



Mississippi Department of Corrections

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**Alternatives to
Incarceration**

*A publication by the Mississippi Department of Corrections for use
by Circuit Courts, District Attorneys, Public Defenders, Law
Enforcement & interested parties*



**Christopher B. Epps
Commissioner**

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Message from the Commissioner

The Mississippi Department of Corrections is charged with the care, custody, control and treatment of over 50,000 convicted felons over half of whom are serving their sentences in the Community. MDOC's fundamental mission is provide these services while exercising due diligence to ensure public safety.

In 1995 the Legislature passed "Truth in Sentencing" mandating that inmates serve 85% of their sentence. The 1995 fiscal year ended with an inmate population of 12,007 and a budget of \$119.3 million. By the end of the 2007 fiscal year the inmate population has grown to 22,141 and the budget has increased to \$306.3 million. These figures dramatically demonstrate the need to use alternatives to incarceration to curtail the ever increasing cost of incarceration.

This publication has been prepared by MDOC to summarize programs that offer alternatives to incarceration or limited incarceration for offenders who meet certain criteria. MDOC is committed to providing excellence in both correctional policy and public service.

The Community Corrections Programs in this report can help provide relief to the State's escalating prison costs while maintaining public safety and providing opportunities for rehabilitation.

*Christopher B. Epps
Commissioner*

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Introduction

This publication is for Circuit Courts, District Attorneys, Public Defenders, Law Enforcement and other interested parties. State Statutes offer several programmatic options to punish offenders that do not require incarceration in a correctional facility. The following programs are available:

- Pre-Trial Diversion
- Non-Adjudicated Probation
- Suspended Sentence Probation
- Drug Courts
- Intensive Supervision Program (House Arrest)

Other programs require an offender's incarceration, but in a less restrictive environment and for a limited period of time. The following programs are available:

- Regimented Inmate Discipline (RID)
- Restitution Centers
- Post Release Supervision

Included in this publication is a brief description of each program as well criteria and applicable state statutes.

Pre-Trial Diversion

The Pre-Trial Diversion Program is an alternative to traditional sentencing available for utilization by the District Attorney's Office in conjunction with the Circuit Court. The purpose of this program is to provide the defendant with an opportunity to avoid a felony conviction. Each Circuit Court has different requirements, forms and procedures to follow for application to this program.

Once a defendant has been indicted and arraigned, the defense attorney may request a referral for placement in the Pre-Trial Diversion program under the control of the District Attorney's office. The defendant is investigated and if the District Attorney approves the offender's placement into the program, a diversion or remand order is issued by the Circuit Court. The order will include rules, regulations and conditions required for participation in the program. In the event the defendant fails to comply with program requirements, the District Attorney may file a motion to reinstate the case to the court docket.

This program is for first time offenders who have no significant history of prior delinquency or criminal activity where it is reasonable to anticipate that justice will be served and the offender appears unlikely to be involved in further criminal activity.

Eligibility Requirements

- Must be a first time offender

Disqualifiers

- Offenders with a significant history of prior delinquency or criminal activity are not eligible.
- Offenders who are a threat to the community are not eligible.
- Offenders previously accepted into an alternative program are not eligible.
- Offenders charged with violent crimes including, but not limited to, murder, aggravated assault, rape, armed robbery, manslaughter or burglary of a dwelling are not eligible.
- Offenders charged with sale, barter, transfer, manufacture, distribution or dispensing of a controlled substance or the possession of a controlled substance with the intent to sell, barter, transfer, manufacture, distribute or dispense a controlled substance (except when the controlled substance involved is one (1) ounce or less of marijuana) are not eligible.
- Offenders charged with possession of one (1) kilogram or more of marijuana in violation of Miss Code Ann 41-29-13 (c)(2)(D) are not eligible.

Applicable Statutes

§ 41-29-139

§ 99-15-101 through § 99-15-127

Non-Adjudicated Probation

Non-adjudicated probation is a form of probation whereupon successful completion, the case is dismissed and the offender's record may be expunged. There are two non-adjudicated probation statuses presently used by the Courts.

Section 41-29 -150 pertains to drug offenses and Section 99-15-26 pertains to non-drug offenses. When an offender is placed on non-adjudicated probation, he enters a guilty plea, but the Court withholds acceptance of the plea and imposition of sentence pending successful completion of conditions imposed by the Court. At the end of the term of probation, if all conditions have been successfully completed and all monies owed to the Court and to victims have been paid, the offender is discharged and the case dismissed.

If an offender sentenced under the non-adjudication statute violates the rules and regulations established for this program, the person must go through the revocation process as any probationer would. The Court may accept the guilty plea and impose sentence.

Eligibility Requirements

- Offenders must be low risk and non violent

Disqualifiers

- Offenders with prior felony convictions are not eligible
- Offenders charged with a crime against a person are not eligible
- Offenders charged with an offense under the Implied Consent Law are not eligible
- Offenders who have previously qualified for non-adjudication are not eligible
- Offenders charged with sale, barter, transfer, manufacture, distribution or dispensing of a controlled substance or the possession of a controlled substance with the intent to sell, barter, transfer, manufacture, distribute or dispense a controlled substance (except when the controlled substance involved is one (1) ounce or less of marijuana) are not eligible
- Offenders charged with possession of one (1) kilogram or more of marijuana in violation of Miss Code Ann 41-29-13 (c) (2) (D) are not eligible

Applicable Statutes

§ 41-29-139

§ 41-29-150

§ 99-15-26

Suspended Sentence Probation

In certain instances upon conviction of an offender or acceptance of a guilty plea the Court may determine that it is in the best interest of justice to suspend execution of an offender's sentence and place him/her on probation. The period of probation shall be fixed by the Court and may be extended or terminated at any time by the Court. Extension shall not exceed five (5) years except that in cases of desertion and/or failure to support minor children the period of probation may be fixed and/or extended by the Court for as long as a duty to support such minor children exists.

Probationers must comply with all court ordered conditions and may be required to pay all fines, court costs and restitution. Failure to comply with the terms of probation may result in revocation of the offender's probation and imposition of all or part of the suspended sentence.

Eligibility Requirements

Must be a first time offender

Disqualifiers

Offenders with a prior felony conviction in any court or courts of the United States or any state or territory are not eligible.

Offenders convicted a crime in which a death sentence or life imprisonment is the maximum penalty are not eligible.

Applicable Statutes

§ 47-7-33

§ 47-7-5 through § 47-7-49

Drug Court

Drug Courts are specifically designed to handle drug-using offenders with comprehensive supervision including immediate sanctions, incentives, and drug testing and treatment programs. Offenders sentenced to this program appear before Court on a regular basis, usually weekly. The supervising officer also appears before the Court to report on the offender's progress. Failure of the offender to appear before the Court or non-compliance with the treatment program may result in expulsion from the program and a new sentence imposed by the Court.

Eligibility Requirements

- Offenders must be low risk and nonviolent.

Disqualifiers

- Offenders charged with a violent crime or who have a prior conviction for a violent crime are not eligible.
- Offenders charged with residential burglary are not eligible.
- Offenders charged with sale, barter, transfer, manufacture, distribution or dispensing of a controlled substance or the possession of a controlled substance with the intent to sell, barter, transfer, manufacture, distribute or dispense a controlled substance are not eligible.
- Offenders charged with a DUI resulting in a death are not eligible.

Applicable Statutes

§ 9-23-01 through § 9-23-23

Intensive Supervision Program (House Arrest)

The Intensive Supervision Program (ISP) allows low-risk, non-violent offenders to serve their felony conviction sentence in an approved residence in the Community. Offenders wear electronic monitoring equipment for curfew management that detects presence or absence from the residence and alerts the supervising field officer according to parameters tailored to the offender. Offenders are allowed time away from home for work, one church service per week, treatment meetings, medical appointments and other approved activities.

Individuals in this program are classified as inmates under the jurisdiction of MDOC and must remain within the State of Mississippi at all times. Except in the case of a medical emergency and approved by the Commissioner of MDOC or by circuit court order for medical reasons may an inmate leave the state.

Eligible offenders may be placed in the Program by the Court or by MDOC. MDOC places incarcerated inmates in the program who meet all eligibility requirements and are within 15 months of their earliest eligible release date.

Non-compliance with program requirements may result in expulsion from the program and placement into an MDOC facility.

Eligibility Requirements

- Offender must be low risk and non violent

Disqualifiers

- Offenders convicted of a sex crime are not eligible
- Offenders convicted of a felony under Section 41-29-139 (a) (1) to sell, barter, transfer, manufacture, produce, distribute, dispense a controlled substance or possess a controlled substance with the intent to sell, barter, transfer, manufacture, produce, distribute or dispense are not eligible.
- Offenders convicted of a crime where death or life imprisonment may be imposed are not eligible.
- Offenders currently or previously convicted of a crime involving the use of a deadly weapon are not eligible.
- Offenders who have been confined for a prior felony conviction by in any court or courts of the United States or any state or territory thereof are not eligible.

