

By: Representative Bailey

To: Judiciary B

HOUSE BILL NO. 940

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, 2007.