

By: Senator(s) Walls

To: Judiciary

SENATE BILL NO. 2306

1 AN ACT TO AMEND SECTIONS 43-21-159, 99-15-26, 99-15-57 AND  
2 99-19-71, MISSISSIPPI CODE OF 1972, TO REQUIRE THE COURT TO  
3 EXPUNGE THE RECORD OF AN ARREST IF THERE IS NO PROSECUTION OF THE  
4 CASE, THE CASE WAS DISMISSED OR THE CHARGES WERE DROPPED; AND FOR  
5 RELATED PURPOSES.

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

7 **SECTION 1.** Section 43-21-159, Mississippi Code of 1972, is  
8 amended as follows:

9 43-21-159. (1) When a person appears before a court other  
10 than the youth court, and it is determined that the person is a  
11 child under jurisdiction of the youth court, such court shall,  
12 unless the jurisdiction of the offense has been transferred to  
13 such court as provided in this chapter, or unless the child has  
14 previously been the subject of a transfer from the youth court to  
15 the circuit court for trial as an adult and was convicted,  
16 immediately dismiss the proceeding without prejudice and forward  
17 all documents pertaining to the cause to the youth court; and all  
18 entries in permanent records shall be expunged. The youth court  
19 shall have the power to order and supervise the expunction or the  
20 destruction of such records in accordance with Section 43-21-265.  
21 The youth court shall expunge the record of any case within its  
22 jurisdiction in which an arrest was made, the person arrested was  
23 released and the case was dismissed or the charges were dropped or  
24 there was no disposition of such case. In cases where the child  
25 is charged with a hunting or fishing violation or a traffic  
26 violation whether it be any state or federal law, a violation of  
27 the Mississippi Implied Consent Law, or municipal ordinance or  
28 county resolution or where the child is charged with a violation



29 of Section 67-3-70, the appropriate criminal court shall proceed  
30 to dispose of the same in the same manner as for other adult  
31 offenders and it shall not be necessary to transfer the case to  
32 the youth court of the county. Unless the cause has been  
33 transferred, or unless the child has previously been the subject  
34 of a transfer from the youth court to the circuit court for trial  
35 as an adult, except for violations under the Implied Consent Law,  
36 and was convicted, the youth court shall have power on its own  
37 motion to remove jurisdiction from any criminal court of any  
38 offense including a hunting or fishing violation, a traffic  
39 violation, or a violation of Section 67-3-70, committed by a child  
40 in a matter under the jurisdiction of the youth court and proceed  
41 therewith in accordance with the provisions of this chapter.

42 (2) After conviction and sentence of any child by any other  
43 court having original jurisdiction on a misdemeanor charge, and  
44 within the time allowed for an appeal of such conviction and  
45 sentence, the youth court of the county shall have the full power  
46 to stay the execution of the sentence and to release the child on  
47 good behavior or on other order as the youth court may see fit to  
48 make unless the child has previously been the subject of a  
49 transfer from the youth court to the circuit court for trial as an  
50 adult and was convicted. When a child is convicted of a  
51 misdemeanor and is committed to, incarcerated in or imprisoned in  
52 a jail or other place of detention by a criminal court having  
53 proper jurisdiction of such charge, such court shall notify the  
54 youth court judge or the judge's designee of the conviction and  
55 sentence prior to the commencement of such incarceration. The  
56 youth court shall have the power to order and supervise the  
57 destruction of any records involving children maintained by the  
58 criminal court in accordance with Section 43-21-265. However, the  
59 youth court shall have the power to set aside a judgment of any  
60 other court rendered in any matter over which the youth court has  
61 exclusive original jurisdiction, to expunge or destroy the records



62 thereof in accordance with Section 43-21-265, and to order a  
63 refund of fines and costs.

64 (3) Nothing in subsection (1) or (2) shall apply to a youth  
65 who has a pending charge or a conviction for any crime over which  
66 circuit court has original jurisdiction.

67 (4) In any case wherein the defendant is a child as defined  
68 in this chapter and of which the circuit court has original  
69 jurisdiction, the circuit judge, upon a finding that it would be  
70 in the best interest of such child and in the interest of justice,  
71 may at any stage of the proceedings prior to the attachment of  
72 jeopardy transfer such proceedings to the youth court for further  
73 proceedings unless the child has previously been the subject of a  
74 transfer from the youth court to the circuit court for trial as an  
75 adult and was convicted or has previously been convicted of a  
76 crime which was in original circuit court jurisdiction, and the  
77 youth court shall, upon acquiring jurisdiction, proceed as  
78 provided in this chapter for the adjudication and disposition of  
79 delinquent child proceeding proceedings. If the case is not  
80 transferred to the youth court and the youth is convicted of a  
81 crime by any circuit court, the trial judge shall sentence the  
82 youth as though such youth was an adult. The circuit court shall  
83 not have the authority to commit such child to the custody of the  
84 Department of Youth Services for placement in a state-supported  
85 training school.

86 (5) In no event shall a court sentence an offender over the  
87 age of eighteen (18) to the custody of the Division of Youth  
88 Services for placement in a state-supported training school.

