

By: Representatives Gipson, Miles, Monsour,
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To: Judiciary B

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1089

1 AN ACT TO CREATE "THE RIVERS MCGRAW ACT"; TO PROVIDE THAT NO
2 PERSON UNDER THE AGE OF TWENTY-ONE, WHO IS ARRESTED FOR AN OFFENSE
3 UNDER THE UNIFORM CONTROLLED SUBSTANCES LAW OR THE DUI LAW MAY BE
4 RELEASED ON BAIL UNTIL CERTAIN CIRCUMSTANCES ARE MET; TO REQUIRE
5 NOTICE TO PARENTS BEFORE SUCH PERSON IS RELEASED; TO AMEND SECTION
6 63-11-30, MISSISSIPPI CODE OF 1972, TO CONFORM TO THE PRECEDING
7 SECTION; AND FOR RELATED PURPOSES.

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

9 **SECTION 1.** This act shall be known and referred to as "The
10 Rivers McGraw Act."

11 **SECTION 2.** (1) If a person under the age of twenty-one (21)
12 is arrested for an offense under the Uniform Controlled Substances
13 Law or a violation of Section 63-11-30, no bail shall be granted
14 and the person so arrested shall not be released, until one (1) of
15 the following occurs within eight (8) hours of the arrest:

16 (a) That one or more of the parents, or a person having
17 legal custody, of the person arrested is present at the time of
18 release. The court specifically finds that it is an unreasonable
19 burden on law enforcement personnel to make determinations as to



20 parental custody rights in contested situations, and authorizes
21 release to either parent.

22 (b) That, because the parents are not reasonably
23 available to appear personally because of travel, out-of-state
24 residence, or similar circumstances, law enforcement personnel
25 take reasonable steps to determine that the parent or parents are
26 notified and concur in release of the defendant on scheduled bail.

27 (c) That an attorney who represents that he or she is
28 acting with the knowledge and consent of the parent or parents
29 requests release of the defendant on scheduled bail. Such
30 representation and request may either be made in writing or
31 verbally, with any such verbal request to be noted in law
32 enforcement records.

33 (2) If none of the conditions described in subsection (1)
34 are met within eight (8) hours of such arrest, the court shall
35 make itself available for emergency hearing, either in person or
36 by telephone, at the request of counsel representing the
37 defendant. If the defendant remains in custody and is unable to
38 meet any of the conditions of release described herein, the court
39 shall hold a hearing within forty-eight (48) hours of the arrest
40 in compliance with URCCC 6.03. In event that the court is unable
41 to hold such hearing within forty-eight (48) hours of the arrest
42 due to circumstances beyond the control of the court, the
43 defendant may be released on scheduled bail without additional
44 conditions.



45 (3) The provisions of this section do not place any
46 additional responsibility upon the police to make calls or allow
47 the arrested person to make telephone calls beyond the existing
48 requirements of the United States Constitution, the Mississippi
49 Constitution or applicable statutes.

50 (4) Nothing in this section shall be construed to interfere
51 with the judges' authority, if any, to deny bail or to otherwise
52 lawfully detain a particular defendant.

53 (5) The notification and approval provisions of this section
54 shall apply to any person under the age of twenty-one (21) who is
55 asked by any local, state or federal law enforcement official to
56 serve as a confidential informant. Approval shall be obtained at
57 least seventy-two (72) hours before any person under the age of
58 twenty-one (21) serves as a confidential informant.

59 **SECTION 3.** Section 63-11-30, Mississippi Code of 1972, is
60 amended as follows:

61 63-11-30. (1) It is unlawful for a person to drive or
62 otherwise operate a vehicle within this state if the person:

63 (a) Is under the influence of intoxicating liquor;

64 (b) Is under the influence of any other substance that
65 has impaired the person's ability to operate a motor vehicle;

66 (c) Is under the influence of any drug or controlled
67 substance, the possession of which is unlawful under the
68 Mississippi Controlled Substances Law; or



69 (d) Has an alcohol concentration in the person's blood,
70 based upon grams of alcohol per one hundred (100) milliliters of
71 blood, or grams of alcohol per two hundred ten (210) liters of
72 breath, as shown by a chemical analysis of the person's breath,
73 blood or urine administered as authorized by this chapter, of:

74 (i) Eight one-hundredths percent (.08%) or more
75 for a person who is above the legal age to purchase alcoholic
76 beverages under state law;

77 (ii) Two one-hundredths percent (.02%) or more for
78 a person who is below the legal age to purchase alcoholic
79 beverages under state law; or

80 (iii) Four one-hundredths percent (.04%) or more
81 for a person operating a commercial motor vehicle.

