

By: Representatives Moak, Johnson, Hines

To: Judiciary B

HOUSE BILL NO. 264
(As Passed the House)

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.** (1) Any person who has been convicted in all
7 criminal cases, felony and misdemeanor, other than crimes against
8 the person, offenses affecting children and offenses pertaining to
9 the sale, barter, transfer, manufacture, distribution or
10 dispensing of a controlled substance, and/or the possession with
11 intent to sell, barter, transfer, manufacture, distribution or
12 dispensing of a controlled substance as provided for in Section
13 41-29-139(a)(1), and who is a first offender, may petition the
14 circuit court in which he or she was convicted for an order to
15 expunge any such conviction from all public records two (2) years
16 after the successful completion of all the terms and conditions of
17 the 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 (2) A certified copy of every expunction and nonadjudication
22 order shall be sent by the circuit clerk to the Mississippi
23 Criminal Information Center where it shall be maintained in a
24 separate confidential database accessible only upon written
25 request by a district attorney, the Attorney General of
26 Mississippi and the Mississippi Law Enforcement Standards and
27 Training Board. Any criminal conviction which has been expunged
28 or nonadjudicated may be used for the purpose of determining

29 habitual offender status and for the use of the Mississippi Law
30 Enforcement Standards and Training Board in giving or retaining
31 law enforcement certification, and to ensure that a person is only
32 eligible for first-offender status one (1) time.

33 The effect of such an order shall be to restore such person,
34 in the contemplation of the law to the status he occupied before
35 such arrest, except such person is not qualified to serve as a
36 juror.

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

39 41-29-150. (a) Any person convicted under Section 41-29-139
40 may be required, in the discretion of the court, as a part of the
41 sentence otherwise imposed, or in lieu of imprisonment in cases of
42 probation or suspension of sentence, to attend a course of
43 instruction conducted by the bureau, the State Board of Health, or
44 any similar agency, on the effects, medically, psychologically and
45 socially, of the misuse of controlled substances. Said course may
46 be conducted at any correctional institution, detention center or
47 hospital, or at any center or treatment facility established for
48 the purpose of education and rehabilitation of those persons
49 committed because of abuse of controlled substances.

50 (b) Any person convicted under Section 41-29-139 who is
51 found to be dependent upon or addicted to any controlled substance
52 shall be required, as a part of the sentence otherwise imposed, or
53 in lieu of imprisonment in cases of parole, probation or
54 suspension of sentence, to receive medical treatment for such
55 dependency or addiction. The regimen of medical treatment may
56 include confinement in a medical facility of any correctional
57 institution, detention center or hospital, or at any center or
58 facility established for treatment of those persons committed
59 because of a dependence or addiction to controlled substances.

60 (c) Those persons previously convicted of a felony under
61 Section 41-29-139 and who are now confined at the Mississippi

62 State Hospital at Whitfield, Mississippi, or at the East
63 Mississippi State Hospital at Meridian, Mississippi, for the term
64 of their sentence shall remain under the jurisdiction of the
65 Mississippi Department of Corrections and shall be required to
66 abide by all reasonable rules and regulations promulgated by the
67 director and staff of said institutions and of the Department of
68 Corrections. Any persons so confined who shall refuse to abide by
69 said rules or who attempt an escape or who shall escape shall be
70 transferred to the State Penitentiary or to a county jail, where
71 appropriate, to serve the remainder of the term of imprisonment;
72 this provision shall not preclude prosecution and conviction for
73 escape from said institutions.

74 (d) (1) If any person who has not previously been convicted
75 of violating Section 41-29-139, or the laws of the United States
76 or of another state relating to narcotic drugs, stimulant or
77 depressant substances, other controlled substances or marihuana is
78 found to be guilty of a violation of subsection (c) or (d) of
79 Section 41-29-139, after trial or upon a plea of guilty, the court
80 may, without entering a judgment of guilty and with the consent of
81 such person, defer further proceedings and place him on probation
82 upon such reasonable conditions as it may require and for such
83 period, not to exceed three (3) years, as the court may prescribe.
84 Upon violation of a condition of the probation, the court may
85 enter an adjudication of guilt and proceed as otherwise provided.
86 The court may, in its discretion, dismiss the proceedings against
87 such person and discharge him from probation before the expiration
88 of the maximum period prescribed for such person's probation. If
89 during the period of his probation such person does not violate
90 any of the conditions of the probation, then upon expiration of
91 such period the court shall discharge such person and dismiss the
92 proceedings against him. Discharge and dismissal under this
93 subsection shall be without court adjudication of guilt, but a
94 nonpublic record thereof shall be retained by the bureau solely

95 for the purpose of use by the courts in determining whether or
96 not, in subsequent proceedings, such person qualifies under this
97 subsection. Such discharge or dismissal shall not be deemed a
98 conviction for purposes of disqualifications or disabilities
99 imposed by law upon conviction of a crime, including the penalties
100 prescribed under this article for second or subsequent conviction,
101 or for any other purpose. Discharge and dismissal under this
102 subsection may occur only once with respect to any person; and

103 (2) Upon the dismissal of such person and discharge of
104 proceedings against him under paragraph (1) of this subsection, or
105 with respect to a person who has been convicted and adjudged
106 guilty of an offense under subsection (c) or (d) of Section
107 41-29-139, or for possession of narcotics, stimulants,
108 depressants, hallucinogens, marihuana, other controlled substances
109 or paraphernalia under prior laws of this state, such person, if
110 he had not reached his twenty-sixth birthday at the time of the
111 offense, may apply to the court for an order to expunge from all
112 official records, other than the nonpublic records to be retained
113 by the bureau under paragraph (1) of this subsection, all
114 recordation relating to his arrest, indictment, trial, finding of
115 guilty, and dismissal and discharge pursuant to this section. If
116 the court determines, after hearing, that such person was
117 dismissed and the proceedings against him discharged and that he
118 had not reached his twenty-sixth birthday at the time of the
119 offense, or that such person had satisfactorily served his
120 sentence or period of probation and parole, and that he had not
121 reached his twenty-sixth birthday at the time of the offense, it
122 shall enter such order. The effect of such order shall be to
123 restore such person, in the contemplation of the law, to the
124 status he occupied before such arrest or indictment. No person as
125 to whom such order has been entered shall be held thereafter under
126 any provision of any law to be guilty of perjury or otherwise
127 giving a false statement by reason of his failures to recite or

128 acknowledge such arrest, or indictment or trial in response to any
129 inquiry made of him for any purpose. Orders may be expunged as
130 provided in Section 1 of this act.

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

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

140 (g) It is the intent and purpose of the Legislature to
141 promote the rehabilitation of persons convicted of offenses under
142 the Uniform Controlled Substances Law.

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

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

161 in any subsequent proceedings under this section, whether such
162 person is a first offender.

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

169 **SECTION 4.** This act shall take effect and be in force from
170 and after July 1, 2006.