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Mississippi Senate Bill 2745

Bill Title: Opioid Crisis Intervention Act; create.

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MISSISSIPPI LEGISLATURE

2019 Regular Session

To: Public Health and Welfare; Accountability, Efficiency, Transparency

By: Senator(s) Doty

Senate Bill 2745

AN ACT TO BE KNOWN AS THE OPIOID CRISIS INTERVENTION ACT; TO AMEND SECTION 41-29-149.1, MISSISSIPPI CODE OF 1972, TO EXPAND THE TYPES OF DRUG VIOLATIONS FOR WHICH A PERSON MAY NOT BE PROSECUTED WHEN COMPLYING WITH THE MISSISSIPPI MEDICAL EMERGENCY GOOD SAMARITAN ACT; TO AMEND SECTION 41-127-1, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT TELEMEDICINE PROVIDERS SHALL BE ALLOWED TO PROVIDE TREATMENT FOR SUBSTANCE USE DISORDERS, INCLUDING MEDICATION-ASSISTED TREATMENT; TO AUTHORIZE MUNICIPALITIES, COUNTIES AND PUBLIC OR PRIVATE EDUCATIONAL INSTITUTIONS TO ADOPT A PRE-ARREST DIVERSION PROGRAM IN WHICH LAW ENFORCEMENT OFFICERS OF THE ENTITY MAY DIVERT ADULTS WHO COMMIT A NONVIOLENT OFFENSE; TO PROVIDE THAT ADULTS WHO ARE DIVERTED SHALL BE PROVIDED APPROPRIATE ASSESSMENT, INTERVENTION, EDUCATION AND BEHAVIORAL HEALTH CARE SERVICES; TO PROVIDE THAT IF THE ADULT DOES NOT PARTICIPATE IN THE PRE-ARREST DIVERSION PROGRAM, THE LAW ENFORCEMENT AGENCY MAY CRIMINALLY CHARGE THE ADULT FOR THE ORIGINAL OFFENSE AND REFER THE CASE TO THE APPROPRIATE PROSECUTING AGENCY TO DETERMINE IF PROSECUTION IS APPROPRIATE; TO PROVIDE THAT IF THE ADULT SUCCESSFULLY COMPLETES THE PROGRAM, AN ARREST RECORD SHALL NOT BE ASSOCIATED WITH THE OFFENSE; TO AMEND SECTION 63-1-53, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT AFTER CERTAIN NOTICE IS GIVEN TO A PERSON WHO FAILS TO TIMELY PAY ANY FINES, FEES AND ASSESSMENTS RELATING TO A TRAFFIC VIOLATION WITHIN 90 DAYS OF RECEIVING THE NOTICE, THEN THE PERSON SHALL BE SUBJECT TO HAVING THE FINES, FEES AND ASSESSMENTS COLLECTED BY A COURT RATHER THAN HAVING HIS OR HER LICENSE SUSPENDED; TO AMEND SECTION 63-1-52, MISSISSIPPI CODE OF 1972, TO CONFORM TO THE PRECEDING SECTION; TO AMEND SECTION 63-1-71, MISSISSIPPI CODE OF 1972, TO REMOVE THE REQUIREMENT THAT A PERSON'S LICENSE BE SUSPENDED FOR A CONTROLLED SUBSTANCE VIOLATION THAT IS UNRELATED TO OPERATING A MOTOR VEHICLE; TO AMEND SECTION 63-1-51, MISSISSIPPI CODE OF 1972, TO REMOVE THE OFFENSE OF CONTEMPT FOR FAILURE TO PAY A FINE OR FEE OR FAILURE TO RESPOND TO A SUMMONS OR CITATION RELATING TO A TRAFFIC VIOLATION AS A GROUNDS FOR REVOKING A PERSON'S LICENSE; TO AMEND SECTION 9-23-15, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT A JUDGE MAY AUTHORIZE A PERSON TO BE ELIGIBLE FOR ALTERNATIVE SENTENCING THROUGH A DRUG COURT IF HE OR SHE HAS BEEN CONVICTED OF BURGLARY OF AN UNOCCUPIED DWELLING; TO AMEND 9-23-13, TO PROVIDE THAT DRUG COURTS MAY ALLOW PARTICIPANTS TO USE MEDICATION-ASSISTED TREATMENT; AND FOR RELATED PURPOSES.

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

SECTION 1. This act shall be known and may be cited as the Opioid Crisis Intervention Act.