82 (2) Except as otherwise provided in subsection (3) of this
83 section (Zero Tolerance for Minors):

84 (a) **First offense DUI.** (i) Upon conviction of any
85 person for the first offense of violating subsection (1) of this
86 section where chemical tests under Section 63-11-5 were given, or
87 where chemical test results are not available, the person shall be
88 fined not less than Two Hundred Fifty Dollars (\$250.00) nor more
89 than One Thousand Dollars (\$1,000.00), or imprisoned for not more
90 than forty-eight (48) hours in jail, or both; however, any person
91 who is under the age of twenty-one (21) shall be released as
92 provided in Section 1 of this act. The court shall order the
93 person to attend and complete an alcohol safety education program



94 as provided in Section 63-11-32 within six (6) months of
95 sentencing. The court may substitute attendance at a victim
96 impact panel instead of forty-eight (48) hours in jail.

97 (ii) Suspension of commercial driving privileges
98 is governed by Section 63-1-216.

99 (iii) A qualifying first offense may be
100 nonadjudicated by the court under subsection (14) of this section.
101 The holder of a commercial driver's license or a commercial
102 learning permit is ineligible for nonadjudication.

103 (iv) Eligibility for an interlock-restricted
104 license is governed by Section 63-11-31 and suspension of regular
105 driving privileges is governed by Section 63-11-23.

106 (b) **Second offense DUI.** (i) Upon any second
107 conviction of any person violating subsection (1) of this section,
108 the offenses being committed within a period of five (5) years,
109 the person shall be guilty of a misdemeanor, fined not less than
110 Six Hundred Dollars (\$600.00) nor more than One Thousand Five
111 Hundred Dollars (\$1,500.00), shall be imprisoned not less than
112 five (5) days nor more than six (6) months and sentenced to
113 community service work for not less than ten (10) days nor more
114 than six (6) months. The minimum penalties shall not be suspended
115 or reduced by the court and no prosecutor shall offer any
116 suspension or sentence reduction as part of a plea bargain.

117 (ii) Suspension of commercial driving privileges
118 is governed by Section 63-1-216.



119 (iii) Eligibility for an interlock-restricted
120 license is governed by Section 63-11-31 and suspension of regular
121 driving privileges is governed by Section 63-11-23.

122 (c) **Third offense DUI.** (i) For a third conviction of
123 a person for violating subsection (1) of this section, the
124 offenses being committed within a period of five (5) years, the
125 person shall be guilty of a felony and fined not less than Two
126 Thousand Dollars (\$2,000.00) nor more than Five Thousand Dollars
127 (\$5,000.00), and shall serve not less than one (1) year nor more
128 than five (5) years in the custody of the Department of
129 Corrections. For any offense that does not result in serious
130 injury or death to any person, the sentence of incarceration may
131 be served in the county jail rather than in the State Penitentiary
132 at the discretion of the circuit court judge. The minimum
133 penalties shall not be suspended or reduced by the court and no
134 prosecutor shall offer any suspension or sentence reduction as
135 part of a plea bargain.

136 (ii) The suspension of commercial driving
137 privileges is governed by Section 63-1-216.

138 (iii) The suspension of regular driving privileges
139 is governed by Section 63-11-23.

140 (d) **Fourth and subsequent offense DUI.** (i) For any
141 fourth or subsequent conviction of a violation of subsection (1)
142 of this section, without regard to the time period within which
143 the violations occurred, the person shall be guilty of a felony



144 and fined not less than Three Thousand Dollars (\$3,000.00) nor
145 more than Ten Thousand Dollars (\$10,000.00), and shall serve not
146 less than two (2) years nor more than ten (10) years in the
147 custody of the Department of Corrections.