Applicable Statutes

§ 47-5-1001 through § 47-5-1015

Regimented Inmate Discipline Program

The Regimented Inmate Discipline (RID) program began in an effort to expand the mandates of shock probation by combining a boot camp approach to discipline with psychological correctional interventions. This combination of paramilitary training with instructional classes and individual-group counseling offers a unique blend of rehabilitative techniques that can be applied with success to the earned probation offender. Offenders participate in structured activities that include Adult Basic Education (ABE) or General Equivalency Degree (GED) classes, Alcoholics Anonymous (AA) or Narcotics Anonymous (NA), pre-release screening, religious instruction, physical fitness, and community service as part of the RID program.

A Court may sentence an offender to a term of incarceration and order the offender's placement into the RID Program. Upon successful completion of RID the remainder of the sentence may be suspended and the offender may be placed on earned probation. If the offender fails to complete RID, he generally must serve the entire sentence originally imposed. The Court may retain jurisdiction of offenders sentenced to RID for up to one year.

Eligibility Requirements

- Offender must be low risk and non-violent.

Disqualifiers

- Offenders convicted a crime where death or life imprisonment is the maximum sentence that may be imposed are not eligible.
- Offenders currently or previously convicted of a crime involving the use of a deadly weapon are not eligible.
- Offenders who have been confined two (2) or more times for a felony conviction in any Court or Courts of the United States or territories are not eligible.
- Offenders charged with a sex crime are not eligible
- Offenders with extensive juvenile histories of criminal activity are not eligible
- Offenders with substantial health problems are not eligible.
- Offenders who are mentally disabled are not eligible.
- Offenders with psychiatric disorders are not eligible

Applicable Statutes

§ 47-7-47

Restitution Centers

Restitution Centers are residential facilities where offenders are sentenced to live and participate in the center program as a condition of their probationary sentence. Residents of the restitution centers are provided a structured environment where work, work ethics, education and responsibility are taught and enforced. Offenders are assisted in obtaining employment in the Community and close contact is maintained with employers to determine both work skills and work attitude. Education needs are addressed through Adult Basic Education (ABE) and General Equivalency Degree (GED) test preparation.

Offenders are encouraged to take responsibility for their actions. Staff encourages this responsibility by requiring job attendance, payment of restitution and other financial responsibilities. Alcohol and drug counseling, mental health services and other social services are tailored to meet the needs of individual residents. Offenders must earn a maximum number of points by demonstrating good behavior and participating in community service projects in order to complete the restitution program.

Restitution centers for males are located at Hinds, Leflore, and Jackson Counties. One center for females is located in Rankin County. Room and board charges, (maximum \$70 per week), restitution fees, court costs, family support and other charges imposed by the judge are deducted from the offender's paycheck.

Upon completion of the program, the offender is placed under the supervision of a field officer for the remainder of the probationary sentence. Failure to successfully complete the program may result in the original sentence being imposed by the Court.

Eligibility Requirements

- Offender must be employable.
- Offender must be serving a probationary sentence.

Disqualifiers

- Offenders convicted of a violent crime *are not eligible*.
- Offenders convicted of a sex crime *are not eligible*
- Offenders who have drug, alcohol or emotional problems that would interfere with participation in the program *are not eligible*

Applicable Statues

§ 99-37-19

Post Release Supervision

Post Release Supervision is a period of supervision by MDOC Community Corrections following a term of incarceration. Upon release from incarceration, the offender is placed under the supervision of an MDOC field officer and is supervised using the same standard by which offenders with suspended sentence probation are supervised. The offender must comply with any additional terms and conditions imposed by the Court.

The period of supervision will be established by the Court. However, the total number of years of incarceration plus the total number of years of post release supervision shall not exceed the maximum sentence authorized by law for the felony committed. The maximum amount of time that MDOC may supervise an offender on Post Release Supervision is five (5) years. Extension shall not exceed five (5) years except in cases of desertion and/or failure to support minor children the period of supervision may be extended by the Court for as long as duty to support such minor children exists.

Eligibility Criteria

- Offender must have committed a crime after June 30, 1995

Applicable Statutes

§ 47-7-34 through § 47-7-49

Applicable Statutes



§9-23-1. Short title

This chapter shall be known and may be cited as the Alyce Griffin Clarke Drug Court Act.

§9-23-3. Purpose

(1) The Legislature of Mississippi recognizes the critical need for judicial intervention to reduce the incidence of alcohol and drug use, alcohol and drug addiction, and crimes committed as a result of alcohol and drug use and alcohol and drug addiction. It is the intent of the Legislature to facilitate local drug court alternative orders adaptable to chancery, circuit, county, youth, municipal and justice courts.

(2) The goals of the drug courts under this chapter include the following:

To reduce alcoholism and other drug dependencies among adult and juvenile offenders and defendants and among respondents in juvenile petitions for abuse, neglect or both;

To reduce criminal and delinquent recidivism and the incidence of child abuse and neglect;

To reduce the alcohol-related and other drug-related court workload;

To increase personal, familial and societal accountability of adult and juvenile offenders and defendants and respondents in juvenile petitions for abuse, neglect or both; and

To promote effective interaction and use of resources among criminal and juvenile justice personnel, child protective services personnel and community agencies.

§9-23-5. Definitions

For the purposes of this chapter, the following words and phrases shall have the meanings ascribed unless the context clearly requires otherwise:

(a) “Drug court” means an immediate and highly structured intervention process for substance abuse treatment of eligible defendants or juveniles that:

(i) Brings together substance abuse professionals, local social programs and intensive judicial monitoring; and

(ii) Follows the key components of drug courts published by the Drug Court Program Office of the United States Department of Justice.

(b) “Chemical tests” means the analysis of an individual’s: (i) blood, (ii) breath, (iii) hair, (iv) sweat, (v) saliva, (vi) urine; or (vii) other bodily substance to determine the presence of alcohol or a controlled substance.

§9-23-7. Certification and monitoring of local drug courts

The Administrative Office of Courts shall be responsible for certification and monitoring of local drug courts according to standards promulgated by the State Drug Courts Advisory Committee.

§9-23-9. State Drug Courts Advisory Committee

(1) The State Drug Courts Advisory Committee is established to develop and periodically update proposed statewide evaluation plans and models for monitoring all critical aspects of drug courts. The committee must provide the proposed evaluation plans to the Chief Justice and the Administrative Office of Courts. The committee shall be chaired by the Director of the Administrative Office of Courts and shall consist of not less than seven (7) members nor more than eleven (11) members appointed by the Supreme Court and broadly representative of the courts, law enforcement, corrections, juvenile justice, child protective services and substance abuse treatment communities.

(2) The State Drug Courts Advisory Committee may also make recommendations to the Chief Justice, the Director of the Administrative Office of Courts and state officials concerning improvements to drug court policies and procedures. The committee may make suggestions as to the criteria for eligibility, and other procedural and substantive guidelines for drug court operation.

(3) The State Drug Courts Advisory Committee shall act as arbiter of disputes arising out of the operation of drug courts established under this chapter and make recommendations to improve the drug courts; it shall also make recommendations to the Supreme Court necessary and incident to compliance with established rules.

§9-23-11. Alcohol and drug

intervention component; requirements; rules and special orders; appointment of employees; participation costs

(1) A drug court may establish an alcohol and drug intervention component provided all the following requirements are met:

(a) The drug court established by the court is certified by the Administrative Office of Courts;

(b) The court that established the drug court determines that in order to fully implement the purposes of the drug court that the drug and alcohol intervention component is necessary; and

(c) The court must submit a petition for approval to the Administrative Office of Courts containing the following:

(i) A full description of a proposed intervention component.

(ii) A budget supported by statistics.

(iii) Details on the implementation of the intervention component.

(2) Each individual drug court judge may establish rules and may make special orders and rules as necessary that do not conflict with rules promulgated by the Supreme Court.

(3) A drug court may appoint such full- or part-time employees it deems necessary for the work of the drug court and shall fix the compensation of those employees. Such employees shall serve at the will and pleasure of the judge or the judge's designee.

(4) Drug court employees or contractors shall perform duties the court assigns.

(5) A drug court established under this article is subject to the regulatory powers of the Administrative Office of Courts as set forth in Section 9-23-17.

(6) Each individual drug court is responsible for the administration of the drug and alcohol intervention component of that court.

(7)(a) The costs of participation in an alcohol and drug services component required by the drug court established by this chapter may be paid by the participant or out of user fees or such other state, federal or private funds that may, from time to time, be made available.

(b) The court may assess such reasonable fees for participation and may impose sanctions that it deems appropriate.

§9-23-13. Court intervention services

(1) A drug court's alcohol and drug intervention component may provide for eligible individuals a range of necessary court intervention services, including, but not limited to, the following:

- (a) Screening for eligibility and other appropriate services;
- (b) Clinical assessment;
- (c) Education;
- (d) Referral;
- (e) Service coordination and case management; and

(f) Counseling and rehabilitative care.

