

By: Representative Dixon

To: Judiciary B

## HOUSE BILL NO. 1050

1 AN ACT TO PROVIDE FOR THE AUTOMATIC EXPUNCTION OF CRIMES OF  
2 FIRST-TIME OFFENDERS UPON COMPLETION OF ALL THE TERMS AND  
3 CONDITIONS OF THE SENTENCE; TO AMEND SECTIONS 41-29-150, 99-15-57  
4 AND 99-19-71, MISSISSIPPI CODE OF 1972, IN CONFORMITY TO THE  
5 PROVISIONS OF THIS ACT; AND FOR RELATED PURPOSES.

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

7 **SECTION 1.** Any person who has been convicted as a first-time  
8 offender of a criminal offense which is eligible for expunction as  
9 provided in Section 99-19-71 shall be automatically granted from  
10 the court in which he or she was convicted an order to expunge any  
11 such conviction from all public records after the successful  
12 completion of all the terms and conditions of the sentence for  
13 such conviction. Upon entering such an order, a nonpublic record  
14 thereof shall be retained solely for the purpose of use in  
15 determining whether in subsequent proceedings, such person is a  
16 first offender. The fees and costs associated with an automatic  
17 expunction granted to a first time offender under this section  
18 shall be waived by the court and performed as a pro bono service  
19 by the representing legal counsel.



20       The effect of such an order shall be to restore such person,  
21 in the contemplation of the law to the status he occupied before  
22 such arrest.

23       **SECTION 2.** Section 41-29-150, Mississippi Code of 1972, is  
24 amended as follows:

25       41-29-150. (a) Any person convicted under Section 41-29-139  
26 may be required, in the discretion of the court, as a part of the  
27 sentence otherwise imposed, or in lieu of imprisonment in cases of  
28 probation or suspension of sentence, to attend a course of  
29 instruction conducted by the bureau, the State Board of Health, or  
30 any similar agency, on the effects, medically, psychologically and  
31 socially, of the misuse of controlled substances. The course may  
32 be conducted at any correctional institution, detention center or  
33 hospital, or at any center or treatment facility established for  
34 the purpose of education and rehabilitation of those persons  
35 committed because of abuse of controlled substances.

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



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

46 (c) Those persons previously convicted of a felony  
47 under Section 41-29-139 and who are now confined at the  
48 Mississippi State Hospital at Whitfield, Mississippi, or at the  
49 East Mississippi State Hospital at Meridian, Mississippi, for the  
50 term of their sentence shall remain under the jurisdiction of the  
51 Mississippi Department of Corrections and shall be required to  
52 abide by all reasonable rules and regulations promulgated by the  
53 director and staff of said institutions and of the Department of  
54 Corrections. Any persons so confined who shall refuse to abide by  
55 said rules or who attempt an escape or who shall escape shall be  
56 transferred to the \* \* \* Mississippi Department of Corrections or  
57 to a county jail, where appropriate, to serve the remainder of the  
58 term of imprisonment; this provision shall not preclude  
59 prosecution and conviction for escape from said institutions.

60 (d) (1) If any person who has not previously been  
61 convicted of violating Section 41-29-139, or the laws of the  
62 United States or of another state relating to narcotic drugs,  
63 stimulant or depressant substances, other controlled substances or  
64 marihuana is found to be guilty of a violation of subsection (c)  
65 or (d) of Section 41-29-139, after trial or upon a plea of guilty,  
66 the court may, without entering a judgment of guilty and with the  
67 consent of such person, defer further proceedings and place him on  
68 probation upon such reasonable conditions as it may require and



69 for such period, not to exceed three (3) years, as the court may  
70 prescribe. Upon violation of a condition of the probation, the  
71 court may enter an adjudication of guilt and proceed as otherwise  
72 provided. The court may, in its discretion, dismiss the  
73 proceedings against such person and discharge him from probation  
74 before the expiration of the maximum period prescribed for such  
75 person's probation. If during the period of his probation such  
76 person does not violate any of the conditions of the probation,  
77 then upon expiration of such period the court shall discharge such  
78 person and dismiss the proceedings against him. Discharge and  
79 dismissal under this subsection shall be without court  
80 adjudication of guilt, but a nonpublic record thereof shall be  
81 retained by the bureau solely for the purpose of use by the courts  
82 in determining whether or not, in subsequent proceedings, such  
83 person qualifies under this subsection. Such discharge or  
84 dismissal shall not be deemed a conviction for purposes of  
85 disqualifications or disabilities imposed by law upon conviction  
86 of a crime, including the penalties prescribed under this article  
87 for second or subsequent conviction, or for any other purpose.  
88 Discharge and dismissal under this subsection may occur only once  
89 with respect to any person; and

90 (2) Upon the dismissal of a person and discharge of  
91 proceedings against him under paragraph (1) of this subsection,  
92 the person may apply to the court for an order to expunge from all  
93 official records, other than the nonpublic records to be retained



94 by the bureau under paragraph (1) of this subsection, all  
95 recordation relating to his arrest, indictment, trial, finding of  
96 guilt, and dismissal and discharge pursuant to this section. If  
97 the court determines, after hearing, that such person was  
98 dismissed and the proceedings against him discharged, or that the  
99 person had satisfactorily served his sentence or period of  
100 probation and parole, it shall enter an order of expunction. The  
101 effect of the order shall be to restore the person, in the  
102 contemplation of the law, to the status he occupied before such  
103 arrest or indictment. No person as to whom such an order has been  
104 entered shall be held thereafter under any provision of any law to  
105 be guilty of perjury or otherwise giving a false statement by  
106 reason of his failures to recite or acknowledge such arrest,  
107 indictment or trial in response to any inquiry made of him for any  
108 purpose. A person as to whom an order has been entered, upon  
109 request, shall be required to advise the court, in camera, of the  
110 previous conviction and expunction in any legal proceeding wherein  
111 the person has been called as a prospective juror. The court  
112 shall thereafter and before the selection of the jury advise the  
113 attorneys representing the parties of the previous conviction and  
114 expunction.