SECTION 2. Section 41-29-149.1, Mississippi Code of 1972, is amended as follows:

41-29-149.1. (1) This section shall be known as the "Mississippi Medical Emergency Good Samaritan Act."

(2) As used in this section, the following words shall have the meanings ascribed:

(a) "Drug overdose" means an acute condition, including, but not limited to, extreme physical illness, decreased level of consciousness, respiratory depression, coma, mania, or death, resulting from the consumption or use of a controlled substance or dangerous drug in violation of

this chapter or that a layperson would reasonably believe to be resulting from the consumption or use of a controlled substance or dangerous drug for which medical assistance is required.

(b) "Drug violation" means * * *

a violation of Section 41-29-139 * * *

, 41-29-144, 41-29-145, 67-1-17, 67-1-81(2), 67-3-13 or 67-3-70, except for trafficking in controlled substances as provided in Section 41-29-139(f).

(c) "Medical assistance" means aid provided to a person experiencing or believed to be experiencing a drug overdose by a health care professional who is licensed, registered, or certified under the laws of this state and who, acting within the lawful scope of practice, may provide diagnosis, treatment, or emergency services relative to the overdose.

(d) "Seeks medical assistance" means accesses or assists in accessing the E-911 system or otherwise contacts or assists in contacting law enforcement or a poison control center or provides care to a person experiencing or believed to be experiencing a drug overdose while awaiting the arrival of medical assistance to aid the person.

(3) (a) Any person who in good faith seeks medical assistance for someone who is experiencing a drug overdose, or is in the proximity of someone seeking medical assistance, shall not be arrested, charged, or prosecuted for a drug violation if there is evidence that the person is under the influence of a controlled substance or in possession of a controlled substance as referenced in subsection (2)(b) of this section.

(b) Any person who is experiencing a drug overdose and, in good faith, seeks medical assistance, or is in the proximity of someone seeking medical assistance, or is the subject of a request for medical assistance, shall not be arrested, charged, or prosecuted for a drug violation if there is evidence that the person is under the influence of a controlled substance or in possession of a controlled substance as referenced in subsection (2)(b) of this section.

(c) A person shall also not be subject to, if related to the seeking of medical assistance:

(i) Penalties for a violation of a permanent or temporary protective order or restraining order;

(ii) Sanctions for a violation of a condition of pretrial release, condition of probation, or condition of parole based on a drug violation; or

(iii) Forfeiture of property pursuant to Section 41-29-153 or 41-29-176 for a drug violation, except that prima facie contraband shall be subject to forfeiture.

(4) Nothing in this section shall be construed:

(a) To limit the admissibility of any evidence in connection with the investigation or prosecution of a crime with regard to a defendant who does not qualify for the protections of subsection (3) of this section or with regard to other crimes committed by a person who otherwise qualifies for protection pursuant to subsection (3) of this section;

(b) To limit any seizure of evidence or contraband otherwise permitted by law; and

(c) To limit or abridge the authority of a law enforcement officer to detain or take into custody a person in the course of an investigation or to effectuate an arrest for any offense except as provided in subsection (3) of this section.

SECTION 3. Section 41-127-1, Mississippi Code of 1972, is amended as follows:

41-127-1. Subject to the limitations of the license under which the individual is practicing, a health-care practitioner licensed in this state may prescribe, dispense, or administer drugs or medical supplies, or otherwise provide treatment recommendations to a patient after having performed an appropriate examination of the patient either in person or by the use of instrumentation and diagnostic equipment through which images and medical records may be transmitted electronically. Treatment recommendations made via electronic means, including issuing a prescription via electronic means, shall be held to the same standards of appropriate practice as those in traditional provider-patient settings.

Notwithstanding any other provision of law, rule or regulation, telemedicine providers shall be authorized to provide treatment for substance use disorders, including medication-assisted treatment.

SECTION 4. (1) A municipality, county or public or private educational institutions may adopt a pre-arrest diversion program in which:

(a) Law enforcement officers of the entity that adopted the program, at their sole discretion, may divert adults who commit a nonviolent offense. Adults who are diverted shall report for intake as required by the pre-arrest diversion program and shall be provided appropriate assessment, intervention, education and behavioral health care services. If the adult does not participate in the pre-arrest diversion program, the law enforcement agency may criminally charge the adult for the original offense and refer the case to the appropriate prosecuting agency to determine if prosecution is appropriate. If the adult successfully completes the program, an arrest record shall not be associated with the offense.

