

By: Representative Scott

To: Judiciary B

HOUSE BILL NO. 438

1 AN ACT TO AMEND SECTION 41-29-147, MISSISSIPPI CODE OF 1972,  
2 TO REVISE THE DEFINITION OF SECOND AND SUBSEQUENT OFFENSE FOR  
3 CERTAIN CRIMES; TO AMEND SECTION 99-19-71, MISSISSIPPI CODE OF  
4 1972, TO REVISE THE LIST OF FELONY OFFENSES WHICH MAY BE EXPUNGED;  
5 AND FOR RELATED PURPOSES.

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

7 **SECTION 1.** Section 41-29-147, Mississippi Code of 1972, is  
8 amended as follows:

9 41-29-147. Except as otherwise provided in Section  
10 41-29-142, any person convicted of a second or subsequent offense  
11 under this article may be imprisoned for a term up to twice the  
12 term otherwise authorized, fined an amount up to twice that  
13 otherwise authorized, or both.

14 For purposes of this section, an offense is considered a  
15 second or subsequent offense, if, prior to his or her conviction  
16 of the offense, the offender has at any time been convicted and  
17 sentenced to separate terms of one (1) year or more under this  
18 article or under any statute of the United States or of any state  
19 relating to narcotic drugs, \* \* \* marijuana, depressant, stimulant



20 or hallucinogenic drugs, upon charges separately brought and  
21 arising out of separate incidents at different times.

22 **SECTION 2.** Section 99-19-71, Mississippi Code of 1972, is  
23 amended as follows:

24 99-19-71. (1) Any person who has been convicted of a  
25 misdemeanor that is not a traffic violation, and who is a first  
26 offender, may petition the justice, county, circuit or municipal  
27 court in which the conviction was had for an order to expunge any  
28 such conviction from all public records.

29 (2) (a) Any person who has been convicted of one (1) of the  
30 following felonies may petition the court in which the conviction  
31 was had for an order to expunge one (1) conviction from all public  
32 records five (5) years after the successful completion of all  
33 terms and conditions of the sentence for the conviction: a bad  
34 check offense under Section 97-19-55; possession of a controlled  
35 substance or paraphernalia under Section 41-29-139(c) or (d); a  
36 first time offender of possession with intent to sell, barter,  
37 transfer, manufacture, distribute, or dispense a controlled  
38 substance, counterfeit substance or paraphernalia as a violation  
39 under Section 41-29-139(a); false pretense under Section 97-19-39;  
40 larceny under Section 97-17-41; malicious mischief under Section  
41 97-17-67; or shoplifting under Section 97-23-93. A person is  
42 eligible for only one (1) felony expunction under this paragraph.  
43 (b) Any person who was under the age of twenty-one (21)  
44 years when he committed a felony may petition the court in which



45 the conviction was had for an order to expunge one (1) conviction  
46 from all public records five (5) years after the successful  
47 completion of all terms and conditions of the sentence for the  
48 conviction; however, eligibility for expunction shall not apply to  
49 a felony classified as a crime of violence under Section 97-3-2  
50 and any felony that, in the determination of the circuit court, is  
51 related to the distribution of a controlled substance and in the  
52 court's discretion it should not be expunged. A person is  
53 eligible for only one (1) felony expunction under this paragraph.

54 (c) The petitioner shall give ten (10) days' written  
55 notice to the district attorney before any hearing on the  
56 petition. In all cases, the court wherein the petition is filed  
57 may grant the petition if the court determines, on the record or  
58 in writing, that the applicant is rehabilitated from the offense  
59 which is the subject of the petition. In those cases where the  
60 court denies the petition, the findings of the court in this  
61 respect shall be identified specifically and not generally.

62 (3) Upon entering an order of expunction under this section,  
63 a nonpublic record thereof shall be retained by the Mississippi  
64 Criminal Information Center solely for the purpose of determining  
65 whether, in subsequent proceedings, the person is a first  
66 offender. The order of expunction shall not preclude a district  
67 attorney's office from retaining a nonpublic record thereof for  
68 law enforcement purposes only. The existence of an order of  
69 expunction shall not preclude an employer from asking a



70 prospective employee if the employee has had an order of  
71 expunction entered on his behalf. The effect of the expunction  
72 order shall be to restore the person, in the contemplation of the  
73 law, to the status he occupied before any arrest or indictment for  
74 which convicted. No person as to whom an expunction order has  
75 been entered shall be held thereafter under any provision of law  
76 to be guilty of perjury or to have otherwise given a false  
77 statement by reason of his failure to recite or acknowledge such  
78 arrest, indictment or conviction in response to any inquiry made  
79 of him for any purpose other than the purpose of determining, in  
80 any subsequent proceedings under this section, whether the person  
81 is a first offender. A person as to whom an order has been  
82 entered, upon request, shall be required to advise the court, in  
83 camera, of the previous conviction and expunction in any legal  
84 proceeding wherein the person has been called as a prospective  
85 juror. The court shall thereafter and before the selection of the  
86 jury advise the attorneys representing the parties of the previous  
87 conviction and expunction.

88 (4) Upon petition therefor, a justice, county, circuit or  
89 municipal court shall expunge the record of any case in which an  
90 arrest was made, the person arrested was released and the case was  
91 dismissed or the charges were dropped or there was no disposition  
92 of such case.

93 (5) No public official is eligible for expunction under this  
94 section for any conviction related to his official duties.



95           **SECTION 3.** This act shall take effect and be in force from  
96 and after July 1, 2018.