(2) Any inpatient treatment or inpatient detoxification program ordered by the court shall be certified by the Department of Mental Health, other appropriate state agency or the equivalent agency of another state.

§9-23-15. Alternative sentencing eligibility criteria and conditions

(1) In order to be eligible for alternative sentencing through a local drug court, the participant must satisfy each of the following criteria:

The participant cannot have any felony convictions for any offenses which are crimes of violence.

The crime before the court cannot be a crime of violence.

Other criminal proceedings alleging commission of a crime of violence cannot be pending against the participant.

The participant cannot have been currently charged with burglary of an occupied dwelling.

The crime before the court cannot be a charge of driving under the influence of alcohol or any other drug or drugs that resulted in the death of a person.

The crime charged cannot be one of distribution, sale, possession with intent to distribute, production, manufacture or cultivation of

(2) A drug court may apply for and receive the following:

- (a) Gifts, bequests and donations from private sources.
- (b) Grant and contract money from governmental sources.
- (c) Other forms of financial assistance approved by the court to supplement the budget of the drug court.

§9-23-21. Immunity

The director and members of the professional and administrative staff of the drug court who perform duties in good faith under this chapter are immune from civil liability for:

- (a) Acts or omissions in providing services under this chapter; and
- (b) The reasonable exercise of discretion in determining eligibility to participate in the drug court.

§9-23-23. Completion of program; expunction of record

If the participant completes all requirements imposed upon him by the drug court, including the payment of fines and fees assessed, the charge and prosecution shall be dismissed. If the defendant or participant was sentenced at the time of entry of plea of guilty, the successful completion of the drug court order and other requirements of probation or suspension of sentence will result in the record of the criminal conviction or adjudication being expunged. However, no expunction of any implied consent violation shall be allowed.

§9-23-51. Drug Court Fund

established

There is created in the State Treasury a special interest-bearing fund to be known as the Drug Court Fund. The purpose of the fund shall be to provide supplemental funding to all drug courts in the state. Monies from the funds derived from assessments under Section 99-19-73 shall be distributed by the State Treasurer upon warrants issued by the Administrative Office of Courts, pursuant to procedures set by the State Drug Courts Advisory Committee to assist both juvenile drug courts and adult drug courts. Funds from other sources shall be distributed to the drug courts in the state based on a formula set by the State Drug Courts Advisory Committee. The fund shall be a continuing fund, not subject to fiscal-year limitations, and shall consist of: (a) monies appropriated by the Legislature for the purposes of funding drug courts; (b) the interest accruing to the fund; (c) monies received under the provisions of Section 99-19-73; (d) monies received from the federal government; and (e) monies received from such other sources as may be provided by law.

Current through 2006 Sessions & 2007 Reg. Sess., Chs. 301,302,305 to 307, 311 to 313, 315, 319 to 321, 323 to 330, 335, 339, 341, 343, 346, 349 to 353, 357, 360, 362, 365, 378, 383, 387, 394, 397, 403, 405, 408, 410 to 412, 419, 422, 425, 426, and 430

§41-29-150. Rehabilitation; probation; escape; legislative intent

- (a) Any person convicted under section 41-29-139 may be required, in the discretion of the court, as a part of the sentence otherwise imposed, or in lieu of imprisonment in cases of probation or suspension of sentence, to attend a

course of instruction conducted by the bureau, the state board of health, or any similar agency, on the effects, medically, psychologically and socially, of the misuse of controlled substances. Said course may be conducted at any correctional institution, detention center or hospital, or at any center or treatment facility established for the purpose of education and rehabilitation of those persons committed because of abuse of controlled substances.

- (b) Any person convicted under section 41-29-139, who is found to be dependent upon or addicted to any controlled substance shall be required, as a part of the sentence otherwise imposed, or in lieu of imprisonment in cases of parole, probation or suspension of sentence, to receive medical treatment for such dependency or addiction. The regimen of medical treatment may include confinement in a medical facility of any correctional institution, detention center or hospital, or at any center or facility established for treatment of those persons committed because of a dependence or addiction to controlled substances.
- (c) Those persons previously convicted of a felony under section 41-29-139 and who are now confined at the Mississippi State Hospital at Whitfield, Mississippi, or at the East Mississippi State Hospital at Meridian, Mississippi, for the term of their sentence shall remain under the jurisdiction of the Mississippi Department of Corrections and shall be required to abide by all reasonable rules and regulations promulgated by the director and staff of said institutions and of the department of corrections. Any persons so confined who shall refuse to abide by said rules or who attempt an escape or who shall escape shall be transferred to the state penitentiary or to a county jail, where appropriate, to serve the remainder of the term of imprisonment; this provision shall not preclude prosecution and conviction for escape from said

institutions.

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

purpose. Discharge and dismissal under this subsection may occur only once with respect to any person; and

(2) Upon the dismissal of such person and discharge of proceedings against him under paragraph (1) of this subsection, or with respect to a person who has been convicted and adjudged guilty of an offense under subsection © or (d) of section 41-29-139, or for possession of narcotics, stimulants, depressants, hallucinogens, marihuana, other controlled substances or paraphernalia under prior laws of this state, such person, if he had not reached his twenty-sixth birthday at the time of the offense, may apply to the court for an order to expunge from all official records, other than the nonpublic records to be retained by the bureau under paragraph (1) of this subsection, all recordation relating to his arrest, indictment, trial, finding of guilty, and dismissal and discharge pursuant to this section. If the court determines, after hearing, that such person was dismissed and the proceedings against him discharged and that he had not reached his twenty-sixth birthday at the time of the offense, or that such person had satisfactorily served his sentence or period of probation and parole, and that he had not reached his twenty-sixth birthday at the time of the offense, it shall enter such order. The effect of such order shall be to restore such person, in the contemplation of the law, to the status he occupied before such arrest or indictment. No person as to whom such order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or trial in response to

any inquiry made of him for any purpose.

- (e) Every person who has been or may hereafter be convicted of a felony offense under section 41-29-139 and sentenced under section 41-29-150© shall be under the jurisdiction of the Mississippi Department of Corrections.
- (f) It shall be unlawful for any person confined under the provisions of subsection (b) or (c) of this section to escape or attempt to escape from said institution, and upon conviction said person shall be guilty of a felony and shall be imprisoned for a term not to exceed two (2) years.
- (g) It is the intent and purpose of the legislature to promote the rehabilitation of persons convicted of offenses under the Uniform Controlled Substances Law.

Current through 2006 Sessions & 2007 Reg. Sess., Chs. 301,302,305 to 307, 311 to 313, 315, 319 to 321, 323 to 330, 335, 339, 341, 343, 346, 349 to 353, 357, 360, 362, 365, 378, 383, 387, 394, 397, 403, 405, 408, 410 to 412, 419, 422, 425, 426, and 430

§41-29-139. Prohibited acts and penalties; indictments for trafficking

- (a) Except as authorized by this article, it is unlawful for any person knowingly or intentionally:
 - (1) To sell, barter, transfer, manufacture, distribute, dispense or possess with intent to sell, barter, transfer, manufacture, distribute or dispense, a controlled substance; or
 - (2) To create, sell, barter, transfer, distribute, dispense or possess with intent to create, sell, barter, transfer, distribute or dispense, a counterfeit substance.

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

- (1) In the case of controlled substances classified in Schedule I or II, as set out in Sections 41-29-113 and 41-29-115, except thirty (30) grams or less of marihuana, and except a first offender as defined in Section 41-29-149(e) who violates subsection (a) of this section with respect to less than one (1) kilogram but more than thirty (30) grams of marihuana, such person may, upon conviction, be imprisoned for not more than thirty (30) years and shall be fined not less than Five Thousand Dollars (\$5,000.00) nor more than One Million Dollars (\$1,000,000.00), or both;
- (2) In the case of a first offender who violates subsection (a) of this section with an amount less than one (1) kilogram but more than thirty (30) grams of marihuana as classified in Schedule I, as set out in Section 41-29-113, such person is guilty of a felony and upon conviction may be imprisoned for not more than twenty (20) years or fined not more than Thirty Thousand Dollars (\$30,000.00), or both;
- (3) In the case of thirty (30) grams or less of marihuana, such person may, upon conviction, be imprisoned for not more than three (3) years or fined not more than Three Thousand Dollars (\$3,000.00), or both;
- (4) In the case of controlled substances classified in Schedules III and IV, as set out in Sections 41-29-117 and 41-29-119, such

person may, upon conviction, be imprisoned for not more than twenty (20) years and shall be fined not less than One Thousand Dollars (\$1,000.00) nor more than Two Hundred Fifty Thousand Dollars (\$250,000.00), or both; and

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

(c) It is unlawful for any person knowingly or intentionally to possess any controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his professional practice, or except as otherwise authorized by this article. The penalties for any violation of this subsection © with respect to a controlled substance classified in Schedules I, II, III, IV or V, as set out in Sections 41-29-113, 41-29-115, 41-29-117, 41-29-119 or 41-29-121, including marihuana, shall be based on dosage unit as defined herein or the weight of the controlled substance as set forth herein as appropriate:

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

For any controlled substance that does not fall within the definition of the term “dosage unit,” the penalties shall be

based upon the weight of the controlled substance.

