

## REPORT OF CONFERENCE COMMITTEE

**MADAM PRESIDENT AND MR. SPEAKER:**

We, the undersigned conferees, have had under consideration the amendments to the following entitled BILL:

S. B. No. 2394: Expunction; authorize fee (DPS).

We, therefore, respectfully submit the following report and recommendation:

1. That the House recede from its Amendment No. 1.
2. That the Senate and House adopt the following amendment:

Amend by striking all after the enacting clause and inserting in lieu thereof the following:

9           **SECTION 1.** Section 45-27-9, Mississippi Code of 1972, is  
10 amended as follows:  
11           45-27-9. (1) All criminal justice agencies within the state  
12 shall submit to the center fingerprints, descriptions, photographs  
13 (when specifically requested), and other identifying data on  
14 persons who have been lawfully arrested or taken into custody in  
15 this state for all felonies and misdemeanors as described in  
16 Section 45-27-7(2)(a). It shall be the duty of all chiefs of  
17 police, sheriffs, district attorneys, courts, court clerks,  
18 judges, parole and probation officers, wardens or other persons in  
19 charge of correctional institutions in this state to furnish the  
20 center with any other data deemed necessary by the center to carry  
21 out its responsibilities under this chapter.  
22           (2) All persons in charge of law enforcement agencies shall  
23 obtain, or cause to be obtained, fingerprints according to the  
24 fingerprint system of identification established by the Director  
25 of the Federal Bureau of Investigation, full face and profile  
26 photographs (if equipment is available) and other available  
27 identifying data, of each person arrested or taken into custody  
28 for an offense of a type designated in subsection (1) of this  
29 section, of all persons arrested or taken into custody as  
30 fugitives from justice and of all unidentified human corpses in

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

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

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

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

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

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

91 (7) All persons in charge of law enforcement agencies in  
92 this state shall furnish the center with any other identifying  
93 data required in accordance with guidelines established by the  
94 center. All law enforcement agencies and correctional

95 institutions in this state having criminal identification files  
96 shall cooperate in providing the center with copies of such items  
97 in such files which will aid in establishing the nucleus of the  
98 state criminal identification file.

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

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

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

127 destroy all records pertaining to any convictions that are ordered  
128 expunged by the courts of this state as provided by law.

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

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

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

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

159 appeals shall be entered in the same manner as other appeals are  
160 entered.

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

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

183         The commissioner may promulgate a rule requiring a fee not to  
184 exceed Fifty Dollars (\$50.00) to be paid to the center to secure  
185 an expunction. The center shall return or refund to the requestor  
186 any fee paid if an expunction is not performed. No fee shall be  
187 charged or collected for expunctions performed pursuant to Section  
188 99-15-59.

189         **SECTION 3.** (1) Except as otherwise provided in this  
190 section, a person who has been convicted of a crime which was

191 committed before the person's thirtieth birthday, whether felony  
192 or misdemeanor, may petition the circuit or county court in which  
193 the conviction was obtained, and a person who has been convicted  
194 of a misdemeanor may petition the justice or municipal court in  
195 which the conviction was obtained, for an order to expunge the  
196 conviction from all public records five (5) years after the  
197 successful completion of all the terms and conditions of the  
198 sentence for such conviction. Upon entering such an order, a  
199 nonpublic record thereof shall be retained solely for the purpose  
200 of determining whether, in subsequent proceedings, the person is a  
201 first offender.

202 (2) To qualify under the provisions of this section a person  
203 must be a first offender. No person having previously qualified  
204 under the provisions of this section or whose conviction was under  
205 the Mississippi Implied Consent Law, or for a crime against  
206 persons, an offense affecting children, or an offense pertaining  
207 to the sale, barter, transfer, manufacture, distribution or  
208 dispensing of a controlled substance, or the possession with  
209 intent to sell, barter, transfer, manufacture, distribute or  
210 dispense a controlled substance, as provided in Section  
211 41-29-139(a)(1).

