

By: Representative Moak

To: Judiciary B

HOUSE BILL NO. 1039

1 AN ACT TO AMEND SECTIONS 41-29-150 AND 99-15-26, MISSISSIPPI  
2 CODE OF 1972, TO PROVIDE FOR THE USE OF EXPUNCTION AND  
3 NONADJUDICATION ORDERS IN DETERMINING HABITUAL OFFENDER STATUS;  
4 AND FOR RELATED PURPOSES.

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

6 **SECTION 1.** Section 41-29-150, Mississippi Code of 1972, is  
7 amended as follows:

8 41-29-150. (a) Any person convicted under Section 41-29-139  
9 may be required, in the discretion of the court, as a part of the  
10 sentence otherwise imposed, or in lieu of imprisonment in cases of  
11 probation or suspension of sentence, to attend a course of  
12 instruction conducted by the bureau, the State Board of Health, or  
13 any similar agency, on the effects, medically, psychologically and  
14 socially, of the misuse of controlled substances. Said course may  
15 be conducted at any correctional institution, detention center or  
16 hospital, or at any center or treatment facility established for  
17 the purpose of education and rehabilitation of those persons  
18 committed because of abuse of controlled substances.

19 (b) Any person convicted under Section 41-29-139 who is  
20 found to be dependent upon or addicted to any controlled substance  
21 shall be required, as a part of the sentence otherwise imposed, or  
22 in lieu of imprisonment in cases of parole, probation or  
23 suspension of sentence, to receive medical treatment for such  
24 dependency or addiction. The regimen of medical treatment may  
25 include confinement in a medical facility of any correctional  
26 institution, detention center or hospital, or at any center or  
27 facility established for treatment of those persons committed  
28 because of a dependence or addiction to controlled substances.

29           (c) Those persons previously convicted of a felony under  
30 Section 41-29-139 and who are now confined at the Mississippi  
31 State Hospital at Whitfield, Mississippi, or at the East  
32 Mississippi State Hospital at Meridian, Mississippi, for the term  
33 of their sentence shall remain under the jurisdiction of the  
34 Mississippi Department of Corrections and shall be required to  
35 abide by all reasonable rules and regulations promulgated by the  
36 director and staff of said institutions and of the Department of  
37 Corrections. Any persons so confined who shall refuse to abide by  
38 said rules or who attempt an escape or who shall escape shall be  
39 transferred to the State Penitentiary or to a county jail, where  
40 appropriate, to serve the remainder of the term of imprisonment;  
41 this provision shall not preclude prosecution and conviction for  
42 escape from said institutions.

43           (d) (1) If any person who has not previously been convicted  
44 of violating Section 41-29-139, or the laws of the United States  
45 or of another state relating to narcotic drugs, stimulant or  
46 depressant substances, other controlled substances or marihuana is  
47 found to be guilty of a violation of subsection (c) or (d) of  
48 Section 41-29-139, after trial or upon a plea of guilty, the court  
49 may, without entering a judgment of guilty and with the consent of  
50 such person, defer further proceedings and place him on probation  
51 upon such reasonable conditions as it may require and for such  
52 period, not to exceed three (3) years, as the court may prescribe.  
53 Upon violation of a condition of the probation, the court may  
54 enter an adjudication of guilt and proceed as otherwise provided.  
55 The court may, in its discretion, dismiss the proceedings against  
56 such person and discharge him from probation before the expiration  
57 of the maximum period prescribed for such person's probation. If  
58 during the period of his probation such person does not violate  
59 any of the conditions of the probation, then upon expiration of  
60 such period the court shall discharge such person and dismiss the  
61 proceedings against him. Discharge and dismissal under this

62 subsection shall be without court adjudication of guilt, but a  
63 nonpublic record thereof shall be retained by the bureau solely  
64 for the purpose of use by the courts in determining whether or  
65 not, in subsequent proceedings, such person qualifies under this  
66 subsection. Such discharge or dismissal shall not be deemed a  
67 conviction for purposes of disqualifications or disabilities  
68 imposed by law upon conviction of a crime, including the penalties  
69 prescribed under this article for second or subsequent conviction,  
70 or for any other purpose. Discharge and dismissal under this  
71 subsection may occur only once with respect to any person; and

72 (2) Upon the dismissal of such person and discharge of  
73 proceedings against him under paragraph (1) of this subsection, or  
74 with respect to a person who has been convicted and adjudged  
75 guilty of an offense under subsection (c) or (d) of Section  
76 41-29-139, or for possession of narcotics, stimulants,  
77 depressants, hallucinogens, marihuana, other controlled substances  
78 or paraphernalia under prior laws of this state, such person, if  
79 he had not reached his twenty-sixth birthday at the time of the  
80 offense, may apply to the court for an order to expunge from all  
81 official records, other than the nonpublic records to be retained  
82 by the bureau under paragraph (1) of this subsection, all  
83 recordation relating to his arrest, indictment, trial, finding of  
84 guilty, and dismissal and discharge pursuant to this section. If  
85 the court determines, after hearing, that such person was  
86 dismissed and the proceedings against him discharged and that he  
87 had not reached his twenty-sixth birthday at the time of the  
88 offense, or that such person had satisfactorily served his  
89 sentence or period of probation and parole, and that he had not  
90 reached his twenty-sixth birthday at the time of the offense, it  
91 shall enter such order. The effect of such order shall be to  
92 restore such person, in the contemplation of the law, to the  
93 status he occupied before such arrest or indictment. No person as  
94 to whom such order has been entered shall be held thereafter under

95 any provision of any law to be guilty of perjury or otherwise  
96 giving a false statement by reason of his failures to recite or  
97 acknowledge such arrest, or indictment or trial in response to any  
98 inquiry made of him for any purpose.