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

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

Any person who violates this subsection with respect to:

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

- (A) Less than one-tenth (0.1) gram or one (1) dosage unit or less may be charged as a misdemeanor or felony. If charged by indictment as a felony: by imprisonment not less than one (1) nor more than four (4) years and a fine not more than Ten Thousand Dollars (\$10,000.00). If charged as a misdemeanor: by imprisonment for up to one (1) year and a fine not more than One Thousand Dollars (\$1,000.00).
- (B) One-tenth (0.1) gram but less than two (2) grams or two (2) dosage units but less than ten (10) dosage units, by imprisonment for not less than two (2) years nor more than eight (8) years and a fine of not more than Fifty Thousand Dollars (\$50,000.00).
- (C) Two (2) grams but less than ten (10) grams or ten (10) dosage units but less than twenty (20) dosage units, by imprisonment for not less than four (4) years nor more than sixteen (16)

years and a fine of not more than Two Hundred Fifty Thousand Dollars (\$250,000.00).

- (D) Ten (10) grams but less than thirty (30) grams or twenty (20) dosage units but not more than forty (40) dosage units, by imprisonment for not less than six (6) years nor more than twenty-four (24) years and a fine of not more than Five Hundred Thousand Dollars (\$500,000.00).
- (E) Thirty (30) grams or more or forty (40) dosage units or more, by imprisonment for not less than ten (10) years nor more than thirty (30) years and a fine of not more than One Million Dollars (\$1,000,000.00).

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

- (A) Thirty (30) grams or less by a fine of not less than One Hundred Dollars (\$100.00) nor more than Two Hundred Fifty Dollars (\$250.00). The provisions of this paragraph shall be enforceable by summons, provided the offender provides proof of identity satisfactory to the arresting officer and gives written promise to appear in court satisfactory to the arresting officer, as directed by the summons. A second conviction under this section within two (2) years shall be punished by a fine of Two Hundred Fifty Dollars (\$250.00) and not less than five (5) days nor more than sixty (60) days in the county jail and mandatory participation in a drug

controlled substances, nor can the participant have a prior conviction for same.

(2) Participation in the services of an alcohol and drug intervention component shall be open only to the individuals over whom the court has jurisdiction, except that the court may agree to provide the services for individuals referred from another drug court. In cases transferred from another jurisdiction, the receiving judge shall act as a special master and make recommendations to the sentencing judge.

(3)(a) As a condition of participation in a drug court, a participant may be required to undergo a chemical test or a series of chemical tests as specified by the drug court. A participant is liable for the costs of all chemical tests required under this section, regardless of whether the costs are paid to the drug court or the laboratory; provided, however, if testing is available from other sources or the program itself, the judge may waive any fees for testing.

(b) A laboratory that performs a chemical test under this section shall report the results of the test to the drug court.

(4) A person does not have a right to participate in drug court under this chapter.

§ 9 - 2 3 - 1 7 . P o w e r s o f A d m i n i s t r a t i v e O f f i c e o f C o u r t s

With regard to any drug court established under this act, the Administrative Office of Courts may do the following:

(a) Ensure that the structure of the

intervention component complies with rules adopted under this section and applicable federal regulations.

(b) Revoke the authorization of a program upon a determination that the program does not comply with rules adopted under this section and applicable federal regulations.

(c) Make agreements and contracts to effectuate the purposes of this chapter with:

(i) Another department, authority or agency of the state;

(ii) Another state;

(iii) The federal government;

(iv) A state-supported or private university; or

(v) A public or private agency, foundation, corporation or individual.

(d) Directly, or by contract, approve and certify any intervention component established under this chapter.

(e) Require, as a condition of operation, that each drug court created or funded under this act be certified by the Administrative Office of Courts.

(f) Adopt rules to implement this chapter.

§9-23-19. Special fund; gifts, grants, and other funding sources

(1) All monies received from any source by the drug court shall be accumulated in a fund to be used only for drug court purposes. Any funds remaining in this fund at the end of a fiscal year shall not lapse into any general fund, but shall be retained in the drug court fund for the funding of further activities by the drug court.

education program, approved by the Division of Alcohol and Drug Abuse of the State Department of Mental Health, unless the court enters a written finding that such drug education program is inappropriate. A third or subsequent conviction under this section within two (2) years is a misdemeanor punishable by a fine of not less than Two Hundred Fifty Dollars (\$250.00) nor more than Five Hundred Dollars (\$500.00) and confinement for not less than five (5) days nor more than six (6) months in the county jail. Upon a first or second conviction under this section, the courts shall forward a report of such conviction to the Mississippi Bureau of Narcotics, which shall make and maintain a private, nonpublic record for a period not to exceed two (2) years from the date of conviction. The private, nonpublic record shall be solely for the use of the courts in determining the penalties which attach upon conviction under this section and shall not constitute a criminal record for the purpose of private or administrative inquiry and the record of each conviction shall be expunged at the end of the period of two (2) years following the date of such conviction;

- (B) Additionally, a person who is the operator of a motor vehicle, who possesses on his person or knowingly keeps or allows to be kept in a motor vehicle within the area of the vehicle normally occupied by the driver or passengers, more than one (1) gram, but not more than thirty (30) grams, of marihuana

is guilty of a misdemeanor and upon conviction may be fined not more than One Thousand Dollars (\$1,000.00) and confined for not more than ninety (90) days in the county jail. For the purposes of this subsection, such area of the vehicle shall not include the trunk of the motor vehicle or the areas not normally occupied by the driver or passengers if the vehicle is not equipped with a trunk. A utility or glove compartment shall be deemed to be within the area occupied by the driver and passengers;

- (C) More than thirty (30) grams but less than two hundred fifty (250) grams may be fined not more than One Thousand Dollars (\$1,000.00), or confined in the county jail for not more than one (1) year, or both; or fined not more than Three Thousand Dollars (\$3,000.00), or imprisoned in the State Penitentiary for not more than three (3) years, or both;
- (D) Two hundred fifty (250) grams but less than five hundred (500) grams, by imprisonment for not less than two (2) years nor more than eight (8) years and by a fine of not more than Fifty Thousand Dollars (\$50,000.00);
- (E) Five hundred (500) grams but less than one (1) kilogram, by imprisonment for not less than four (4) years nor more than sixteen (16) years and a fine of less than Two Hundred Fifty Thousand Dollars (\$250,000.00);
- (F) One (1) kilogram but less than five (5) kilograms, by imprisonment for not less than six (6) years nor more than twenty-four (24) years and a fine of not more than Five Hundred Thousand Dollars

(\$500,000.00);

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

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

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

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

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

(D) Three hundred (300) grams but less than five hundred (500) grams or one thousand (1,000) dosage units but less than two thousand five hundred (2,500) dosage units, by imprisonment for not less than four (4) years

nor more than sixteen (16) years and a fine of not more than Two Hundred Fifty Thousand Dollars (\$250,000.00).

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

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

(2) It is unlawful for any person to deliver, sell, possess with intent to deliver or sell, or manufacture with intent to deliver or sell, paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound,

convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of the Uniform Controlled Substances Law. Any person who violates this subsection is guilty of a misdemeanor and upon conviction may be confined in the county jail for not more than six (6) months or fined not more than Five Hundred Dollars (\$500.00), or both.

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

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

(e) It shall be unlawful for any physician practicing medicine in this state to prescribe, dispense or administer any amphetamine or amphetamine-like anorectics and/or central nervous system stimulants classified in Schedule II, pursuant to Section 41-29-115, for the exclusive treatment of

obesity, weight control or weight loss. Any person who violates this subsection, upon conviction, is guilty of a misdemeanor and may be confined for a period not to exceed six (6) months, or fined not more than One Thousand Dollars (\$1,000.00), or both.

(f) Except as otherwise authorized in this article, any person twenty-one (21) years of age or older who knowingly sells, barter, transfers, manufactures, distributes or dispenses during any twelve (12) consecutive month period: (i) ten (10) pounds or more of marihuana; (ii) two (2) ounces or more of heroin; (iii) two (2) or more ounces of cocaine or of any mixture containing cocaine as described in Section 41-29-105(s), Mississippi Code of 1972; (iv) two (2) or more ounces of methamphetamine; or (v) one hundred (100) or more dosage units of morphine, Demerol, Dilaudid, oxycodone hydrochloride or a derivative thereof, or 3,4-methylenedioxymethamphetamine (MDMA) shall be guilty of a felony and, upon conviction thereof, shall be sentenced to life imprisonment and such sentence shall not be reduced or suspended nor shall such person be eligible for probation or parole, the provisions of Sections 41-29-149, 47-5-139, 47-7-3 and 47-7-33, Mississippi Code of 1972, to the contrary notwithstanding. The provisions of this subsection shall not apply to any person who furnishes information and assistance to the bureau or its designee, which, in the opinion of the trial judge objectively should or would have aided in the arrest or prosecution of others who violate this subsection. The accused shall have adequate opportunity to develop and make a record of all information and assistance so furnished.