148 (ii) The suspension of commercial driving
149 privileges is governed by Section 63-1-216.

150 (iii) A person convicted of a fourth or subsequent
151 offense is ineligible to exercise the privilege to operate a motor
152 vehicle that is not equipped with an ignition-interlock device for
153 ten (10) years.

154 (e) Any person convicted of a second or subsequent
155 violation of subsection (1) of this section shall receive an
156 in-depth diagnostic assessment, and if as a result of the
157 assessment is determined to be in need of treatment for alcohol or
158 drug abuse, the person must successfully complete treatment at a
159 program site certified by the Department of Mental Health. Each
160 person who receives a diagnostic assessment shall pay a fee
161 representing the cost of the assessment. Each person who
162 participates in a treatment program shall pay a fee representing
163 the cost of treatment.

164 (f) The use of ignition-interlock devices is governed
165 by Section 63-11-31.

166 (3) **Zero Tolerance for Minors.** (a) This subsection shall
167 be known and may be cited as Zero Tolerance for Minors. The
168 provisions of this subsection shall apply only when a person under



169 the age of twenty-one (21) years has a blood alcohol concentration
170 of two one-hundredths percent (.02%) or more, but lower than eight
171 one-hundredths percent (.08%). If the person's blood alcohol
172 concentration is eight one-hundredths percent (.08%) or more, the
173 provisions of subsection (2) shall apply; however, any person who
174 is under the age of twenty-one (21) and not within the
175 jurisdiction of the youth court shall be released as provided in
176 Section 1 of this act.

177 (b) (i) A person under the age of twenty-one (21) is
178 eligible for nonadjudication of a qualifying first offense by the
179 court pursuant to subsection (14) of this section.

180 (ii) Upon conviction of any person under the age
181 of twenty-one (21) years for the first offense of violating
182 subsection (1) of this section where chemical tests provided for
183 under Section 63-11-5 were given, or where chemical test results
184 are not available, the person shall be fined Two Hundred Fifty
185 Dollars (\$250.00); the court shall order the person to attend and
186 complete an alcohol safety education program as provided in
187 Section 63-11-32 within six (6) months. The court may also
188 require attendance at a victim impact panel.

189 (c) A person under the age of twenty-one (21) years who
190 is convicted of a second violation of subsection (1) of this
191 section, the offenses being committed within a period of five (5)
192 years, shall be fined not more than Five Hundred Dollars
193 (\$500.00).



194 (d) A person under the age of twenty-one (21) years who
195 is convicted of a third or subsequent violation of subsection (1)
196 of this section, the offenses being committed within a period of
197 five (5) years, shall be fined not more than One Thousand Dollars
198 (\$1,000.00).

199 (e) License suspension is governed by Section 63-11-23
200 and ignition interlock is governed by Section 63-11-31.

201 (f) Any person under the age of twenty-one (21) years
202 convicted of a third or subsequent violation of subsection (1) of
203 this section must complete treatment of an alcohol or drug abuse
204 program at a site certified by the Department of Mental Health.

205 (4) **DUI test refusal.** In addition to the other penalties
206 provided in this section, every person refusing a law enforcement
207 officer's request to submit to a chemical test of the person's
208 breath as provided in this chapter, or who was unconscious at the
209 time of a chemical test and refused to consent to the introduction
210 of the results of the test in any prosecution, shall suffer an
211 additional administrative suspension of driving privileges as set
212 forth in Section 63-11-23.

213 (5) **Aggravated DUI.** (a) Every person who operates any
214 motor vehicle in violation of the provisions of subsection (1) of
215 this section and who in a negligent manner causes the death of
216 another or mutilates, disfigures, permanently disables or destroys
217 the tongue, eye, lip, nose or any other limb, organ or member of
218 another shall, upon conviction, be guilty of a separate felony for



219 each victim who suffers death, mutilation, disfigurement or other
220 injury and shall be committed to the custody of the State
221 Department of Corrections for a period of time of not less than
222 five (5) years and not to exceed twenty-five (25) years for each
223 death, mutilation, disfigurement or other injury, and the
224 imprisonment for the second or each subsequent conviction, in the
225 discretion of the court, shall commence either at the termination
226 of the imprisonment for the preceding conviction or run
227 concurrently with the preceding conviction. Any person charged
228 with causing the death of another as described in this subsection
229 shall be required to post bail before being released after arrest.