(b) A municipality, county or public or private educational institution that adopts a pre-arrest diversion program shall create a steering committee for the program to develop policies and procedures for the program, including, but not limited to, eligibility criteria, program implementation and operation, and the fee to be paid by adults participating in the program. At a minimum, the steering committee must be composed of representatives of the law enforcement agencies participating in the program, a representative of the program services provider, a public defender or his or her designee, a prosecuting attorney or his or her designee, a clerk of the circuit court or his or her designee, and other interested stakeholders.

(2) This section does not preempt a county or municipality from enacting noncriminal sanctions for a violation of an ordinance or other violation, and does not preempt a county, municipality or public or private educational institution from creating its own model for a pre-arrest diversion program for adults.

SECTION 5. Section 63-1-53, Mississippi Code of 1972, is amended as follows:

63-1-53. (1) Upon failure of any person to * * * pay timely any fine, fee or assessment levied as a result of any violation of this title, the clerk of the court shall give written notice to such person by United States first-class mail at his last-known address advising * * * the person that, if within * * * ninety (90) days after such notice is deposited in the mail, the person has not * * * paid the entire amount of all fines, fees and assessments levied, then the court will * * * pursue collection as for any other delinquent payment, and shall be entitled to collection of all additional fees in accordance with subsection (4) of this section.

(2) The commissioner is hereby authorized to suspend the license of an operator without preliminary hearing upon a showing by his records or other sufficient evidence that the licensee:

(a) Has committed an offense for which mandatory revocation of license is required upon conviction except under the provisions of the Mississippi Implied Consent Law;

(b) Has been involved as a driver in any accident resulting in the death or personal injury of another or serious property damage;

(c) Is an habitually reckless or negligent driver of a motor vehicle;

(d) Has been convicted with such frequency of serious offenses against traffic regulations governing the movement of vehicles as to indicate a disrespect for traffic laws and a disregard for the safety of other persons on the highways;

(e) Is incompetent to drive a motor vehicle;

(f) Has permitted an unlawful or fraudulent use of such license;

(g) Has committed an offense in another state which if committed in this state would be grounds for suspension or revocation; or

* * *

(* * *h) Has committed a violation for which mandatory revocation of license is required upon conviction, entering a plea of nolo contendere to, or adjudication of delinquency, pursuant to the provisions of subsection (1) of Section 63-1-71.

(3) Notice that a person's license is suspended or will be suspended under subsection (2) of this section shall be given by the commissioner in the manner and at the time provided for under Section 63-1-52, and upon such person's request, he shall be afforded an opportunity for a hearing as early as practicable, but not to exceed twenty (20) days after receipt of such request in the county wherein the licensee resides unless the department and the licensee agree that such hearing may be held in some other county. Upon such hearing the commissioner, or his duly authorized agent, may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers and may require a reexamination of the licensee. Upon such hearing the commissioner shall either rescind any order of suspension or, good cause appearing therefor, may extend any suspension of such license or revoke such license.

(4) If a licensee has not paid all cash appearance bonds authorized under Section 99-19-3 or all fines, fees or other assessments levied as a result of a violation of this title within ninety (90) days * * * of receiving notice of the licensee's failure to pay all fines, fees or other

assessments as provided in subsection (1) of this section, the court is authorized to pursue collection under Section 21-17-1(6) or 19-3-41(2) as for any other delinquent payment, and shall be entitled to collection of all additional fees authorized under those sections.

SECTION 6. Section 63-1-52, Mississippi Code of 1972, is amended as follows:

63-1-52. (1) Whenever the Commissioner of Public Safety suspends, cancels or revokes the driver's license or driving privileges of any person, notice of the suspension, cancellation or revocation shall be given to such person by the commissioner, or his duly authorized agent, in the manner provided in subsection (2) of this section and at the time provided in subsection (3) of this section or in the manner and at the time provided in subsection (4) of this section.

(2) Notice shall be given in the following manner:

(a) In writing, (i) by United States Certificate of Mail; or (ii) by personal service at the person's address as it appears on the driving record maintained by the Department of Public Safety or at the person's last-known address; or (iii) by personal notice being given by any law enforcement officer of this state or any duly authorized agent of the Commissioner of Public Safety on forms prescribed and furnished by the Commissioner of Public Safety; whenever a person's driver's license or driving privileges are suspended, revoked or cancelled in accordance with the Mississippi Driver License Compact Law, the Mississippi Implied Consent Law, the Mississippi Motor Vehicle Safety Responsibility Law or * * * subsection (2) (c), (2) (d), (2) (e) or (2) (f) of Section 63-1-53.

