

By: Representative Hines

To: Juvenile Justice;
Corrections

HOUSE BILL NO. 1465

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 \$10.00 FOR THE TEST; TO PROVIDE THAT IF
8 A JUVENILE OFFENDER TESTS POSITIVE FOR ALCOHOL OR DRUGS HE OR SHE
9 SHALL BE REQUIRED TO ATTEND AN ALCOHOL AND DRUG REHABILITATION
10 PROGRAM; TO REENACT SECTIONS 47-5-1001, 47-5-1003, 47-5-1005,
11 47-5-1007, 47-5-1009, 47-5-1011, 47-5-1013 AND 47-5-1015,
12 MISSISSIPPI CODE OF 1972, WHICH ESTABLISH THE INTENSIVE
13 SUPERVISION PROGRAM AND PERMIT A COURT TO PLACE AN OFFENDER IN THE
14 PROGRAM AS AN ALTERNATIVE TO INCARCERATION, PROVIDE RULES AND
15 GUIDELINES FOR OPERATION OF THE PROGRAM, PROVIDE PAYMENT OF FEES
16 BY PARTICIPANTS OF THE PROGRAM AND WHICH WERE REPEALED BY
17 OPERATION OF LAW ON JULY 1, 2004; TO AMEND REENACTED SECTION
18 47-5-1007, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT JUVENILE
19 OFFENDERS SENTENCED TO THE INTENSIVE SUPERVISION PROGRAM SHALL PAY
20 A MONTHLY FEE TO OFFSET THE COST OF THE INTENSIVE SUPERVISION
21 PROGRAM; TO AMEND REENACTED SECTION 47-5-1013, MISSISSIPPI CODE OF
22 1972, TO PROVIDE THAT JUVENILE OFFENDERS SHALL NOT PAY A PROGRAM
23 FEE BUT SHALL PAY A MONTHLY FEE; TO AMEND REENACTED SECTION
24 47-5-1003, MISSISSIPPI CODE OF 1972, IN CONFORMITY THERETO; TO
25 AMEND REENACTED SECTION 47-5-1015, MISSISSIPPI CODE OF 1972, TO
26 EXTEND THE DATE OF REPEAL ON THE REENACTED SECTIONS FROM JUNE 30,
27 2004, TO JUNE 30, 2006; AND FOR RELATED PURPOSES.

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

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

31 43-21-605. (1) In delinquency cases, the disposition order
32 may include any of the following alternatives:

33 (a) Release the child without further action;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

178 47-5-1001. For purposes of Sections 47-5-1001 through
179 47-5-1015, the following words shall have the meaning ascribed
180 herein unless the context shall otherwise require:

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

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

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

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

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

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

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

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

204 47-5-1003. (1) An intensive supervision program may be used
205 as an alternative to incarceration for offenders who are low risk
206 and nonviolent as selected by the department or court and for
207 juvenile offenders as provided in Section 43-21-605 (k). Any
208 offender convicted of a sex crime or a felony violation of Section
209 41-29-139(a)(1) shall not be placed in the program.

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

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

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

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

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

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

241 47-5-1005. (1) The department shall promulgate rules that
242 prescribe reasonable guidelines under which an intensive
243 supervision program shall operate. These rules shall include, but
244 not be limited to, the following:

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

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

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

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

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

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

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

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

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

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

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

275 47-5-1007. (1) Any participant in the intensive supervision
276 program who engages in employment shall pay a monthly fee to the
277 department for each month such person is enrolled in the program.
278 The department may waive the monthly fee if the offender is a
279 full-time student or is engaged in vocational training. Juvenile
280 offenders shall pay a monthly fee of not less than Ten Dollars
281 (\$10.00) but not more than Fifty Dollars (\$50.00) based on a
282 sliding scale using the standard of need for each family that is
283 used to calculate TANF benefits. Money received by the department
284 from participants in the program shall be deposited into a special
285 fund which is hereby created in the State Treasury. It shall be
286 used, upon appropriation by the Legislature, for the purpose of
287 helping to defray the costs involved in administering and
288 supervising such program. Unexpended amounts remaining in such
289 special fund at the end of a fiscal year shall not lapse into the
290 State General Fund, and any interest earned on amounts in such
291 special fund shall be deposited to the credit of the special fund.

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

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

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

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

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

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

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

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

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

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

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

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

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

324 47-5-1009. (1) The department shall have absolute immunity
325 from liability for any injury resulting from a determination by a
326 judge or correctional officer that an offender shall be allowed to
327 participate in the electronic home detention program.

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

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

333 47-5-1011. (1) Before entering an order for commitment for
334 electronic house arrest, the department shall inform the
335 participant and other persons residing in the home of the nature
336 and extent of the approved electronic monitoring devices by doing
337 the following:

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

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

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

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

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

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

360 47-5-1013. Participants enrolled in an intensive supervision
361 program shall be required to:

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

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

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

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

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

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

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

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

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

394 47-5-1015. Sections 47-5-1001 through 47-5-1015 shall stand
395 repealed after June 30, 2006.

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