212 (3) A certified copy of every expunction and nonadjudication  
213 order shall be sent by the circuit clerk to the Mississippi  
214 Criminal Information Center where it shall be maintained in a  
215 separate confidential database accessible only upon written  
216 request by a county attorney, municipal attorney, district  
217 attorney, the Attorney General of Mississippi and the Mississippi  
218 Law Enforcement Standards and Training Board. Any criminal  
219 conviction which has been expunged or nonadjudicated may be used  
220 for the purpose of determining habitual offender status and for  
221 the use of the Mississippi Law Enforcement Standards and Training  
222 Board in giving or retaining law enforcement certification, and to

223 ensure that a person is only eligible for first-offender status  
224 one (1) time.

225 The effect of such an order shall be to restore such person,  
226 in the contemplation of the law to the status he occupied before  
227 such arrest, except such person is not qualified to serve as a  
228 juror.

229 (4) The provisions of this section shall not apply to any  
230 elected official convicted of a crime while performing the  
231 official duties of the office.

232 **SECTION 4.** Section 41-29-150, Mississippi Code of 1972, is  
233 amended as follows:

234 41-29-150. (a) Any person convicted under Section 41-29-139  
235 may be required, in the discretion of the court, as a part of the  
236 sentence otherwise imposed, or in lieu of imprisonment in cases of  
237 probation or suspension of sentence, to attend a course of  
238 instruction conducted by the bureau, the State Board of Health, or  
239 any similar agency, on the effects, medically, psychologically and  
240 socially, of the misuse of controlled substances. Said course may  
241 be conducted at any correctional institution, detention center or  
242 hospital, or at any center or treatment facility established for  
243 the purpose of education and rehabilitation of those persons  
244 committed because of abuse of controlled substances.

245 (b) Any person convicted under Section 41-29-139 who is  
246 found to be dependent upon or addicted to any controlled substance  
247 shall be required, as a part of the sentence otherwise imposed, or  
248 in lieu of imprisonment in cases of parole, probation or  
249 suspension of sentence, to receive medical treatment for such  
250 dependency or addiction. The regimen of medical treatment may  
251 include confinement in a medical facility of any correctional  
252 institution, detention center or hospital, or at any center or  
253 facility established for treatment of those persons committed  
254 because of a dependence or addiction to controlled substances.



255 (c) Those persons previously convicted of a felony under  
256 Section 41-29-139 and who are now confined at the Mississippi  
257 State Hospital at Whitfield, Mississippi, or at the East  
258 Mississippi State Hospital at Meridian, Mississippi, for the term  
259 of their sentence shall remain under the jurisdiction of the  
260 Mississippi Department of Corrections and shall be required to  
261 abide by all reasonable rules and regulations promulgated by the  
262 director and staff of said institutions and of the Department of  
263 Corrections. Any persons so confined who shall refuse to abide by  
264 said rules or who attempt an escape or who shall escape shall be  
265 transferred to the State Penitentiary or to a county jail, where  
266 appropriate, to serve the remainder of the term of imprisonment;  
267 this provision shall not preclude prosecution and conviction for  
268 escape from said institutions.

269 (d) (1) If any person who has not previously been convicted  
270 of violating Section 41-29-139, or the laws of the United States  
271 or of another state relating to narcotic drugs, stimulant or  
272 depressant substances, other controlled substances or marihuana is  
273 found to be guilty of a violation of subsection (c) or (d) of  
274 Section 41-29-139, after trial or upon a plea of guilty, the court  
275 may, without entering a judgment of guilty and with the consent of  
276 such person, defer further proceedings and place him on probation  
277 upon such reasonable conditions as it may require and for such  
278 period, not to exceed three (3) years, as the court may prescribe.  
279 Upon violation of a condition of the probation, the court may  
280 enter an adjudication of guilt and proceed as otherwise provided.  
281 The court may, in its discretion, dismiss the proceedings against  
282 such person and discharge him from probation before the expiration  
283 of the maximum period prescribed for such person's probation. If  
284 during the period of his probation such person does not violate  
285 any of the conditions of the probation, then upon expiration of  
286 such period the court shall discharge such person and dismiss the