(b) In writing, by United States first-class mail, whenever a person's driver's license or driving privileges are suspended, revoked or cancelled in accordance with the Mississippi Commercial Driver's License Law, the Youth Court Law, Chapter 23 of Title 43, Mississippi Code of 1972, Section 63-1-45, Section 63-1-51, * * * subsection (2) (g) * * * of Section 63-1-53 or Section 63-9-25.

(3) Notice shall be given at the following time:

(a) Before suspension, revocation or cancellation, whenever a person's driver's license or driving privileges are suspended, revoked or cancelled in accordance with the Mississippi Driver License Compact Law, the Mississippi Motor Vehicle Safety Responsibility Law or * * * subsection (2) (c), (2) (d), (2) (e) or (2) (f) of Section 63-1-53.

(b) Unless otherwise specifically provided for by law, at the time of suspension, revocation or cancellation, whenever a person's driver's license or driving privileges are suspended, revoked or cancelled in accordance with the Mississippi Commercial Driver's License Law, the Mississippi Implied Consent Law, the Youth Court Law, Chapter 23 of Title 43, Mississippi Code of 1972, Section 63-1-45, Section 63-1-51, * * * subsection (2) (g) * * * of Section 63-1-53 or Section 63-9-25.

(4) Whenever the Commissioner of Public Safety suspends, revokes or cancels the driver's license or driving privileges of any person in accordance with some provision of law other than a provision of law referred to in subsections (2) and (3) of this section, and the manner and time

for giving notice is not provided for in such law, then notice of such suspension, revocation or cancellation shall be given in the manner and at the time provided for under * * * subsections (2) (b) and (3) (b) of this section.

SECTION 7. Section 63-1-71, Mississippi Code of 1972, is amended as follows:

63-1-71. (1) * * * Notwithstanding the provisions of Section 63-11-30(2) (a) and in addition to any penalty authorized by the Uniform Controlled Substances Law or any other statute indicating the dispositions that can be ordered for an adjudication of delinquency, every person convicted of driving under the influence of a controlled substance, or entering a plea of nolo contendere thereto, or adjudicated delinquent therefor, in a court of this state, and every person convicted of driving under the influence of a controlled substance, or entering a plea of nolo contendere thereto, or adjudicated delinquent therefor, under the laws of the United States, another state, a territory or possession of the United States, the District of Columbia or the Commonwealth of Puerto Rico, shall forthwith forfeit his right to operate a motor vehicle over the highways of this state for a period of not less than six (6) months. In the case of any person who at the time of the imposition of sentence does not have a driver's license or is less than fifteen (15) years of age, the period of the suspension of driving privileges authorized herein shall commence on the day the sentence is imposed and shall run for a period of not less than six (6) months after the day the person obtains a driver's license or reaches the age of fifteen (15) years. If the driving privilege of any person is under revocation or suspension at the time of any conviction or adjudication of delinquency for * * * driving under the influence of a controlled substance, the revocation or suspension period imposed herein shall commence as of the date of termination of the existing revocation or suspension.

(2) The court in this state before whom any person is convicted of or adjudicated delinquent for * * * driving under the influence of a controlled substance shall collect forthwith the Mississippi driver's license of the person and forward such license to the Department of Public Safety along with a report indicating the first and last day of the suspension or revocation period imposed pursuant to this section. If the court is for any reason unable to collect the license of the person, the court shall cause a report of the conviction or adjudication of delinquency to be filed with the Commissioner of Public Safety. That report shall include the complete name, address, date of birth, eye color and sex of the person and shall indicate the first and last day of the suspension or revocation period imposed by the court pursuant to this section. The court shall inform the person orally and in writing that if the person is convicted of personally operating a motor vehicle during the period of license suspension or revocation imposed pursuant to this section, the person shall, upon conviction, be subject to the penalties set forth in Section 63-11-40. A person shall be required to acknowledge receipt of the written notice in writing. Failure to receive a written notice or failure to acknowledge in writing the receipt of a written notice shall not be a defense to a subsequent charge of a violation of Section 63-11-40. If the person is the holder of a driver's license from another jurisdiction, the court shall not collect the license

but shall notify forthwith the Commissioner of Public Safety who shall notify the appropriate officials in the licensing jurisdiction. The court shall, however, in accordance with the provisions of this section, revoke the person's nonresident driving privilege in this state.