230 (b) A holder of a commercial driver's license who is
231 convicted of operating a commercial motor vehicle with an alcohol
232 concentration of eight one-hundredths percent (.08%) or more shall
233 be guilty of a felony and shall be committed to the custody of the
234 Department of Corrections for not less than two (2) years and not
235 more than ten (10) years.

236 (c) The court shall order an ignition-interlock
237 restriction on the offender's privilege to drive as a condition of
238 probation or post-release supervision not to exceed five (5) years
239 unless a longer restriction is required under other law.

240 (6) **DUI citations.** (a) Upon conviction of a violation of
241 subsection (1) of this section, the trial judge shall sign in the
242 place provided on the traffic ticket, citation or affidavit
243 stating that the person arrested either employed an attorney or



244 waived his right to an attorney after having been properly
245 advised. If the person arrested employed an attorney, the name,
246 address and telephone number of the attorney shall be written on
247 the ticket, citation or affidavit. The court clerk must
248 immediately send a copy of the traffic ticket, citation or
249 affidavit, and any other pertinent documents concerning the
250 conviction or other order of the court, to the Department of
251 Public Safety as provided in Section 63-11-37.

252 (b) A copy of the traffic ticket, citation or affidavit
253 and any other pertinent documents, having been attested as true
254 and correct by the Commissioner of Public Safety, or his designee,
255 shall be sufficient proof of the conviction for purposes of
256 determining the enhanced penalty for any subsequent convictions of
257 violations of subsection (1) of this section. The Department of
258 Public Safety shall maintain a central database for verification
259 of prior offenses and convictions.

260 (7) **Out-of-state prior convictions.** Convictions in another
261 state, territory or possession of the United States, or under the
262 law of a federally recognized Native American tribe, of violations
263 for driving or operating a vehicle while under the influence of an
264 intoxicating liquor or while under the influence of any other
265 substance that has impaired the person's ability to operate a
266 motor vehicle occurring within five (5) years before an offense
267 shall be counted for the purposes of determining if a violation of
268 subsection (1) of this section is a second, third, fourth or



269 subsequent offense and the penalty that shall be imposed upon
270 conviction for a violation of subsection (1) of this section.

271 (8) **Charging of subsequent offenses.** For the purposes of
272 determining how to impose the sentence for a second, third, fourth
273 or subsequent conviction under this section, the affidavit or
274 indictment shall not be required to enumerate previous
275 convictions. It shall only be necessary that the affidavit or
276 indictment states the number of times that the defendant has been
277 convicted and sentenced within the past five (5) years under this
278 section to determine if an enhanced penalty shall be imposed. The
279 amount of fine and imprisonment imposed in previous convictions
280 shall not be considered in calculating offenses to determine a
281 second, third, fourth or subsequent offense of this section.

282 (9) **License eligibility for underage offenders.** A person
283 who is under the legal age to obtain a license to operate a motor
284 vehicle at the time of the offense and who is convicted under this
285 section shall not be eligible to receive a driver's license until
286 the person reaches the age of eighteen (18) years.

287 (10) **License suspensions and restrictions to run**
288 **consecutively.** Suspension or restriction of driving privileges
289 for any person convicted of or nonadjudicated for violations of
290 subsection (1) of this section shall run consecutively to and not
291 concurrently with any other administrative license suspension.

292 (11) **Ignition interlock.** If the court orders installation
293 and use of an ignition-interlock device as provided in Section



294 63-11-31 for every vehicle operated by a person convicted or
295 nonadjudicated under this section, each device shall be installed,
296 maintained and removed as provided in Section 63-11-31.

