

By: Representative Moak

To: Judiciary B

HOUSE BILL NO. 129

1 AN ACT TO PROVIDE A PROCEDURE TO EXPUNGE CERTAIN CONVICTIONS;  
2 TO AMEND SECTIONS 41-29-150 AND 99-19-71, MISSISSIPPI CODE OF  
3 1972, IN CONFORMITY TO THE PROVISIONS OF THIS ACT; AND FOR RELATED  
4 PURPOSES.

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

6 **SECTION 1.** Any person who has been convicted in all criminal  
7 cases, felony and misdemeanor, other than crimes against the  
8 person, offenses affecting children and offenses pertaining to the  
9 sale, barter, transfer, manufacture, distribution or dispensing of  
10 a controlled substance, and/or the possession with intent to sale,  
11 barter, transfer, manufacture, distribution or dispensing of a  
12 controlled substance as provided for in Section 41-29-139(a)(1),  
13 and who is a first offender, may petition the circuit court in  
14 which he or she was convicted for an order to expunge any such  
15 conviction from all public records. Upon entering such an order,  
16 a nonpublic record thereof shall be retained solely for the  
17 purpose of use in determining whether in subsequent proceeding,  
18 such person is a first offender.

19 The effect of such an order shall be to restore such person,  
20 in the contemplation of the law to the status he occupied before  
21 such arrest.

22 **SECTION 2.** Section 41-29-150, Mississippi Code of 1972, is  
23 amended as follows:

24 41-29-150. (a) Any person convicted under Section 41-29-139  
25 may be required, in the discretion of the court, as a part of the  
26 sentence otherwise imposed, or in lieu of imprisonment in cases of  
27 probation or suspension of sentence, to attend a course of  
28 instruction conducted by the bureau, the State Board of Health, or

29 any similar agency, on the effects, medically, psychologically and  
30 socially, of the misuse of controlled substances. Said course may  
31 be conducted at any correctional institution, detention center or  
32 hospital, or at any center or treatment facility established for  
33 the purpose of education and rehabilitation of those persons  
34 committed because of abuse of controlled substances.

35 (b) Any person convicted under Section 41-29-139 who is  
36 found to be dependent upon or addicted to any controlled substance  
37 shall be required, as a part of the sentence otherwise imposed, or  
38 in lieu of imprisonment in cases of parole, probation or  
39 suspension of sentence, to receive medical treatment for such  
40 dependency or addiction. The regimen of medical treatment may  
41 include confinement in a medical facility of any correctional  
42 institution, detention center or hospital, or at any center or  
43 facility established for treatment of those persons committed  
44 because of a dependence or addiction to controlled substances.

45 (c) Those persons previously convicted of a felony under  
46 Section 41-29-139 and who are now confined at the Mississippi  
47 State Hospital at Whitfield, Mississippi, or at the East  
48 Mississippi State Hospital at Meridian, Mississippi, for the term  
49 of their sentence shall remain under the jurisdiction of the  
50 Mississippi Department of Corrections and shall be required to  
51 abide by all reasonable rules and regulations promulgated by the  
52 director and staff of said institutions and of the Department of  
53 Corrections. Any persons so confined who shall refuse to abide by  
54 said rules or who attempt an escape or who shall escape shall be  
55 transferred to the State Penitentiary or to a county jail, where  
56 appropriate, to serve the remainder of the term of imprisonment;  
57 this provision shall not preclude prosecution and conviction for  
58 escape from said institutions.

59 (d) (1) If any person who has not previously been convicted  
60 of violating Section 41-29-139, or the laws of the United States  
61 or of another state relating to narcotic drugs, stimulant or