(g) (1) Any person trafficking in controlled substances shall be guilty of a felony and upon conviction shall be imprisoned for a term of thirty (30)

years and such sentence shall not be reduced or suspended nor shall such person be eligible for probation or parole, the provisions of Sections 41-29-149, 47-5-139, 47-7-3 and 47-7-33, Mississippi Code of 1972, to the contrary notwithstanding and shall be fined not less than Five Thousand Dollars (\$5,000.00) nor more than One Million Dollars (\$1,000,000.00).

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

(3) The charge of trafficking in controlled substances shall be set forth in one (1) count of an indictment with each of the component offenses alleged therein and it may be charged and tried in any county where a component offense occurred. An indictment for trafficking in controlled substances may also be returned by the State Grand Jury of Mississippi provided at least two (2) of the component offenses occurred in different circuit court districts.

Current through 2006 Sessions & 2007 Reg. Sess., Chs. 301,302,305 to 307, 311 to 313, 315, 319 to 321, 323 to 330, 335, 339, 341, 343, 346, 349 to 353, 357, 360, 362, 365, 378, 383, 387, 394, 397, 403, 405, 408, 410 to 412, 419, 422, 425, 426, and 430

§47-5-1001. Definitions

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

- (a) "Approved electronic monitoring device" means a device approved by the department, which is primarily intended to record, and transmit information regarding the offender's presence or nonpresence in the home.
- (b) "Correctional field officer" means the supervising probation and parole officer in charge of supervising the offender.
- (c) "Court" means a circuit court having jurisdiction to place an offender to the intensive supervision program.
- (d) "Department" means the Department of Corrections.
- (e) "House arrest" means the confinement of a person convicted or charged with a crime to his place of residence under the terms and conditions established by the department or court.
- (f) "Operating capacity" means the total number of state offenders which can be safely and reasonably housed in facilities operated by the department and in local or county jails or other facilities authorized to house state offenders as certified by the department, subject to applicable federal and state laws and rules and regulations.
- (g) "Participant" means an offender placed into an intensive supervision program.

Current through 2006 Sessions & 2007 Reg. Sess., Chs. 301,302,305 to 307, 311 to 313, 315, 319 to 321, 323 to 330, 335, 339, 341, 343, 346, 349 to 353, 357, 360, 362, 365, 378, 383, 387, 394, 397, 403, 405, 408, 410 to 412, 419, 422, 425, 426, and

§47-5-1003. Program eligibility; court placement procedure

- (1) An intensive supervision program may be used as an alternative to incarceration for offenders who are low risk and nonviolent as selected by the department or court. Any offender convicted of a sex crime or a felony violation of Section 41-29-139 (a) (1) shall not be placed in the program.
- (2) The court placing an offender in the intensive supervision program may, acting upon the advice and consent of the commissioner and not later than one (1) year after the defendant has been delivered to the custody of the department, suspend the further execution of the sentence and place the defendant on intensive supervision, except when a death sentence or life imprisonment is the maximum penalty which may be imposed or if the defendant has been confined for the conviction of a felony on a previous occasion in any court or courts of the United States and of any state or territories thereof or has been convicted of a felony involving the use of a deadly weapon.
- (3) To protect and to ensure the safety of the state's citizens, any offender who violates an order or condition of the intensive supervision program may be arrested by the correctional field officer and placed in the actual custody of the Department of Corrections. Such offender is under the full and complete jurisdiction of the department and subject to removal from the program by the classification-hearing officer.
- (4) When any circuit or county court places an offender in an intensive supervision program, the court shall give notice to the Mississippi Department of Corrections within fifteen (15) days of the court's decision to place the offender in an intensive supervision program. Notice shall be delivered to the central office of the Mississippi Department of Corrections and to the

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

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

Current through 2006 Sessions & 2007 Reg. Sess., Chs. 301, 302, 305 to 307, 311 to 313, 315, 319 to 321, 323 to 329, 330, 335, 339, 341, 343, 346, 349 to 353, 357, 360, 362, 365 and 378.

§47-5-1005. Implementation; acquisition of electronic monitoring devices

(1) The department shall promulgate rules that prescribe reasonable guidelines under which an intensive supervision program shall operate. These rules shall include, but not be limited to, the following:

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

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

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

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

(iii) Undergoing medical,

psychiatric, mental health treatment, counseling or other treatment programs approved for the participant by the court or department;

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

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

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

(c) Except in case of a medical emergency and approval by the Commissioner of the Department of Corrections, or his designee, or by circuit court order for medical purposes, no participant in the intensive supervision program may leave the jurisdiction of the State of Mississippi.

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

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

SECTION 2, [Effective date] This act

shall take effect and be in force from and after its passage. APPROVED April 21, 2007

§47-5-1007. Monthly fee; participant's responsibilities

(1) Any participant in the intensive supervision program who engages in employment shall pay a monthly fee to the department for each month such person is enrolled in the program. The department may waive the monthly fee if the offender is a full-time student or is engaged in vocational training. Money received by the department from participants in the program shall be deposited into a special fund, which is hereby created in the State Treasury. It shall be used, upon appropriation by the Legislature, for the purpose of helping to defray the costs involved in administering and supervising such program. Unexpended amounts remaining in such special fund at the end of a fiscal year shall not lapse into the State General Fund, and any interest earned on amounts in such special fund shall be deposited to the credit of the special fund.

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

(3) The participant shall make the necessary arrangements to allow for correctional officers to visit the participant's place of education or employment at any time, based upon the approval of the educational institution or employer, for the purpose of verifying the participant's compliance with the conditions of his detention.

(4) The participant shall acknowledge and participate with the approved electronic monitoring device

as designated by the department at any time for the purpose of verifying the participant's compliance with the conditions of his detention.

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

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

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

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

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

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

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

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

REPEALER AND EFFECT OF 2005 LEGISLATION

<For repeal date of § 47-5-1001 to 47-5-1015, and for information regarding the repeal of former sections relating to electronic home detention, the effect of Laws 2005, Ch. 485, and ratification of certain Department of Corrections actions taken from July 1, 2004 to April 6, 2005, see notes preceding § 47-5- 1001 in West's

Annotated Mississippi Code.>

Current through 2006 Sessions & 2007 Reg. Sess., Chs. 301,302,305 to 307, 311 to 313, 315, 319 to 321, 323 to 330, 335, 339, 341, 343, 346, 349 to 353, 357, 360, 362, 365, 378, 383, 387, 394, 397, 403, 405, 408, 410 to 412, 419, 422, 425, 426, and 430

§47-5-1009. Absolute immunity; annual audits

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

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

Current through 2006 Sessions & 2007 Reg. Sess., Chs. 301,302,305 to 307, 311 to 313, 315, 319 to 321, 323 to 330, 335, 339, 341, 343, 346, 349 to 353, 357, 360, 362, 365, 378, 383, 387, 394, 397, 403, 405, 408, 410 to 412, 419, 422, 425, 426, and 430

(1) Before entering an order for commitment for electronic house arrest, the department shall inform the participant and other persons residing in the home of the nature and extent of the approved electronic monitoring devices by doing the following:

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

(b) Advising adult persons residing in the home of the participant at the time an order or commitment for electronic house arrest is entered and

asking such persons to acknowledge the nature and extent of approved electronic monitoring devices.

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

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

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

Current through 2006 Sessions & 2007 Reg. Sess., Chs. 301,302,305 to 307, 311 to 313, 315, 319 to 321, 323 to 330, 335, 339, 341, 343, 346, 349 to 353, 357, 360, 362, 365, 378, 383, 387, 394, 397, 403, 405, 408, 410 to 412, 419, 422, 425, 426, and 430

§47-5-1013. Conditions of continued participation

Participants enrolled in an intensive supervision program shall be required to:

(a) Maintain employment if physically able, or full-time student status at an approved school or vocational trade, and make progress deemed satisfactory to the correctional field officer, or both, or be involved in supervised job searches.

(b) Pay restitution and program fees as directed by the department. Program fees shall not be less than Seventy-five Dollars (\$75.00) per month. The sentencing judge may charge a program fee of less than Seventy-five Dollars (\$75.00) per month in cases of extreme financial hardship, when such judge determines that the offender's participation in the program would provide a benefit to his community. Program fees shall be deposited in the special fund created in Section 47-5-1007.

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

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

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

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

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

Current through 2006 Sessions & 2007 Reg. Sess., Chs. 301,302,305 to 307, 311 to 313, 315, 319 to 321, 323 to 330, 335, 339, 341, 343, 346, 349 to 353, 357, 360, 362, 365, 378, 383, 387,

394, 397, 403, 405, 408, 410 to 412, 419, 422, 425, 426, and 430

§47-5-1014. Monthly supervision fee

(1) Participants who have been in the intensive supervision program since July 1, 2004, whether placed into the program before or after July 1, 2004, shall pay a Fifty Dollar (\$50.00) monthly supervision fee to the Mississippi Department of Corrections for their supervision from July 1, 2004, or from the date the participant entered the program after July 1, 2004, until completion of the program, or April 6, 2005, or whichever occurs first. From and after April 6, 2005, all participants of the intensive supervision program shall pay the fee as established in Section 47-5-1013.

