonment is the maximum penalty which may be imposed or if the  
218 defendant has been confined for the conviction of a felony on a  
219 previous occasion in any court or courts of the United States and  
220 of any state or territories thereof or has been convicted of a  
221 felony involving the use of a deadly weapon.

222           (3) To protect and to ensure the safety of the state's  
223 citizens, any offender who violates an order or condition of the  
224 intensive supervision program may be arrested by the correctional  
225 field officer and placed in the actual custody of the Department  
226 of Corrections. Such offender is under the full and complete  
227 jurisdiction of the department and subject to removal from the  
228 program by the classification hearing officer.

229           (4) When any circuit or county court places an offender in  
230 an intensive supervision program, the court shall give notice to  
231 the Mississippi Department of Corrections within fifteen (15) days  
232 of the court's decision to place the offender in an intensive  
233 supervision program. Notice shall be delivered to the central  
234 office of the Mississippi Department of Corrections and to the

235 regional office of the department which will be providing  
236 supervision to the offender in an intensive supervision program.

237 The courts may not require an offender to complete the  
238 intensive supervision program as a condition of probation or  
239 post-release supervision.

240 **SECTION 4.** Section 47-5-1005, Mississippi Code of 1972, is  
241 reenacted as follows:

242 47-5-1005. (1) The department shall promulgate rules that  
243 prescribe reasonable guidelines under which an intensive  
244 supervision program shall operate. These rules shall include, but  
245 not be limited to, the following:

246 (a) The participant shall remain within the interior  
247 premises or within the property boundaries of his or her residence  
248 at all times during the hours designated by the correctional field  
249 officer.

250 (b) Approved absences from the home may include, but  
251 are not limited to, the following:

252 (i) Working or employment approved by the court or  
253 department and traveling to or from approved employment;

254 (ii) Unemployed and seeking employment approved  
255 for the participant by the court or department;

256 (iii) Undergoing medical, psychiatric, mental  
257 health treatment, counseling or other treatment programs approved  
258 for the participant by the court or department;

259 (iv) Attending an educational institution or a  
260 program approved for the participant by the court or department;

261 (v) Participating in community work release or  
262 community service program approved for the participant by the  
263 court or department; or

264 (vi) For another compelling reason consistent with  
265 the public interest, as approved by the court or department.



266 (2) The department shall select and approve all electronic  
267 monitoring devices used under Sections 47-5-1001 through  
268 47-5-1015.

269 (3) The department may lease the equipment necessary to  
270 implement the intensive supervision program and to contract for  
271 the monitoring of such devices. The department is authorized to  
272 select the lowest price and best source in contracting for these  
273 services.

274 **SECTION 5.** Section 47-5-1007, Mississippi Code of 1972, is  
275 reenacted and amended as follows:

276 47-5-1007. (1) Any participant in the intensive supervision  
277 program who engages in employment shall pay a monthly fee to the  
278 department for each month such person is enrolled in the program.  
279 The department may waive the monthly fee if the offender is a  
280 full-time student or is engaged in vocational training. Juvenile  
281 offenders shall pay a monthly fee of not less than Ten Dollars  
282 (\$10.00) but not more than Fifty Dollars (\$50.00) based on a  
283 sliding scale using the standard of need for each family that is  
284 used to calculate TANF benefits. Money received by the department  
285 from participants in the program shall be deposited into a special  
286 fund which is hereby created in the State Treasury. It shall be  
287 used, upon appropriation by the Legislature, for the purpose of  
288 helping to defray the costs involved in administering and  
289 supervising such program. Unexpended amounts remaining in such  
290 special fund at the end of a fiscal year shall not lapse into the  
291 State General Fund, and any interest earned on amounts in such  
292 special fund shall be deposited to the credit of the special fund.

293 (2) The participant shall admit any correctional officer  
294 into his residence at any time for purposes of verifying the  
295 participant's compliance with the conditions of his detention.

296 (3) The participant shall make the necessary arrangements to  
297 allow for correctional officers to visit the participant's place  
298 of education or employment at any time, based upon the approval of

299 the educational institution or employer, for the purpose of  
300 verifying the participant's compliance with the conditions of his  
301 detention.

302 (4) The participant shall acknowledge and participate with  
303 the approved electronic monitoring device as designated by the  
304 department at any time for the purpose of verifying the  
305 participant's compliance with the conditions of his detention.

