

By: Representative Moak

To: Judiciary B

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. 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, 2005.