297 (12) **DUI child endangerment.** A person over the age of
298 twenty-one (21) who violates subsection (1) of this section while
299 transporting in a motor vehicle a child under the age of sixteen
300 (16) years is guilty of the separate offense of endangering a
301 child by driving under the influence of alcohol or any other
302 substance which has impaired the person's ability to operate a
303 motor vehicle. The offense of endangering a child by driving
304 under the influence of alcohol or any other substance which has
305 impaired the person's ability to operate a motor vehicle shall not
306 be merged with an offense of violating subsection (1) of this
307 section for the purposes of prosecution and sentencing. An
308 offender who is convicted of a violation of this subsection shall
309 be punished as follows:

310 (a) A person who commits a violation of this subsection
311 which does not result in the serious injury or death of a child
312 and which is a first conviction shall be guilty of a misdemeanor
313 and, upon conviction, shall be fined not more than One Thousand
314 Dollars (\$1,000.00) or shall be imprisoned for not more than
315 twelve (12) months, or both;

316 (b) A person who commits a violation of this subsection
317 which does not result in the serious injury or death of a child
318 and which is a second conviction shall be guilty of a misdemeanor



319 and, upon conviction, shall be fined not less than One Thousand
320 Dollars (\$1,000.00) nor more than Five Thousand Dollars
321 (\$5,000.00) or shall be imprisoned for one (1) year, or both;

322 (c) A person who commits a violation of this subsection
323 which does not result in the serious injury or death of a child
324 and which is a third or subsequent conviction shall be guilty of a
325 felony and, upon conviction, shall be fined not less than Ten
326 Thousand Dollars (\$10,000.00) or shall be imprisoned for not less
327 than one (1) year nor more than five (5) years, or both; and

328 (d) A person who commits a violation of this subsection
329 which results in the serious injury or death of a child, without
330 regard to whether the offense was a first, second, third or
331 subsequent offense, shall be guilty of a felony and, upon
332 conviction, shall be punished by a fine of not less than Ten
333 Thousand Dollars (\$10,000.00) and shall be imprisoned for not less
334 than five (5) years nor more than twenty-five (25) years.

335 (13) **Expunction.** (a) Any person convicted under subsection
336 (2) or (3) of this section of a first offense of driving under the
337 influence and who was not the holder of a commercial driver's
338 license or a commercial learning permit at the time of the offense
339 may petition the circuit court of the county in which the
340 conviction was had for an order to expunge the record of the
341 conviction at least five (5) years after successful completion of
342 all terms and conditions of the sentence imposed for the



343 conviction. Expunction under this subsection will only be
344 available to a person:

345 (i) Who has successfully completed all terms and
346 conditions of the sentence imposed for the conviction;

347 (ii) Who did not refuse to submit to a test of his
348 blood or breath;

349 (iii) Whose blood alcohol concentration tested
350 below sixteen one-hundredths percent (.16%) if test results are
351 available;

352 (iv) Who has not been convicted of and does not
353 have pending any other offense of driving under the influence;

354 (v) Who has provided the court with justification
355 as to why the conviction should be expunged; and

356 (vi) Who has not previously had a nonadjudication
357 or expunction of a violation of this section.

358 (b) A person is eligible for only one (1) expunction
359 under this subsection, and the Department of Public Safety shall
360 maintain a permanent confidential registry of all cases of
361 expunction under this subsection for the sole purpose of
362 determining a person's eligibility for expunction, for
363 nonadjudication, or as a first offender under this section.

364 (c) The court in its order of expunction shall state in
365 writing the justification for which the expunction was granted and
366 forward the order to the Department of Public Safety within five
367 (5) days of the entry of the order.



368 (14) **Nonadjudication.** (a) For the purposes of this
369 chapter, "nonadjudication" means that the court withholds
370 adjudication of guilt and sentencing, either at the conclusion of
371 a trial on the merits or upon the entry of a plea of guilt by a
372 defendant, and places the defendant in a nonadjudication program
373 conditioned upon the successful completion of the requirements
374 imposed by the court under this subsection.

375 (b) A person is eligible for nonadjudication of an
376 offense under this Section 63-11-30 only one (1) time under any
377 provision of a law that authorizes nonadjudication and only for an
378 offender:

379 (i) Who has successfully completed all terms and
380 conditions imposed by the court after placement of the defendant
381 in a nonadjudication program;

382 (ii) Who was not operating a commercial vehicle at
383 the time of the offense;

384 (iii) Who has not previously been convicted of and
385 does not have pending any former or subsequent charges under this
386 section; and

387 (iv) Who has provided the court with justification
388 as to why nonadjudication is appropriate.

