

By: Senator(s) Albritton

To: Judiciary, Division B

SENATE BILL NO. 2394

1 AN ACT TO AMEND SECTIONS 45-27-9 AND 45-27-11, MISSISSIPPI
2 CODE OF 1972, TO AUTHORIZE COLLECTION OF A FEE NOT TO EXCEED FIFTY
3 DOLLARS IN ORDER FOR A CRIMINAL RECORD TO BE EXPUNGED BY THE
4 CRIMINAL HISTORY INFORMATION CENTER WITH CERTAIN EXCEPTIONS; AND
5 FOR RELATED PURPOSES.

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

7 **SECTION 1.** Section 45-27-9, Mississippi Code of 1972, is
8 amended as follows:

9 45-27-9. (1) All criminal justice agencies within the state
10 shall submit to the center fingerprints, descriptions, photographs
11 (when specifically requested), and other identifying data on
12 persons who have been lawfully arrested or taken into custody in
13 this state for all felonies and misdemeanors as described in
14 Section 45-27-7(2)(a). It shall be the duty of all chiefs of
15 police, sheriffs, district attorneys, courts, court clerks,
16 judges, parole and probation officers, wardens or other persons in
17 charge of correctional institutions in this state to furnish the
18 center with any other data deemed necessary by the center to carry
19 out its responsibilities under this chapter.

20 (2) All persons in charge of law enforcement agencies shall
21 obtain, or cause to be obtained, fingerprints according to the
22 fingerprint system of identification established by the Director
23 of the Federal Bureau of Investigation, full face and profile
24 photographs (if equipment is available) and other available
25 identifying data, of each person arrested or taken into custody
26 for an offense of a type designated in subsection (1) of this
27 section, of all persons arrested or taken into custody as
28 fugitives from justice and of all unidentified human corpses in

29 their jurisdictions, but photographs need not be taken if it is
30 known that photographs of the type listed, taken within the
31 previous year, are on file. Any record taken in connection with
32 any person arrested or taken into custody and subsequently
33 released without charge or cleared of the offense through court
34 proceedings shall be purged from the files of the center and
35 destroyed upon receipt by the center of a lawful expunction order
36 if accompanied by the proper expunction fee, and subject to the
37 provisions of Section 99-19-71. All persons in charge of law
38 enforcement agencies shall submit to the center detailed
39 descriptions of arrests or takings into custody which result in
40 release without charge or subsequent exoneration from criminal
41 liability within twenty-four (24) hours of such release or
42 exoneration.

43 (3) Fingerprints and other identifying data required to be
44 taken under subsection (2) shall be forwarded within twenty-four
45 (24) hours after taking for filing and classification, but the
46 period of twenty-four (24) hours may be extended to cover any
47 intervening holiday or weekend. Photographs taken shall be
48 forwarded at the discretion of the agency concerned, but, if not
49 forwarded, the fingerprint record shall be marked "Photo
50 Available" and the photographs shall be forwarded subsequently if
51 the center so requests.

52 (4) All persons in charge of law enforcement agencies shall
53 submit to the center detailed descriptions of arrest warrants and
54 related identifying data immediately upon determination of the
55 fact that the warrant cannot be served for the reasons stated. If
56 the warrant is subsequently served or withdrawn, the law
57 enforcement agency concerned must immediately notify the center of
58 such service or withdrawal. Also, the agency concerned must
59 annually, no later than January 31 of each year and at other times
60 if requested by the center, confirm all such arrest warrants which
61 continue to be outstanding. Upon receipt of a lawful expunction

62 order, the center shall purge and destroy files of all data
63 relating to an offense when an individual is subsequently
64 exonerated from criminal liability of that offense. The center
65 shall not be liable for the failure to purge, destroy or expunge
66 any records if an agency or court fails to forward to the center
67 proper documentation ordering such action or if the requestor
68 fails to pay the proper fee.

69 (5) All persons in charge of state correctional institutions
70 shall obtain fingerprints, according to the fingerprint system of
71 identification established by the Director of the Federal Bureau
72 of Investigation or as otherwise directed by the center, and full
73 face and profile photographs of all persons received on commitment
74 to such institutions. The prints so taken shall be forwarded to
75 the center, together with any other identifying data requested,
76 within ten (10) days after the arrival at the institution of the
77 person committed. At the time of release, the institution will
78 again obtain fingerprints, as before, and forward them to the
79 center within ten (10) days, along with any other related
80 information requested by the center. The institution shall notify
81 the center immediately upon the release of such person.

82 (6) All persons in charge of law enforcement agencies, all
83 court clerks, all municipal justices where they have no clerks,
84 all justice court judges and all persons in charge of state and
85 county probation and parole offices, shall supply the center with
86 the information described in subsections (4) and (10) of this
87 section on the basis of the forms and instructions to be supplied
88 by the center.