(2) The Department of Corrections shall use its best effort to collect the monthly supervision fees in arrearage under this section.

(3) A participant's failure to pay the monthly fees in arrearage shall not be deemed a violation of a condition of the program, and the participant shall not be removed from the program for failure to pay the monthly fees in arrearage.

(4) This section shall not apply to any fees incurred after April 6, 2005.

(5) Any arrearage remaining under this section at the end of the offender's participation in the program shall automatically be reduced to a civil judgment and upon notice by the Department of Corrections shall be recorded with the circuit court clerk in the county wherein the participant resides. The Department of

Corrections and/or the district attorney shall use best efforts to collect the judgment.

Current through 2006 Sessions & 2007 Reg. Sess., Chs. 301,302,305 to 307, 311 to 313, 315, 319 to 321, 323 to 330, 335, 339, 341, 343, 346, 349 to 353, 357, 360, 362, 365, 378, 383, 387, 394, 397, 403, 405, 408, 410 to 412, 419, 422, 425, 426, and 430

§47-7-33. Probation; notice to Department of Corrections; support payments

(1) When it appears to the satisfaction of any circuit court or county court in the State of Mississippi; having original jurisdiction over criminal actions, or to the judge thereof, that the ends of justice and the best interest of the public, as well as the defendant, will be served thereby, such court, in termtime or in vacation, shall have the power, after conviction or a plea of guilty, except in a case where a death sentence or life imprisonment is the maximum penalty which may be imposed or where the defendant has been convicted of a felony on a previous occasion in any court or courts of the United States and of any state or territories thereof, to suspend the imposition or execution of sentence, and place the defendant on probation as herein provided, except that the court shall not suspend the execution of a sentence of imprisonment after the defendant shall have begun to serve such sentence. In placing any defendant on probation, the court, or judge, shall direct that such defendant be under the supervision of the Department of Corrections.

(2) When any circuit or county court places an offender on probation, the court shall give notice to the

Mississippi Department of Corrections within fifteen (15) days of the court's decision to place the offender on probation. Notice shall be delivered to the central office of the Mississippi Department of Corrections and to the regional office of the department which will be providing supervision to the offender on probation.

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

Current through 2006 Sessions & 2007 Reg. Sess., Chs. 301,302,305 to 307, 311 to 313, 315, 319 to 321, 323 to 330, 335, 339, 341, 343, 346, 349 to 353, 357, 360, 362, 365, 378, 383, 387, 394, 397, 403, 405, 408, 410 to 412, 419, 422, 425, 426, and 430

§ 47-7-34. Post-release supervision; imposition by court; restrictions; termination

(1) When a court imposes a sentence upon a conviction for any felony committed after June 30, 1995, the court, in addition to any other punishment imposed if the other punishment includes a term of incarceration in a state or local correctional facility, may impose a term of post-release supervision. However, the total number of years of incarceration plus the total number of

years of post-release supervision shall not exceed the maximum sentence authorized to be imposed by law for the felony committed. The defendant shall be placed under post-release supervision upon release from the term of incarceration. The period of supervision shall be established by the court.

(2) The period of post-release supervision shall be conducted in the same manner as a like period of supervised probation, including a requirement that the defendant shall abide by any terms and conditions as the court may establish. Failure to successfully abide by the terms and conditions shall be grounds to terminate the period of post-release supervision and to recommit the defendant to the correctional facility from which he was previously released. Procedures for termination and recommitment shall be conducted in the same manner as procedures for the revocation of probation and imposition of a suspended sentence.

(3) Post-release supervision programs shall be operated through the probation and parole unit of the Division of Community Corrections of the department. The maximum amount of time that the Mississippi Department of Corrections may supervise an offender on the post-release supervision program is five (5) years.

Current through 2006 Sessions & 2007 Reg. Sess., Chs. 301,302,305 to 307, 311 to 313, 315, 319 to 321, 323 to 330, 335, 339, 341, 343, 346, 349 to 353, 357, 360, 362, 365, 378, 383, 387, 394, 397, 403, 405, 408, 410 to 412, 419, 422, 425, 426, and 430

§47-7-35. Permissible conditions of probation or post-release supervision; Sex Offender Registry check

(1) The courts referred to in Section 47-7-33 or 47-7-34 shall determine the terms and conditions of probation or post-release supervision and may alter or modify, at any time during the period of probation or post-release supervision the conditions and may include among them the following or any other:

That the, offender shall:

- (a) Commit no offense against the laws of this or any other state of the United States, or of the United States;
- (b) Avoid injurious or vicious habits;
- (c) Avoid persons or places of disreputable or harmful character;
- (d) Report to the probation and parole officer as directed;
- (e) Permit the probation and parole officer to visit him at home or elsewhere;
- (f) Work faithfully at suitable employment so far as possible;
- (g) Remain within a specified area;
- (h) Pay his fine in one (1) or several sums;
- (i) Support his dependents;
- (j) Submit, as provided in Section 47-5-601, to any type of breath, saliva or urine chemical analysis test, the purpose of which is to

detect the possible presence of alcohol or a substance prohibited or controlled by any law of the State of Mississippi or the United States.

(2) When any court places a defendant on misdemeanor probation, the court must cause to be conducted a search of the probationer's name or other identifying information against the registration information regarding sex offenders maintained under Title 45, Chapter 33. The search may be conducted using the Internet site maintained by the Department of Public Safety Sex Offender Registry.

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§47-7-37. Probation and post-release supervision violations; release with or without bail; procedure; duration

The period of probation shall be fixed by the court, and may at any time be extended or terminated by the court, or judge in vacation. Such period with any extension thereof shall not exceed five (5) years, except that in cases of desertion and/or failure to support minor children, the period of probation may be fixed and/or extended by the court for so long as the duty to support such minor children exists.

At any time during the period of probation the court, or judge in vacation, may issue a warrant for violating any of the conditions of probation or suspension of sentence and cause the probationer to be arrested. Any probation and parole officer may arrest a probationer without

a warrant, or may deputize any other officer with power of arrest to do so by giving him a written statement setting forth that the probationer has, in the judgment of the probation and parole officer, violated the conditions of probation. Such written statement delivered with the probationer by the arresting officer to the official in charge of a county jail or other place of detention shall be sufficient warrant for the detention of the probationer.

If a probationer or offender is subject to registration as a sex offender, the court must make a finding that the probationer or offender is not a danger to the public prior to release with or without bail. In determining the danger posed by the release of the offender or probationer, the court may consider the nature and circumstances of the violation and any new offenses charged; the offender or probationer's past and present conduct, including convictions of crimes and any record of arrests without conviction for crimes involving violence or sex crimes; any other evidence of allegations of unlawful sexual conduct or the use of violence by the offender or probationer; the offender or probationer's family ties, length of residence in the community, employment history and mental condition; the offender or probationer's history and conduct during the probation or other supervised release and any other previous supervisions, including disciplinary records of previous incarcerations; the likelihood that the offender or probationer will engage again in a criminal course of conduct; the weight of the evidence against the offender or probationer; and any other facts the court considers relevant.

The probation and parole officer after making an arrest shall present to the

detaining authorities a similar statement of the circumstances of violation. The probation and parole officer shall at once notify the court of the arrest and detention of the probationer and shall submit a report in writing showing in what manner the probationer has violated the conditions of probation. Thereupon, or upon an arrest by warrant as herein provided, the court, in termtime or vacation, shall cause the probationer to be brought before it and may continue or revoke all or any part of the probation or the suspension of sentence, and may cause the sentence imposed to be executed or may impose any part of the sentence which might have been imposed at the time of conviction.

If the probationer is arrested in a circuit court district in the State of Mississippi other than that in which he was convicted, the probation and parole officer, upon the written request of the sentencing judge, shall furnish to the circuit court or the county court of the county in which the arrest is made, or to the judge of such court, a report concerning the probationer, and such court or the judge in vacation shall have authority, after a hearing, to continue or revoke all or any part of probation or all or any part of the suspension of sentence, and may in case of revocation proceed to deal with the case as if there had been no probation. In such case, the clerk of the court in which the order of revocation is issued shall forward a transcript of such order to the clerk of the court of original jurisdiction, and the clerk of that court shall proceed as if the order of revocation had been issued by the court of original jurisdiction. Upon the revocation of probation or suspension of sentence of any offender, such offender shall be placed in the legal custody of the State

Department of Corrections and shall be subject to the requirements thereof.

Any probationer who removes himself from the State of Mississippi without permission of the court placing him on probation, or the court to which jurisdiction has been transferred, shall be deemed and considered a fugitive from justice and shall be subject to extradition as now provided by law. No part of the time that one is on probation shall be considered as any part of the time that he shall be sentenced to serve.