62 depressant substances, other controlled substances or marihuana is  
63 found to be guilty of a violation of subsection (c) or (d) of  
64 Section 41-29-139, after trial or upon a plea of guilty, the court  
65 may, without entering a judgment of guilty and with the consent of  
66 such person, defer further proceedings and place him on probation  
67 upon such reasonable conditions as it may require and for such  
68 period, not to exceed three (3) years, as the court may prescribe.  
69 Upon violation of a condition of the probation, the court may  
70 enter an adjudication of guilt and proceed as otherwise provided.  
71 The court may, in its discretion, dismiss the proceedings against  
72 such person and discharge him from probation before the expiration  
73 of the maximum period prescribed for such person's probation. If  
74 during the period of his probation such person does not violate  
75 any of the conditions of the probation, then upon expiration of  
76 such period the court shall discharge such person and dismiss the  
77 proceedings against him. Discharge and dismissal under this  
78 subsection shall be without court adjudication of guilt, but a  
79 nonpublic record thereof shall be retained by the bureau solely  
80 for the purpose of use by the courts in determining whether or  
81 not, in subsequent proceedings, such person qualifies under this  
82 subsection. Such discharge or dismissal shall not be deemed a  
83 conviction for purposes of disqualifications or disabilities  
84 imposed by law upon conviction of a crime, including the penalties  
85 prescribed under this article for second or subsequent conviction,  
86 or for any other purpose. Discharge and dismissal under this  
87 subsection may occur only once with respect to any person; and  
88 (2) Upon the dismissal of such person and discharge of  
89 proceedings against him under paragraph (1) of this subsection, or  
90 with respect to a person who has been convicted and adjudged  
91 guilty of an offense under subsection (c) or (d) of Section  
92 41-29-139, or for possession of narcotics, stimulants,  
93 depressants, hallucinogens, marihuana, other controlled substances  
94 or paraphernalia under prior laws of this state, such person, if

95 he had not reached his twenty-sixth birthday at the time of the  
96 offense, may apply to the court for an order to expunge from all  
97 official records, other than the nonpublic records to be retained  
98 by the bureau under paragraph (1) of this subsection, all  
99 recordation relating to his arrest, indictment, trial, finding of  
100 guilty, and dismissal and discharge pursuant to this section. If  
101 the court determines, after hearing, that such person was  
102 dismissed and the proceedings against him discharged and that he  
103 had not reached his twenty-sixth birthday at the time of the  
104 offense, or that such person had satisfactorily served his  
105 sentence or period of probation and parole, and that he had not  
106 reached his twenty-sixth birthday at the time of the offense, it  
107 shall enter such order. The effect of such order shall be to  
108 restore such person, in the contemplation of the law, to the  
109 status he occupied before such arrest or indictment. No person as  
110 to whom such order has been entered shall be held thereafter under  
111 any provision of any law to be guilty of perjury or otherwise  
112 giving a false statement by reason of his failures to recite or  
113 acknowledge such arrest, or indictment or trial in response to any  
114 inquiry made of him for any purpose. Orders may be expunged as  
115 provided in Section 1 of this act.

116 (e) Every person who has been or may hereafter be convicted  
117 of a felony offense under Section 41-29-139 and sentenced under  
118 Section 41-29-150(c) shall be under the jurisdiction of the  
119 Mississippi Department of Corrections.

120 (f) It shall be unlawful for any person confined under the  
121 provisions of subsection (b) or (c) of this section to escape or  
122 attempt to escape from said institution, and upon conviction said  
123 person shall be guilty of a felony and shall be imprisoned for a  
124 term not to exceed two (2) years.

125 (g) It is the intent and purpose of the Legislature to  
126 promote the rehabilitation of persons convicted of offenses under  
127 the Uniform Controlled Substances Law.

128           **SECTION 3.** Section 99-19-71, Mississippi Code of 1972, is  
129 amended as follows:

130           99-19-71. (1) Any person who has been convicted of a  
131 misdemeanor, excluding a conviction for a traffic violation, and  
132 who is a first offender, may petition the justice, county, circuit  
133 or municipal court, as may be applicable, for an order to expunge  
134 any such conviction from all public records. Upon entering such  
135 order, a nonpublic record thereof shall be retained by the court  
136 and by the Mississippi Criminal Information Center solely for the  
137 purpose of determining whether, in subsequent proceedings, such  
138 person is a first offender. The effect of such order shall be to  
139 restore such person, in the contemplation of the law, to the  
140 status he occupied before such arrest. No person as to whom such  
141 order has been entered shall be held thereafter under any  
142 provision of law to be guilty of perjury or to have otherwise  
143 given a false statement by reason of his failure to recite or  
144 acknowledge such arrest or conviction in response to any inquiry  
145 made of him for any purpose, except for the purpose of determining  
146 in any subsequent proceedings under this section, whether such  
147 person is a first offender.

148           (2) Upon petition therefor, a justice, county, circuit or  
149 municipal court shall expunge the record of any case in which an  
150 arrest was made, the person arrested was released and the case was  
151 dismissed or the charges were dropped or there was no disposition  
152 of such case. Convictions may also be expunged as provided in  
153 Section 1 of this act.

154           **SECTION 4.** This act shall take effect and be in force from  
155 and after July 1, 2004.