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



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

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

(h) Convictions of first-time offenders shall be expunged automatically as provided in Section 1 of this act.

**SECTION 3.** Section 99-15-57, Mississippi Code of 1972, is amended as follows:

99-15-57. (1) Any person who pled guilty within six (6) months prior to the effective date of Section 99-15-26, Mississippi Code of 1972, and who would have otherwise been eligible for the relief allowed in such section, may apply to the court in which such person was sentenced for an order to expunge from all official public records all recordation relating to his arrest, indictment, trial, finding of guilty and sentence. If the court determines, after hearing, that such person has satisfactorily served his sentence or period of probation and parole, pled guilty within six (6) months prior to the effective date of Section 99-15-26 and would have otherwise been eligible for the relief allowed in such section, it may enter such order. The effect of such order shall be to restore such person, in the



144 contemplation of the law, to the status he occupied before such  
145 arrest or indictment. No person as to whom such order has been  
146 entered shall be held thereafter under any provision of any law to  
147 be guilty of perjury or otherwise giving a false statement by  
148 reason of his failures to recite or acknowledge such arrest, or  
149 indictment or trial in response to any inquiry made of him for any  
150 purpose.

151 (2) Upon petition therefor, the court shall expunge the  
152 record of any case in which an arrest was made, the person  
153 arrested was released and the case was dismissed or the charges  
154 were dropped or there was no disposition of such case.

155 (3) A conviction of a first-time offender shall be expunged  
156 automatically as provided in Section 1 of this act.

157 **SECTION 4.** Section 99-19-71, Mississippi Code of 1972, is  
158 amended as follows:

159 99-19-71. (1) Any person who has been convicted of a  
160 misdemeanor, excluding a conviction for a traffic violation, and  
161 who is a first offender, may petition the justice, county, circuit  
162 or municipal court in which the conviction was had for an order to  
163 expunge any such conviction from all public records.

164 (2) (a) Any person who has been convicted of one (1) of the  
165 following felonies may petition the court in which the conviction  
166 was had for an order to expunge one (1) conviction from all public  
167 records \* \* \* two (2) years after the successful completion of all  
168 terms and conditions of the sentence for the conviction: a bad



169 check offense under Section 97-19-55; possession of a controlled  
170 substance or paraphernalia under Section 41-29-139(c) or (d);  
171 false pretense under Section 97-19-39; larceny under Section  
172 97-17-41; malicious mischief under Section 97-17-67; or  
173 shoplifting under Section 97-23-93. A person is eligible for only  
174 one (1) felony expunction under this section.

175           (b) The petitioner shall give ten (10) days' written  
176 notice to the district attorney before any hearing on the  
177 petition. In all cases, the court wherein the petition is filed  
178 may grant the petition if the court determines, on the record or  
179 in writing, that the applicant is rehabilitated from the offense  
180 which is the subject of the petition. In those cases where the  
181 court denies the petition, the findings of the court in this  
182 respect shall be identified specifically and not generally.

183           (3) Upon entering an order of expunction under this section,  
184 a nonpublic record thereof shall be retained by the Mississippi  
185 Criminal Information Center solely for the purpose of determining  
186 whether, in subsequent proceedings, the person is a first  
187 offender. The order of expunction shall not preclude a district  
188 attorney's office from retaining a nonpublic record thereof for  
189 law enforcement purposes only. The existence of an order of  
190 expunction shall not preclude an employer from asking a  
191 prospective employee if the employee has had an order of  
192 expunction entered on his behalf. The effect of the expunction  
193 order shall be to restore the person, in the contemplation of the





194 law, to the status he occupied before any arrest or indictment for  
195 which convicted. No person as to whom an expunction order has  
196 been entered shall be held thereafter under any provision of law  
197 to be guilty of perjury or to have otherwise given a false  
198 statement by reason of his failure to recite or acknowledge such  
199 arrest, indictment or conviction in response to any inquiry made  
200 of him for any purpose other than the purpose of determining, in  
201 any subsequent proceedings under this section, whether the person  
202 is a first offender. A person as to whom an order has been  
203 entered, upon request, shall be required to advise the court, in  
204 camera, of the previous conviction and expunction in any legal  
205 proceeding wherein the person has been called as a prospective  
206 juror. The court shall thereafter and before the selection of the  
207 jury advise the attorneys representing the parties of the previous  
208 conviction and expunction.

209 (4) Upon petition therefor, a justice, county, circuit or  
210 municipal court shall expunge the record of any case in which an  
211 arrest was made, the person arrested was released and the case was  
212 dismissed or the charges were dropped or there was no disposition  
213 of such case. Convictions of first-time offenders shall be  
214 expunged automatically as provided in Section 1 of this act.

215 **SECTION 5.** This act shall take effect and be in force from  
216 and after July 1, 2013.