The arresting officer, except when a probation and parole officer, shall be allowed the same fees as now provided by law for arrest on warrant, and such fees shall be taxed against the probationer and paid as now provided by law.

The arrest, revocation and recommitment procedures of this section also apply to persons who are serving a period of post-release supervision imposed by the court.

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§47-7-39. Transfer of probation; residency change

If, for good and sufficient reasons, a probationer desires to change his residence within or without the state, such transfer may be effected by application to his field supervisor which transfer shall be subject to the court's consent and subject to such

regulations as the court, or judge, may require.

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§47-7-41. Discharge from probation; restoring rights

When a probationer shall be discharged from probation by the court of original jurisdiction, the field supervisor, upon receiving a written request from the probationer, shall forward a written report of the record of the probationer to the Division of Community Corrections of the department, which shall present a copy of this report to the Governor. The Governor may, in his discretion, at any time thereafter by appropriate executive order restore any civil rights lost by the probationer by virtue of his conviction or plea of guilty in the court of original jurisdiction.

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§47-7-47. Probation; notification; additional conditions authorized; restitution; alcohol and drug tests

(1) The judge of any circuit court may place an offender on a program of earned probation after a period of confinement as set out herein and the judge may seek the advice of the commissioner and shall direct that the

defendant be under the supervision of the department.

(2) (a) Any circuit court or county court may, upon its own motion, acting upon the advice and consent of the commissioner not earlier than thirty (30) days nor later than one (1) year after the defendant has been delivered to the custody of the department, to which he has been sentenced, suspend the further execution of the sentence and place the defendant on earned probation, except when a death sentence or life imprisonment is the maximum penalty which may be imposed or if the defendant has been confined two (2) or more times for the conviction of a felony on a previous occasion in any court or courts of the United States and of any state or territories thereof or has been convicted of a felony involving the use of a deadly weapon.

(b) The authority granted in this subsection shall be exercised by the judge who imposed sentence on the defendant, or his successor.

(c) The time limit imposed by paragraph (a) of this subsection is not applicable to those defendants sentenced to the custody of the department prior to April 14, 1977. Persons who are convicted of crimes that carry mandatory sentences shall not be eligible for earned probation.

(3) When any circuit or county court places an offender on earned probation, the court shall give notice to the Mississippi Department of Corrections within fifteen (15) days of the court's decision to place the offender on earned probation. Notice shall be delivered to the central office of the Mississippi Department of Corrections and to the regional office

of the department, which will be providing supervision to the offender on earned probation.

(4) If the court places any person on probation or earned probation, the court may order the person, as a condition of probation, to a period of confinement and treatment at a private or public agency or institution, either within or without the state, which treats emotional, mental or drug-related problems. Any person who, as a condition of probation, is confined for treatment at an out-of-state facility shall be supervised pursuant to Section 47-7-71, and any person confined at a private agency shall not be confined at public expense. Time served in any such agency or institution may be counted as time required to meet the criteria of subsection (2)(a).

(5) If the court places any person on probation or earned probation, the court may order the person to make appropriate restitution to any victim of his crime or to society through the performance of reasonable work for the benefit of the community.

(6) If the court places any person on probation or earned probation, the court may order the person, as a condition of probation, to submit, as provided in Section 47-5-601, to any type of breath, saliva or urine chemical analysis test, the purpose of which is to detect the possible presence of alcohol or a substance prohibited or controlled by any law of the State of Mississippi or the United States.

Current through 2006 Sessions & 2007 Reg. Sess., Chs. 301,302,305 to 307, 311 to 313, 315, 319 to 321, 323 to 330, 335, 339, 341, 343, 346, 349 to 353,357, 360, 362, 365, 378, 383, 387, 394, 397, 403, 405, 408, 410 to 412, 419, 422, 425, 426, and 430

§47-7-49. Monthly fees for supervision; depositing funds

(1) Any offender on probation, parole, earned-release supervision, post-release supervision, earned probation or any other offender under the field supervision of the Community Services Division of the department shall pay to the department the sum of Forty-five Dollars (\$45.00) per month by certified check or money order unless a hardship waiver is granted. An offender shall make the initial payment within thirty (30) days after being released from imprisonment unless a hardship waiver is granted. A hardship waiver may be granted by the sentencing court or the Department of Corrections. A hardship waiver may not be granted for a period of time exceeding ninety (90) days. The commissioner or his designee shall deposit Forty Dollars (\$40.00) of each payment received into a special fund in the State Treasury, which is hereby created, to be known as the Community Service Revolving Fund. Expenditures from this fund shall be made for: (a) the establishment of restitution and satellite centers; and (b) the establishment, administration and operation of the department's Drug Identification Program and the intensive and field supervision program. The Forty Dollars (\$40.00) may be used for salaries and to purchase equipment, supplies and vehicles to be used by the Community Services Division in the performance of its duties. Expenditures for the purposes established in this section may be made from the fund upon requisition by the commissioner, or his designee.

Of the remaining amount, Three Dollars (\$3.00) of each payment shall be

deposited in the Crime Victims' Compensation Fund created in Section 99-41- 29, and Two Dollars (\$2.00) shall be deposited into the Training Revolving Fund created pursuant to Section 47-7-51. When a person is convicted of a felony in this state, in addition to any other sentence it may impose, the court may, in its discretion, order the offender to pay a state assessment not to exceed the greater of One Thousand Dollars (\$1,000.00) or the maximum fine that may be imposed for the offense, into the Crime Victims' Compensation Fund created pursuant to Section 99-41-29.

Any federal funds made available to the department for training or for training facilities, equipment or services shall be deposited in the Correctional Training Revolving Fund created in Section 47-7-51. The funds deposited in this account shall be used to support an expansion of the department's training program to include the renovation of facilities for training purposes, purchase of equipment and contracting of training services with community colleges in the state.

No offender shall be required to make this payment for a period of time longer than ten (10) years.

(2) The offender may be imprisoned until the payments are made if the offender is financially able to make the payments and the court in the county where the offender resides so finds, subject to the limitations hereinafter set out. The offender shall not be imprisoned if the offender is financially unable to make the payments and so states to the court in writing, under oath, and the court so finds.

(3) This section shall stand

repealed from and after June 30, 2008.

REPEALER

<This section is repealed by its own terms from and after June 30, 2008.>

Current through 2006 Sessions & 2007 Reg. Sess., Chs. 301,302,305 to 307, 311 to 313, 315, 319 to 321, 323 to 330, 335, 339, 341, 343, 346, 349 to 353, 357, 360, 362, 365, 378, 383, 387, 394, 397, 403, 405, 408, 410 to 412, 419, 422, 425, 426, and 430

§99-15-26. Release after successful completion of conditions

(1) In all criminal cases, felony and misdemeanor, other than crimes against the person, the circuit or county court shall be empowered, upon the entry of a plea of guilty by a criminal defendant, to withhold acceptance of the plea and sentence thereon pending successful completion of such conditions as may be imposed by the court pursuant to subsection (2) of this section. In all misdemeanor criminal cases, other than crimes against the person, the justice or municipal court shall be empowered, upon the entry of a plea of guilty by a criminal defendant, to withhold acceptance of the plea and sentence thereon pending successful completion of such conditions as may be imposed by the court pursuant to subsection (2) of this section. No person having previously qualified under the provisions of this section or having ever been convicted of a felony shall be eligible to qualify for release in accordance with this section. A person shall not be eligible to qualify for release in accordance with this section if such person has been charged (a)

with an offense pertaining to the sale, barter, transfer, manufacture, distribution or dispensing of a controlled substance, or the possession with intent to sell, barter, transfer, manufacture, distribute or dispense a controlled substance, as provided in Section 41-29-139(a)(1), except for a charge under said provision when the controlled substance involved is one (1) ounce or less of marijuana; (b) with an offense pertaining to the possession of one (1) kilogram or more of marijuana as provided in Section 41-29-139(c)(2)(F) and (G) ; or (c) with an offense under the Mississippi Implied Consent Law.

(2)(a) Conditions which the circuit, county, justice or municipal court may impose under subsection (1) of this section shall consist of:

(i) Reasonable restitution to the victim of the crime.

(ii) Performance of not more than nine hundred sixty (960) hours of public service work approved by the court.

(iii) Payment of a fine not to exceed the statutory limit.

(iv) Successful completion of drug, alcohol, psychological or psychiatric treatment or any combination thereof if the court deems such treatment necessary.

(v) The circuit or county court, in its discretion, may require the defendant to remain in the program subject to good behavior for a period of time not to exceed five (5) years. The justice or municipal court, in its discretion, may require the defendant to remain in the

program subject to good behavior for a period of time not to exceed two (2) years.

(b) Conditions, which the circuit or county court may impose under subsection (1) of this section, also include successful completion of a regimented inmate discipline program.

(3) When the court has imposed upon the defendant the conditions set out in this section, the court shall release the bail bond, if any.