287 proceedings against him. Discharge and dismissal under this  
288 subsection shall be without court adjudication of guilt, but a  
289 nonpublic record thereof shall be retained by the bureau solely  
290 for the purpose of use by the courts in determining whether or  
291 not, in subsequent proceedings, such person qualifies under this  
292 subsection. Such discharge or dismissal shall not be deemed a  
293 conviction for purposes of disqualifications or disabilities  
294 imposed by law upon conviction of a crime, including the penalties  
295 prescribed under this article for second or subsequent conviction,  
296 or for any other purpose. Discharge and dismissal under this  
297 subsection may occur only once with respect to any person; and

298           (2) Upon the dismissal of such person and discharge of  
299 proceedings against him under paragraph (1) of this subsection, or  
300 with respect to a person who has been convicted and adjudged  
301 guilty of an offense under subsection (c) or (d) of Section  
302 41-29-139, or for possession of narcotics, stimulants,  
303 depressants, hallucinogens, marihuana, other controlled substances  
304 or paraphernalia under prior laws of this state, such person, if  
305 he had not reached his twenty-sixth birthday at the time of the  
306 offense, may apply to the court for an order to expunge from all  
307 official records, other than the nonpublic records to be retained  
308 by the bureau under paragraph (1) of this subsection, all  
309 recordation relating to his arrest, indictment, trial, finding of  
310 guilty, and dismissal and discharge pursuant to this section. If  
311 the court determines, after hearing, that such person was  
312 dismissed and the proceedings against him discharged and that he  
313 had not reached his twenty-sixth birthday at the time of the  
314 offense, or that such person had satisfactorily served his  
315 sentence or period of probation and parole, and that he had not  
316 reached his twenty-sixth birthday at the time of the offense, it  
317 shall enter such order. The effect of such order shall be to  
318 restore such person, in the contemplation of the law, to the

319 status he occupied before such arrest or indictment. No person as  
320 to whom such order has been entered shall be held thereafter under  
321 any provision of any law to be guilty of perjury or otherwise  
322 giving a false statement by reason of his failures to recite or  
323 acknowledge such arrest, or indictment or trial in response to any  
324 inquiry made of him for any purpose. Orders may be expunged as  
325 provided in Section 1 of this act.

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

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

335 (g) It is the intent and purpose of the Legislature to  
336 promote the rehabilitation of persons convicted of offenses under  
337 the Uniform Controlled Substances Law.

338 **SECTION 5.** Section 99-19-71, Mississippi Code of 1972, is  
339 amended as follows:

340 99-19-71. (1) Any person who has been convicted of a  
341 misdemeanor, excluding a conviction for a traffic violation, and  
342 who is a first offender, may petition the justice, county, circuit  
343 or municipal court, as may be applicable, for an order to expunge  
344 any such conviction from all public records. Upon entering such  
345 order, a nonpublic record thereof shall be retained by the court  
346 and by the Mississippi Criminal Information Center solely for the  
347 purpose of determining whether, in subsequent proceedings, such  
348 person is a first offender. The effect of such order shall be to  
349 restore such person, in the contemplation of the law, to the  
350 status he occupied before such arrest. No person as to whom such

351 order has been entered shall be held thereafter under any  
352 provision of law to be guilty of perjury or to have otherwise  
353 given a false statement by reason of his failure to recite or  
354 acknowledge such arrest or conviction in response to any inquiry  
355 made of him for any purpose, except for the purpose of determining  
356 in any subsequent proceedings under this section, whether such  
357 person is a first offender.

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

364 **SECTION 6.** This act shall take effect and be in force from  
365 and after July 1, 2006.

**Further, amend by striking the title in its entirety and  
inserting in lieu thereof the following:**

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; TO  
5 PROVIDE A PROCEDURE TO EXPUNGE CERTAIN CONVICTIONS; TO AMEND  
6 SECTIONS 41-29-150 AND 99-19-71, MISSISSIPPI CODE OF 1972, IN  
7 CONFORMITY THERETO; AND FOR RELATED PURPOSES.

CONFEREES FOR THE SENATE

CONFEREES FOR THE HOUSE

(NOT SIGNED)  
Tollison

X (SIGNED)  
Smith (39th)

X (SIGNED)  
Albritton

X (SIGNED)  
Bailey

X (SIGNED)  
Walls

X (SIGNED)  
Norquist