99 (3) A certified copy of every expunction and  
100 nonadjudication order shall be sent by the circuit clerk to the  
101 Mississippi Criminal Information Center where it shall be  
102 maintained in a separate confidential database accessible only  
103 upon written request by a district attorney, the Attorney General  
104 and the Mississippi Law Enforcement Standards and Training Board.  
105 Any criminal conviction which has been expunged or nonadjudicated  
106 may be used for the purpose of determining habitual offender  
107 status and for the use of the Mississippi Law Enforcement  
108 Standards and Training Board in giving or retaining law  
109 enforcement certification. A person may only receive one (1)  
110 expunction or nonadjudication.

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

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

120 (g) It is the intent and purpose of the Legislature to  
121 promote the rehabilitation of persons convicted of offenses under  
122 the Uniform Controlled Substances Law.

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

125 99-15-26. (1) In all criminal cases, felony and  
126 misdemeanor, other than crimes against the person, the circuit or  
127 county court shall be empowered, upon the entry of a plea of

128 guilty by a criminal defendant, to withhold acceptance of the plea  
129 and sentence thereon pending successful completion of such  
130 conditions as may be imposed by the court pursuant to subsection  
131 (2) of this section. In all misdemeanor criminal cases, other  
132 than crimes against the person, the justice or municipal court  
133 shall be empowered, upon the entry of a plea of guilty by a  
134 criminal defendant, to withhold acceptance of the plea and  
135 sentence thereon pending successful completion of such conditions  
136 as may be imposed by the court pursuant to subsection (2) of this  
137 section. No person having previously qualified under the  
138 provisions of this section or having ever been convicted of a  
139 felony shall be eligible to qualify for release in accordance with  
140 this section. A person shall not be eligible to qualify for  
141 release in accordance with this section if such person has been  
142 charged (a) with an offense pertaining to the sale, barter,  
143 transfer, manufacture, distribution or dispensing of a controlled  
144 substance, or the possession with intent to sell, barter,  
145 transfer, manufacture, distribute or dispense a controlled  
146 substance, as provided in Section 41-29-139(a)(1), Mississippi  
147 Code of 1972, except for a charge under said provision when the  
148 controlled substance involved is one (1) ounce or less of  
149 marihuana; (b) with an offense pertaining to the possession of one  
150 (1) kilogram or more of marihuana as provided in Section  
151 41-29-139(c)(2)(D), Mississippi Code of 1972; or (c) with an  
152 offense under the Mississippi Implied Consent Law.

153 (2) (a) Conditions which the circuit, county, justice or  
154 municipal court may impose under subsection (1) of this section  
155 shall consist of:

156 (i) Reasonable restitution to the victim of the  
157 crime.

158 (ii) Performance of not more than nine hundred  
159 sixty (960) hours of public service work approved by the court.

160 (iii) Payment of a fine not to exceed the  
161 statutory limit.

162 (iv) Successful completion of drug, alcohol,  
163 psychological or psychiatric treatment or any combination thereof  
164 if the court deems such treatment necessary.

165 (v) The circuit or county court, in its  
166 discretion, may require the defendant to remain in the program  
167 subject to good behavior for a period of time not to exceed five  
168 (5) years. The justice or municipal court, in its discretion, may  
169 require the defendant to remain in the program subject to good  
170 behavior for a period of time not to exceed two (2) years.

171 (b) Conditions which the circuit or county court may  
172 impose under subsection (1) of this section also include  
173 successful completion of a regimented inmate discipline program.

174 (3) When the court has imposed upon the defendant the  
175 conditions set out in this section, the court shall release the  
176 bail bond, if any.

177 (4) Upon successful completion of the court-imposed  
178 conditions permitted by subsection (2) of this section, the court  
179 shall direct that the cause be dismissed and the case be closed.

180 (5) Upon petition therefor, the court shall expunge the  
181 record of any case in which an arrest was made, the person  
182 arrested was released and the case was dismissed or the charges  
183 were dropped or there was no disposition of such case.

184 (6) A certified copy of every expunction and nonadjudication  
185 order shall be sent by the circuit clerk to the Mississippi  
186 Criminal Information Center where it shall be maintained in a  
187 separate confidential database accessible only upon written  
188 request by a district attorney, the Attorney General and the  
189 Mississippi Law Enforcement Standards and Training Board. Any  
190 criminal conviction which has been expunged or nonadjudicated may  
191 be used for the purpose of determining habitual offender status  
192 and for the use of the Mississippi Law Enforcement Standards and

193 Training Board in giving or retaining law enforcement  
194 certification. A person may only receive one (1) expunction or  
195 nonadjudication.

196 (7) This section shall take effect and be in force from and  
197 after March 31, 1983.

198 **SECTION 3.** This act shall take effect and be in force from  
199 and after July 1, 2006.