89 (7) All persons in charge of law enforcement agencies in
90 this state shall furnish the center with any other identifying
91 data required in accordance with guidelines established by the
92 center. All law enforcement agencies and correctional
93 institutions in this state having criminal identification files
94 shall cooperate in providing the center with copies of such items

95 in such files which will aid in establishing the nucleus of the
96 state criminal identification file.

97 (8) All law enforcement agencies within the state shall
98 report to the center, in a manner prescribed by the center, all
99 persons wanted by and all vehicles and identifiable property
100 stolen from their jurisdictions. The report shall be made as soon
101 as is practical after the investigating department or agency
102 either ascertains that a vehicle or identifiable property has been
103 stolen or obtains a warrant for an individual's arrest or
104 determines that there are reasonable grounds to believe that the
105 individual has committed a crime. The report shall be made within
106 a reasonable time period following the reporting department's or
107 agency's determination that it has grounds to believe that a
108 vehicle or property was stolen or that the wanted person should be
109 arrested.

110 (9) All law enforcement agencies in the state shall
111 immediately notify the center if at any time after making a report
112 as required by subsection (8) of this section it is determined by
113 the reporting department or agency that a person is no longer
114 wanted or that a vehicle or property stolen has been recovered.
115 Furthermore, if the agency making such apprehension or recovery is
116 not the one which made the original report, then it shall
117 immediately notify the originating agency of the full particulars
118 relating to such apprehension or recovery using methods prescribed
119 by the center.

120 (10) All law enforcement agencies in the state and clerks of
121 the various courts shall promptly report to the center all
122 instances where records of convictions of criminals are ordered
123 expunged by courts of this state as now provided by law. The
124 center shall promptly expunge from the files of the center and
125 destroy all records pertaining to any convictions that are ordered
126 expunged by the courts of this state as provided by law.

127 (11) The center shall not be held liable for the failure to
128 purge, destroy or expunge records if an agency or court fails to
129 forward to the center proper documentation ordering such action or
130 if the requestor fails to pay the proper fee.

131 **SECTION 2.** Section 45-27-11, Mississippi Code of 1972, is
132 amended as follows:

133 45-27-11. The center shall make a person's criminal records
134 available for inspection by him or his attorney upon written
135 request. Prior to inspection, the person must submit a set of
136 fingerprints, sign a written authorization for the records check,
137 and provide any other identifying information required by the
138 center. Should such person or his attorney contest the accuracy
139 of any portion of such records, the center shall make available to
140 such person or his attorney a copy of the contested record upon
141 written application identifying the portion of the record
142 contested and showing the reason for the contest of accuracy.
143 Forms, procedures, fees, identification and other related aspects
144 pertinent to such access may be prescribed by the center in making
145 access available.

146 If an individual believes such information to be inaccurate
147 or incomplete, he may request the original agency having custody
148 or control of the records to purge, modify or supplement them and
149 to so notify the center of such changes. Should the agency
150 decline to so act or should the individual believe the agency's
151 decision to be otherwise unsatisfactory, the individual or his
152 attorney may within thirty (30) days of such decision enter an
153 appeal to the county or circuit court of the county of his
154 residence or to such court in the county where such agency exists.
155 The court in each such case shall conduct a de novo hearing and
156 may order such relief as it finds to be required by law. Such
157 appeals shall be entered in the same manner as other appeals are
158 entered.

159 Should the record in question be found to be inaccurate or
160 incomplete, the court shall order it to be appropriately expunged,
161 modified or supplemented by an explanatory notation. Each agency
162 or individual in the state with custody, possession or control of
163 any such record shall promptly cause each and every copy thereof
164 in his custody, possession or control to be altered in accordance
165 with the court's order. Notification of each such deletion,
166 amendment and supplementary notation shall be promptly
167 disseminated to any individuals or agencies to which the records
168 in question have been communicated as well as to the individual
169 whose records have been ordered so altered. The center shall not
170 be held liable for the failure to modify, supplement, destroy or
171 expunge records if an agency or court fails to forward to the
172 center proper documentation ordering such action or if the
173 requestor fails to pay the proper fee.

174 Agencies, including the center, at which criminal offender
175 records are sought to be inspected may prescribe reasonable hours
176 and places of inspection and may impose such additional
177 procedures, fees or restrictions, including fingerprinting, as are
178 reasonably necessary both to assure the record's security, to
179 verify the identities of those who seek to inspect them and to
180 maintain an orderly and efficient mechanism for such access.

181 The commissioner may promulgate a rule requiring a fee not to
182 exceed Fifty Dollars (\$50.00) to be paid to the center to secure
183 an expunction. The center shall return or refund to the requestor
184 any fee paid if an expunction is not performed. No fee shall be
185 charged or collected for expunctions performed pursuant to Section
186 99-15-59.

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