(4) Upon successful completion of the court-imposed conditions permitted by subsection (2) of this section, the court shall direct that the cause be dismissed and the case be closed.

(5) Upon petition therefor, the court shall expunge the record of any case in which an arrest was made, the person arrested was released and the case was dismissed or the charges were dropped or there was no disposition of such case.

(6) This section shall take effect and be in force from and after March 31, 1983.

SECTION 2. [Effective date] This act shall take effect and be in force from and after July 1, 2007.

§99-15-101. Short title

Sections 99-15-101 through 99-15-127 shall be known and may be cited as the "Pretrial Intervention Act."

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§99-15-103. Definitions

For purposes of Sections 99-15-101 through 99-15-127, the following words shall have the meaning ascribed herein unless the context shall otherwise require:

(a) "Prosecutorial discretion" means the power of the district attorney to consider all circumstances of criminal proceedings and to determine whether any legal action is to be taken and, if so taken, of what kind and degree and to what conclusion.

(b) "Noncriminal disposition" means the dismissal of a criminal charge without prejudice to the state to reinstate criminal proceedings on motion of the district attorney.

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§99-15-105. Establishment of program

(1) Each district attorney, with the consent of a circuit court judge of his district, shall have the prosecutorial discretion as defined herein and may as a matter of such prosecutorial discretion establish a pretrial intervention program in the circuit court districts.

(2) A pretrial intervention program shall be under the direct supervision

and control of the district attorney.

(3) An offender must make application to an intervention program within the time prescribed by the district attorney.

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§99-15-107. Eligibility

A person shall not be considered for intervention if he or she has previously been accepted into an intervention program nor shall intervention be considered for those individuals charged with any crime of violence including, but not limited to murder, aggravated assault, rape, armed robbery, manslaughter or burglary of a dwelling house. A person shall not be eligible for acceptance into the intervention program provided by Sections 99-15-101 through 99- 15-127 if such person has been charged (a) with an offense pertaining to the sale, barter, transfer, manufacture, distribution or dispensing of a controlled substance, or the possession with intent to sell, barter, transfer, manufacture, distribute or dispense a controlled substance, as provided in Section 41-29-139(a)(1), Mississippi Code of 1972, except for a charge under said provision when the controlled substance involved is one (1) ounce or less of marihuana; or (b) with an offense pertaining to the possession of one (1) kilogram or more of marihuana as provided in Section 41-29-139(c)(2)(D), Mississippi Code of 1972.

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§99-15-109. Prerequisites; offenders held in contempt for failure to pay fine or restitution

(1) Intervention shall be appropriate only when:

(a) The offender is eighteen (18) years of age or older;

(b) There is substantial likelihood that justice will be served if the offender is placed in an intervention program;

(c) It is determined that the needs of the offender and the state can better be met outside the traditional criminal justice process;

(d) It is apparent that the offender poses no threat to the community;

(e) It appears that the offender is unlikely to be involved in further criminal activity;

(f) The offender, in those cases where it is required, is likely to respond quickly to rehabilitative treatment;

(g) The offender has no significant history of prior delinquency or criminal activity;

(h) The offender has been indicted and is represented by an attorney; and

(i) The court has determined that the office of district attorney or the department of corrections has

sufficient support staff to administer such intervention program.

(2) When jurisdiction in a case involving a child is acquired by the circuit court pursuant to a transfer from the youth court, the provision of subsection (1)(a) of this section shall not be applicable.

(3) Notwithstanding any other provision of this section, in all criminal cases wherein an offender has been held in contempt of court for failure to pay fines or restitution, the offender may be placed in pretrial intervention for the purpose of collecting unpaid restitution and fines regardless of any prior criminal conviction, whether felony or misdemeanor.

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§99-15-111. Information compiled on offender

Prior to admittance of an offender into an intervention program, the district attorney may require the offender to furnish information concerning the offender's past criminal record, education and work record, family history, medical or psychiatric treatment or care received, psychological tests taken and other information which, in the district attorney's opinion, bears on the decision as to whether the offender should be admitted.

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§99-15-113. Recommendations from victims and police

Prior to any person's admittance to a pretrial intervention program the victim, if any, of the crime for which the applicant is charged and the law enforcement agency employing the arresting officer shall be asked to comment in writing as to whether or not the applicant should be allowed to enter an intervention program. In each case involving admission to an intervention program, the district attorney and a circuit court judge of his district shall consider the recommendations of the law enforcement agency and the victim, if any, in making a decision.

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§99-15-115. Waiver and agreement

An offender who enters an intervention program shall:

(a) Waive, in writing and contingent upon his successful completion of the program, his or her right to a speedy trial;

(b) Agree, in writing, to the tolling

while in the program of all periods of limitation established by statutes or rules of court;

(c) Agree, in writing, to the conditions of the intervention program established by the district attorney which shall not require or include a guilty plea;

(d) In the event there is a victim of the crime, agree, in writing, to make restitution to the victim within a specified period of time and in an amount to be determined by the district attorney and approved by the court; and

(e) Agree, in writing, to waive extradition.

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§99-15-117. Terms of program; court approval

In any case in which an offender agrees to an intervention program, a specific agreement shall be made between the district attorney and the offender. This agreement shall include the terms of the intervention program, the length of the program, which shall not exceed three (3) years, and a section therein stating the period of time after which the prosecutor will either dismiss the charge or seek a conviction based upon that charge. The agreement shall be signed by the offender and his or her counsel and filed in the district attorney's office. Before an offender is admitted to an

intervention program, the court having jurisdiction of the charge must approve of the offender's admission to the program and the terms of the agreement.

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§99-15-119. Written reports

In all cases where an offender is accepted for intervention a written report shall be made and retained on file in the district attorney's office, regardless of whether or not the offender successfully completes the intervention program. The district attorney shall furnish to the Mississippi Justice Information Center personal identification information on each person accepted for intervention. This information shall only be released by the Mississippi Justice Information Center in those cases where a district attorney inquires as to whether a person has previously been accepted into an intervention program.

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§99-15-121. Restitution

Prior to the completion of the pretrial intervention program the offender shall

make restitution, as determined by the district attorney and approved by the court, to the victim, if any, and shall pay any expenses to the administrator of this program which are incurred as a result of his participation in the program. The amount of such expenses shall be determined by the district attorney and made part of the initial agreement between the district attorney and the offender.

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§99-15-123. Disposition of charges

(1) In the event an offender successfully completes a pretrial intervention program, the district attorney, with the approval of a circuit court judge of his district, may make a noncriminal disposition of the charge or charges pending against the offender.

(2) In the event the offender violates the conditions of the program agreement: (a) the district attorney may terminate the offender's participation in the program, (b) the waiver executed pursuant to Section 99-15-115 shall be void on the date the offender is removed from the program for the violation, and (c) the prosecution of pending criminal charges against the offender shall be resumed by the district attorney.

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§99-15-125. Reference to program as inducement to confession

No law enforcement officer shall refer to, mention and/or offer participation in this program as an inducement to any statement, confession or waiver of any constitutional rights of any person accused of a crime except those enumerated in Section 99-15-115.

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§99-15-127. Support of program

The Department of Corrections, Division of Community Corrections, is directed to support Sections 99-15-101 through 99-15-127 to the extent that field support personnel are available in circuit court districts, and the Commissioner of Corrections shall certify to the court that the Division of Community Corrections has sufficient field parole officers to supervise and oversee those individuals who may be placed in this program by the court.

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§99-37-19. Restitution centers

The boards of supervisors of the several counties and the governing authorities of municipalities are hereby authorized to cooperate with the Department of Corrections in the establishment of restitution centers. Such centers may house both probationers referred by the circuit courts as well as inmates transferred from other facilities of the Department of Corrections as provided in Section 47-5-110. In order to qualify for placement in a restitution center, an offender must: (a) be convicted of a nonviolent offense that constitutes a felony, (b) not be convicted of a sex crime, and (c) not have drug, alcohol, emotional or physical problems so serious that the offender appears unlikely to meet obligations of the restitution program. Such centers shall be operated by the Department of Corrections. County or municipal property may be utilized with the approval of the board of supervisors or municipal governing authority for the construction, renovation and maintenance of facilities owned by the state or a local political subdivision. Such facility may be leased to the Department of Corrections for a period of time for use as a restitution center.

It is the intent of this section that county and local governments contribute only to the establishment, renovation and maintenance of the physical plant of a restitution center and that the Department of Corrections support the operation of, and have sole jurisdiction over and responsibility for offenders in, such restitution program.

This section shall stand repealed on July 1, 2011.

REPEALER

<This section is repealed by its own terms on July 1, 2011.>

Current through 2006 Sessions & 2007 Reg. Sess., Chs. 301,302,305 to 307, 311 to 313, 315, 319 to 321, 323 to 330, 335, 339, 341, 343, 346, 349 to 353, 357, 360, 362, 365, 378, 383, 387, 394, 397, 403, 405, 408, 410 to 412, 419, 422, 425, 426, and 430

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