89 (6) When a child's driver's license is suspended by the  
90 youth court for any reason, the clerk of the youth court shall  
91 report the suspension, without a court order under Section  
92 43-21-261, to the Commissioner of Public Safety in the same manner  
93 as such suspensions are reported in cases involving adults.



94 (7) No offense involving the use or possession of a firearm  
95 by a child who has reached his fifteenth birthday and which, if  
96 committed by an adult would be a felony, shall be transferred to  
97 the youth court.

98 **SECTION 2.** Section 99-15-26, Mississippi Code of 1972, is  
99 amended as follows:

100 99-15-26. (1) In all criminal cases, felony and  
101 misdemeanor, other than crimes against the person, the circuit or  
102 county court shall be empowered, upon the entry of a plea of  
103 guilty by a criminal defendant, to withhold acceptance of the plea  
104 and sentence thereon pending successful completion of such  
105 conditions as may be imposed by the court pursuant to subsection  
106 (2) of this section. No person having previously qualified under  
107 the provisions of this section or having ever been convicted of a  
108 felony shall be eligible to qualify for release in accordance with  
109 this section. A person shall not be eligible to qualify for  
110 release in accordance with this section if such person has been  
111 charged (a) with an offense pertaining to the sale, barter,  
112 transfer, manufacture, distribution or dispensing of a controlled  
113 substance, or the possession with intent to sell, barter,  
114 transfer, manufacture, distribute or dispense a controlled  
115 substance, as provided in Section 41-29-139(a)(1), Mississippi  
116 Code of 1972, except for a charge under said provision when the  
117 controlled substance involved is one (1) ounce or less of  
118 marihuana; (b) with an offense pertaining to the possession of one  
119 (1) kilogram or more of marihuana as provided in Section  
120 41-29-139(c)(2)(D), Mississippi Code of 1972; or (c) with an  
121 offense under the Mississippi Implied Consent Law.

122 (2) Conditions which the circuit or county court may impose  
123 under subsection (1) of this section shall consist of:

124 (a) Reasonable restitution to the victim of the crime.

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



127 (c) Payment of a fine not to exceed the statutory  
128 limit.

129 (d) The court may, in its discretion, require the  
130 defendant to remain in the program subject to good behavior for a  
131 period of time not to exceed five (5) years.

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

135 (4) The court shall expunge the record of any case in which  
136 an arrest was made, the person arrested was released and the case  
137 was dismissed or the charges were dropped or there was no  
138 disposition of such case.

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

141 **SECTION 3.** Section 99-15-57, Mississippi Code of 1972, is  
142 amended as follows:

143 99-15-57. (1) Any person who pled guilty within six (6)  
144 months prior to the effective date of Section 99-15-26,  
145 Mississippi Code of 1972, and who would have otherwise been  
146 eligible for the relief allowed in such section, may apply to the  
147 court in which such person was sentenced for an order to expunge  
148 from all official public records all recordation relating to his  
149 arrest, indictment, trial, finding of guilty and sentence. If the  
150 court determines, after hearing, that such person has  
151 satisfactorily served his sentence or period of probation and  
152 parole, pled guilty within six (6) months prior to the effective  
153 date of Section 99-15-26 and would have otherwise been eligible  
154 for the relief allowed in such section, it may enter such order.  
155 The effect of such order shall be to restore such person, in the  
156 contemplation of the law, to the status he occupied before such  
157 arrest or indictment. No person as to whom such order has been  
158 entered shall be held thereafter under any provision of any law to  
159 be guilty of perjury or otherwise giving a false statement by



160 reason of his failures to recite or acknowledge such arrest, or  
161 indictment or trial in response to any inquiry made of him for any  
162 purpose.

163       (2) The court shall expunge the record of any case in which  
164 an arrest was made, the person arrested was released and the case  
165 was dismissed or the charges were dropped or there was no  
166 disposition of such case.

167       **SECTION 4.** Section 99-19-71, Mississippi Code of 1972, is  
168 amended as follows:

169       99-19-71. (1) Any person who has been convicted of a  
170 misdemeanor before reaching his twenty-third birthday, excluding a  
171 conviction for a traffic violation, and who is a first offender,  
172 may petition the justice, county, circuit or municipal court, as  
173 may be applicable, for an order to expunge any such conviction  
174 from all public records. Upon entering such order, a nonpublic  
175 record thereof shall be retained by the court solely for the  
176 purpose of use by the court in determining whether or not in  
177 subsequent proceedings such person is a first offender. The  
178 effect of such order shall be to restore such person, in the  
179 contemplation of the law, to the status he occupied before such  
180 arrest. No person as to whom such order has been entered shall be  
181 held thereafter under any provision of law to be guilty of perjury  
182 or to have otherwise given a false statement by reason of his  
183 failure to recite or acknowledge such arrest or conviction in  
184 response to any inquiry made of him for any purpose, except for  
185 the purpose of determining in any subsequent proceedings under  
186 this section, whether such person is a first offender.

187       (2) A justice, county, circuit or municipal court shall  
188 expunge the record of any case in which an arrest was made, the  
189 person arrested was released and the case was dismissed or the  
190 charges were dropped or there was no disposition of such case.

191       **SECTION 5.** This act shall take effect and be in force from  
192 and after its passage.