306 (5) The participant shall be responsible for and shall  
307 maintain the following:

308 (a) A working telephone line in the participant's home;

309 (b) A monitoring device in the participant's home, or  
310 on the participant's person or both; and

311 (c) A monitoring device in the participant's home and  
312 on the participant's person in the absence of a telephone.

313 (6) The participant shall obtain approval from the  
314 correctional field officer before the participant changes  
315 residence.

316 (7) The participant shall not commit another crime during  
317 the period of home detention ordered by the court or department.

318 (8) Notice shall be given to the participant that violation  
319 of the order of home detention shall subject the participant to  
320 prosecution for the crime of escape as a felony.

321 (9) The participant shall abide by other conditions as set  
322 by the department.

323 **SECTION 6.** Section 47-5-1009, Mississippi Code of 1972, is  
324 reenacted as follows:

325 47-5-1009. (1) The department shall have absolute immunity  
326 from liability for any injury resulting from a determination by a  
327 judge or correctional officer that an offender shall be allowed to  
328 participate in the electronic home detention program.

329 (2) The Department of Audit shall annually audit the records  
330 of the department to ensure compliance with Sections 47-5-1001  
331 through 47-5-1015.

332           **SECTION 7.** Section 47-5-1011, Mississippi Code of 1972, is  
333 reenacted as follows:

334           47-5-1011. (1) Before entering an order for commitment for  
335 electronic house arrest, the department shall inform the  
336 participant and other persons residing in the home of the nature  
337 and extent of the approved electronic monitoring devices by doing  
338 the following:

339                   (a) Securing the written consent of the participant in  
340 the program to comply with the rules and regulations of the  
341 program.

342                   (b) Advising adult persons residing in the home of the  
343 participant at the time an order or commitment for electronic  
344 house arrest is entered and asking such persons to acknowledge the  
345 nature and extent of approved electronic monitoring devices.

346                   (c) Insuring that the approved electronic devices are  
347 minimally intrusive upon the privacy of other persons residing in  
348 the home while remaining in compliance with Sections 47-5-1001  
349 through 47-5-1015.

350           (2) The participant shall be responsible for the cost of  
351 equipment and any damage to such equipment. Any intentional  
352 damage, any attempt to defeat monitoring, any committing of a  
353 criminal offense or any associating with felons or known  
354 criminals, shall constitute a violation of the program.

355           (3) Any person whose residence is utilized in the program  
356 shall agree to keep the home drug and alcohol free and to exclude  
357 known felons and criminals in order to provide a noncriminal  
358 environment.

359           **SECTION 8.** Section 47-5-1013, Mississippi Code of 1972, is  
360 reenacted and amended as follows:

361           47-5-1013. Participants enrolled in an intensive supervision  
362 program shall be required to:

363                   (a) Maintain employment if physically able, or  
364 full-time student status at an approved school or vocational

365 trade, and make progress deemed satisfactory to the correctional  
366 field officer, or both, or be involved in supervised job searches.

367 (b) Pay restitution and program fees as directed by the  
368 department. Program fees shall not be less than Fifty Dollars  
369 (\$50.00) nor more than the actual cost of the program. The  
370 sentencing judge may charge a program fee of less than Fifty  
371 Dollars (\$50.00) in cases of extreme financial hardship, when such  
372 judge determines that the offender's participation in the program  
373 would provide a benefit to his community. Juvenile offenders  
374 shall not pay a program fee, but shall pay a monthly fee as  
375 provided in Section 47-5-1007. Program fees shall be deposited in  
376 the special fund created in Section 47-5-1007.

377 (c) Establish a place of residence at a place approved  
378 by the correctional field officer, and not change his residence  
379 without the officer's approval. The correctional officer shall be  
380 allowed to inspect the place of residence for alcoholic beverages,  
381 controlled substances and drug paraphernalia.

382 (d) Remain at his place of residence at all times  
383 except to go to work, to attend school, to perform community  
384 service and as specifically allowed in each instance by the  
385 correctional field officer.

386 (e) Allow administration of drug and alcohol tests as  
387 requested by the field officer.

388 (f) Perform not less than ten (10) hours of community  
389 service each month.

390 (g) Meet any other conditions imposed by the court to  
391 meet the needs of the offender and limit the risks to the  
392 community.

393 **SECTION 9.** Section 47-5-1015, Mississippi Code of 1972, is  
394 reenacted and amended as follows:

395 47-5-1015. Sections 47-5-1001 through 47-5-1015 shall stand  
396 repealed after June 30, 2006.

397           **SECTION 10.** This act shall take effect and be in force from  
398 and after July 1, 2005.