389 (c) Nonadjudication may be initiated upon the filing of
390 a petition for nonadjudication or at any stage of the proceedings
391 in the discretion of the court; the court may withhold
392 adjudication of guilt, defer sentencing, and upon the agreement of



393 the offender to participate in a nonadjudication program, enter an
394 order imposing requirements on the offender for a period of court
395 supervision before the order of nonadjudication is entered.
396 Failure to successfully complete a nonadjudication program
397 subjects the person to adjudication of the charges against him and
398 to imposition of all penalties previously withheld due to entrance
399 into a nonadjudication program. The court shall immediately
400 inform the commissioner of the conviction as required in Section
401 63-11-37.

402 (i) The court shall order the person to:

403 1. Pay the nonadjudication fee imposed under
404 Section 63-11-31 if applicable;

405 2. Pay all fines, penalties and assessments
406 that would have been imposed for conviction;

407 3. Attend and complete an alcohol safety
408 education program as provided in Section 63-11-32 within six (6)
409 months of the date of the order;

410 4. a. If the court determines that the
411 person violated this section with respect to alcohol or
412 intoxicating liquor, the person must install an ignition-interlock
413 device on every motor vehicle operated by the person, obtain an
414 interlock-restricted license, and maintain that license for one
415 hundred twenty (120) days or suffer a one-hundred-twenty-day
416 suspension of the person's regular driver's license, during which
417 time the person must not operate any vehicle.



418 b. If the court determines that the
419 person violated this section by operating a vehicle when under the
420 influence of a substance other than alcohol that has impaired the
421 person's ability to operate a motor vehicle, including any drug or
422 controlled substance which is unlawful to possess under the
423 Mississippi Controlled Substances Law, the person must submit to a
424 one-hundred-twenty-day period of a nonadjudication program that
425 includes court-ordered drug testing at the person's own expense
426 not less often than every thirty (30) days, during which time the
427 person may drive if compliant with the terms of the program, or
428 suffer a one-hundred-twenty-day suspension of the person's regular
429 driver's license, during which time the person will not operate
430 any vehicle.

431 (ii) Other conditions that may be imposed by the
432 court include, but are not limited to, alcohol or drug screening,
433 or both, proof that the person has not committed any other traffic
434 violations while under court supervision, proof of immobilization
435 or impoundment of vehicles owned by the offender if required, and
436 attendance at a victim-impact panel.

437 (d) The court may enter an order of nonadjudication
438 only if the court finds, after a hearing or after ex parte
439 examination of reliable documentation of compliance, that the
440 offender has successfully completed all conditions imposed by law
441 and previous orders of the court. The court shall retain



442 jurisdiction over cases involving nonadjudication for a period of
443 not more than two (2) years.

444 (e) (i) The clerk shall immediately forward a record
445 of every person placed in a nonadjudication program and of every
446 nonadjudication order to the Department of Public Safety for
447 inclusion in the permanent confidential registry of all cases that
448 are nonadjudicated under this subsection (14).

449 (ii) Judges, clerks and prosecutors involved in
450 the trial of implied consent violations and law enforcement
451 officers involved in the issuance of citations for implied consent
452 violations shall have access to the confidential registry for the
453 purpose of determining whether a person has previously been the
454 subject of a nonadjudicated case and 1. is therefore ineligible
455 for another nonadjudication; 2. is ineligible as a first offender
456 for a violation of this section; or 3. is ineligible for
457 expunction of a conviction of a violation of this section.

458 (iii) The Driver Services Bureau of the department
459 shall have access to the confidential registry for the purpose of
460 determining whether a person is eligible for a form of license not
461 restricted to operating a vehicle equipped with an
462 ignition-interlock device.

463 (iv) The Mississippi Alcohol Safety Education
464 Program shall have access to the confidential registry for
465 research purposes only.



466 **SECTION 4.** This act shall take effect and be in force from
467 and after July 1, 2017.

