

**Adopted
AMENDMENT NO 1 PROPOSED TO**

Senate Bill No. 2394

BY: Representative Moak

1 **AMEND** after line 186 by inserting the following new sections
2 and renumbering succeeding section:

3 **SECTION 3.** (1) Any person who has been convicted in all
4 criminal cases, felony and misdemeanor, other than crimes against
5 the person, offenses affecting children and offenses pertaining to
6 the sale, barter, transfer, manufacture, distribution or
7 dispensing of a controlled substance, and/or the possession with
8 intent to sell, barter, transfer, manufacture, distribution or
9 dispensing of a controlled substance as provided for in Section
10 41-29-139(a)(1), and who is a first offender, may petition the
11 circuit court in which he or she was convicted for an order to
12 expunge any such conviction from all public records two (2) years
13 after the successful completion of all the terms and conditions of
14 the sentence for such conviction. Upon entering such an order, a
15 nonpublic record thereof shall be retained solely for the purpose
16 of use in determining whether in subsequent proceeding, such
17 person is a first offender.

18 (2) A certified copy of every expunction and nonadjudication
19 order shall be sent by the circuit clerk to the Mississippi
20 Criminal Information Center where it shall be maintained in a
21 separate confidential database accessible only upon written
22 request by a district attorney, the Attorney General of

23 Mississippi and the Mississippi Law Enforcement Standards and
24 Training Board. Any criminal conviction which has been expunged
25 or nonadjudicated may be used for the purpose of determining
26 habitual offender status and for the use of the Mississippi Law
27 Enforcement Standards and Training Board in giving or retaining
28 law enforcement certification, and to ensure that a person is only
29 eligible for first-offender status one (1) time.

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

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

36 41-29-150. (a) Any person convicted under Section 41-29-139
37 may be required, in the discretion of the court, as a part of the
38 sentence otherwise imposed, or in lieu of imprisonment in cases of
39 probation or suspension of sentence, to attend a course of
40 instruction conducted by the bureau, the State Board of Health, or
41 any similar agency, on the effects, medically, psychologically and
42 socially, of the misuse of controlled substances. Said course may
43 be conducted at any correctional institution, detention center or
44 hospital, or at any center or treatment facility established for
45 the purpose of education and rehabilitation of those persons
46 committed because of abuse of controlled substances.

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

55 facility established for treatment of those persons committed
56 because of a dependence or addiction to controlled substances.

57 (c) Those persons previously convicted of a felony under
58 Section 41-29-139 and who are now confined at the Mississippi
59 State Hospital at Whitfield, Mississippi, or at the East
60 Mississippi State Hospital at Meridian, Mississippi, for the term
61 of their sentence shall remain under the jurisdiction of the
62 Mississippi Department of Corrections and shall be required to
63 abide by all reasonable rules and regulations promulgated by the
64 director and staff of said institutions and of the Department of
65 Corrections. Any persons so confined who shall refuse to abide by
66 said rules or who attempt an escape or who shall escape shall be
67 transferred to the State Penitentiary or to a county jail, where
68 appropriate, to serve the remainder of the term of imprisonment;
69 this provision shall not preclude prosecution and conviction for
70 escape from said institutions.

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

87 any of the conditions of the probation, then upon expiration of
88 such period the court shall discharge such person and dismiss the
89 proceedings against him. Discharge and dismissal under this
90 subsection shall be without court adjudication of guilt, but a
91 nonpublic record thereof shall be retained by the bureau solely
92 for the purpose of use by the courts in determining whether or
93 not, in subsequent proceedings, such person qualifies under this
94 subsection. Such discharge or dismissal shall not be deemed a
95 conviction for purposes of disqualifications or disabilities
96 imposed by law upon conviction of a crime, including the penalties
97 prescribed under this article for second or subsequent conviction,
98 or for any other purpose. Discharge and dismissal under this
99 subsection may occur only once with respect to any person; and

100 (2) Upon the dismissal of such person and discharge of
101 proceedings against him under paragraph (1) of this subsection, or
102 with respect to a person who has been convicted and adjudged
103 guilty of an offense under subsection (c) or (d) of Section
104 41-29-139, or for possession of narcotics, stimulants,
105 depressants, hallucinogens, marihuana, other controlled substances
106 or paraphernalia under prior laws of this state, such person, if
107 he had not reached his twenty-sixth birthday at the time of the
108 offense, may apply to the court for an order to expunge from all
109 official records, other than the nonpublic records to be retained
110 by the bureau under paragraph (1) of this subsection, all
111 recordation relating to his arrest, indictment, trial, finding of
112 guilty, and dismissal and discharge pursuant to this section. If
113 the court determines, after hearing, that such person was
114 dismissed and the proceedings against him discharged and that he
115 had not reached his twenty-sixth birthday at the time of the
116 offense, or that such person had satisfactorily served his
117 sentence or period of probation and parole, and that he had not
118 reached his twenty-sixth birthday at the time of the offense, it

119 shall enter such order. The effect of such order shall be to
120 restore such person, in the contemplation of the law, to the
121 status he occupied before such arrest or indictment. No person as
122 to whom such order has been entered shall be held thereafter under
123 any provision of any law to be guilty of perjury or otherwise
124 giving a false statement by reason of his failures to recite or
125 acknowledge such arrest, or indictment or trial in response to any
126 inquiry made of him for any purpose. Orders may be expunged as
127 provided in Section 1 of this act.

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

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

137 (g) It is the intent and purpose of the Legislature to
138 promote the rehabilitation of persons convicted of offenses under
139 the Uniform Controlled Substances Law.

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

142 99-19-71. (1) Any person who has been convicted of a
143 misdemeanor, excluding a conviction for a traffic violation, and
144 who is a first offender, may petition the justice, county, circuit
145 or municipal court, as may be applicable, for an order to expunge
146 any such conviction from all public records. Upon entering such
147 order, a nonpublic record thereof shall be retained by the court
148 and by the Mississippi Criminal Information Center solely for the
149 purpose of determining whether, in subsequent proceedings, such
150 person is a first offender. The effect of such order shall be to

151 restore such person, in the contemplation of the law, to the
152 status he occupied before such arrest. No person as to whom such
153 order has been entered shall be held thereafter under any
154 provision of law to be guilty of perjury or to have otherwise
155 given a false statement by reason of his failure to recite or
156 acknowledge such arrest or conviction in response to any inquiry
157 made of him for any purpose, except for the purpose of determining
158 in any subsequent proceedings under this section, whether such
159 person is a first offender.

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

166 **AMEND FURTHER** the title on line 4 by inserting the following
167 after the semicolon: "TO PROVIDE A PROCEDURE TO EXPUNGE CERTAIN
168 CONVICTIONS; TO AMEND SECTIONS 41-29-150 AND 99-19-71, MISSISSIPPI
169 CODE OF 1972, IN CONFORMITY TO THE PROVISIONS OF THIS ACT;"