(3) The county court or circuit court having jurisdiction, on petition, may reduce the suspension of driving privileges under this section if the denial of which would constitute a hardship on the offender. When the petition is filed, such person shall pay to the circuit clerk of the court where the petition is filed a fee of Twenty Dollars (\$20.00) for each year, or portion thereof, of license revocation or suspension remaining under the original sentence, which shall be deposited into the State General Fund to the credit of a special fund hereby created in the State Treasury to be used for alcohol or drug abuse treatment and education, upon appropriation by the Legislature. This fee shall be in addition to any other court costs or fees required for the filing of petitions.

SECTION 8. Section 63-1-51, Mississippi Code of 1972, is amended as follows:

63-1-51. (1) It shall be the duty of the court clerk, upon conviction of any person holding a license issued pursuant to this article where the penalty for a traffic violation is as much as Ten Dollars (\$10.00), to mail a copy of abstract of the court record or provide an electronically or computer generated copy of abstract of the court record immediately to the commissioner at Jackson, Mississippi, showing the date of conviction, penalty, etc., so that a record of same may be made by the Department of Public Safety. The commissioner shall forthwith revoke the license of any person for a period of one (1) year upon receiving a duly certified record of each person's convictions of any of the following offenses when such conviction has become final:

(a) Manslaughter or negligent homicide resulting from the operation of a motor vehicle;

(b) Any felony in the commission of which a motor vehicle is used;

(c) Failure to stop and render aid as required under the laws of this state in event of a motor vehicle accident resulting in the death or personal injury of another;

(d) Perjury or the willful making of a false affidavit or statement under oath to the department under this article or under any other law relating to the ownership or operation of motor vehicles;

(e) Conviction, or forfeiture of bail not vacated, upon three (3) charges of reckless driving committed within a period of twelve (12) months * * *.

* * *

(2) The commissioner shall revoke the license issued pursuant to this article of any person convicted of negligent homicide, in addition to any penalty now provided by law.

(3) In addition to the reasons specified in this section, the commissioner shall be authorized to suspend the license issued to any person pursuant to this article for being out of compliance with an order for support, as defined in Section 93-11-153. The procedure for suspension of a license for being out of compliance with an order for support, and the procedure for the reissuance or reinstatement of a license suspended for that purpose, and the payment of any

fees for the reissuance or reinstatement of a license suspended for that purpose, shall be governed by Section 93-11-157 or 93-11-163, as the case may be. If there is any conflict between any provision of Section 93-11-157 or 93-11-163 and any provision of this article, the provisions of Section 93-11-157 or 93-11-163, as the case may be, shall control.

SECTION 9. Section 9-23-15, Mississippi Code of 1972, is amended as follows:

9-23-15. (1) In order to be eligible for alternative sentencing through a local drug court, the participant must satisfy each of the following criteria:

(a) The participant cannot have any felony convictions for any offenses that are crimes of violence as defined in Section 97-3-2 within the previous ten (10) years, except as provided in paragraph (f) of this subsection.

(b) The crime before the court cannot be a crime of violence as defined in Section 97-3-2, except as provided in paragraph (f) of this subsection.

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

* * *

(* * *d) 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.

(* * *e) The crime charged cannot be one of trafficking in controlled substances under Section 41-29-139(f), nor can the participant have a prior conviction for same.

(f) A judge, in his or her discretion, may authorize a person who has been charged, convicted or who is before the court for burglary of an unoccupied dwelling under Section 97-17-23(1) for eligible participation for alternative sentencing through a local drug court.

(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; 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. The court having jurisdiction over a person for a matter before the court shall have the final determination about whether the person may participate in drug court under this chapter.

SECTION 10. Section 9-23-13, Mississippi Code of 1972, is amended as follows:

9-23-13. (1) A drug court's alcohol and drug intervention component shall provide for eligible individuals, either directly or through referrals, a range of necessary court intervention services, including, but not limited to, the following:

- (a) Screening using a valid and reliable assessment tool effective for identifying alcohol and drug dependent persons for eligibility and 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.

(3) In accordance with the recommendations of the National Drug Court Institute to combat the opioid epidemic, all drug courts shall allow participants to use medication-assisted treatment while participating in the drug court program.

SECTION 11. This act shall take effect and be in force from and after its passage.
