

By: Representative Moak

To: Judiciary B

COMMITTEE SUBSTITUTE  
FOR  
HOUSE BILL NO. 94

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 sell,  
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 two (2) years after the  
16 successful completion of all the terms and conditions of the  
17 sentence for such conviction. Upon entering such an order, a  
18 nonpublic record thereof shall be retained solely for the purpose  
19 of use in determining whether in subsequent proceeding, such  
20 person is a first offender.

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

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

26 41-29-150. (a) Any person convicted under Section 41-29-139  
27 may be required, in the discretion of the court, as a part of the  
28 sentence otherwise imposed, or in lieu of imprisonment in cases of

29 probation or suspension of sentence, to attend a course of  
30 instruction conducted by the bureau, the State Board of Health, or  
31 any similar agency, on the effects, medically, psychologically and  
32 socially, of the misuse of controlled substances. Said course may  
33 be conducted at any correctional institution, detention center or  
34 hospital, or at any center or treatment facility established for  
35 the purpose of education and rehabilitation of those persons  
36 committed because of abuse of controlled substances.

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

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

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

90           (2) Upon the dismissal of such person and discharge of  
91 proceedings against him under paragraph (1) of this subsection, or  
92 with respect to a person who has been convicted and adjudged  
93 guilty of an offense under subsection (c) or (d) of Section

94 41-29-139, or for possession of narcotics, stimulants,  
95 depressants, hallucinogens, marihuana, other controlled substances  
96 or paraphernalia under prior laws of this state, such person, if  
97 he had not reached his twenty-sixth birthday at the time of the  
98 offense, may apply to the court for an order to expunge from all  
99 official records, other than the nonpublic records to be retained  
100 by the bureau under paragraph (1) of this subsection, all  
101 recordation relating to his arrest, indictment, trial, finding of  
102 guilty, and dismissal and discharge pursuant to this section. If  
103 the court determines, after hearing, that such person was  
104 dismissed and the proceedings against him discharged and that he  
105 had not reached his twenty-sixth birthday at the time of the  
106 offense, or that such person had satisfactorily served his  
107 sentence or period of probation and parole, and that he had not  
108 reached his twenty-sixth birthday at the time of the offense, it  
109 shall enter such order. The effect of such order shall be to  
110 restore such person, in the contemplation of the law, to the  
111 status he occupied before such arrest or indictment. No person as  
112 to whom such order has been entered shall be held thereafter under  
113 any provision of any law to be guilty of perjury or otherwise  
114 giving a false statement by reason of his failures to recite or  
115 acknowledge such arrest, or indictment or trial in response to any  
116 inquiry made of him for any purpose. Orders may be expunged as  
117 provided in Section 1 of this act.

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

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

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

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

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

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

156 **SECTION 4.** This act shall take effect and be in force from  
157 and after July 1, 2005.