

By: Representative Scott

To: Judiciary B

HOUSE BILL NO. 462

1 AN ACT TO AMEND SECTION 99-19-71, MISSISSIPPI CODE OF 1972,
2 TO REVISE THE AGE FOR EXPUNCTION OF CERTAIN FELONIES; TO AMEND
3 SECTION 21-23-7, MISSISSIPPI CODE OF 1972, TO CONFORM TO THE
4 PRECEDING SECTION; AND FOR RELATED PURPOSES.

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

6 **SECTION 1.** Section 99-19-71, Mississippi Code of 1972, is
7 amended as follows:

8 99-19-71. (1) Any person who has been convicted of a
9 misdemeanor that is not a traffic violation, and who is a first
10 offender, may petition the justice, county, circuit or municipal
11 court in which the conviction was had for an order to expunge any
12 such conviction from all public records.

13 (2) (a) Any person who has been convicted of one (1) of the
14 following felonies may petition the court in which the conviction
15 was had for an order to expunge one (1) conviction from all public
16 records five (5) years after the successful completion of all
17 terms and conditions of the sentence for the conviction: a bad
18 check offense under Section 97-19-55; possession of a controlled
19 substance or paraphernalia under Section 41-29-139(c) or (d);



20 false pretense under Section 97-19-39; larceny under Section
21 97-17-41; malicious mischief under Section 97-17-67; or
22 shoplifting under Section 97-23-93. A person is eligible for only
23 one (1) felony expunction under this paragraph.

24 (b) Any person who was under the age of * * *
25 thirty-five (35) years when he committed a felony may petition the
26 court in which the conviction was had for an order to expunge one
27 (1) conviction from all public records five (5) years after the
28 successful completion of all terms and conditions of the sentence
29 for the conviction; however, eligibility for expunction shall not
30 apply to a felony classified as a crime of violence under Section
31 97-3-2 and any felony that, in the determination of the circuit
32 court, is related to the distribution of a controlled substance
33 and in the court's discretion it should not be expunged. A person
34 is eligible for only one (1) felony expunction under this
35 paragraph.

36 (c) The petitioner shall give ten (10) days' written
37 notice to the district attorney before any hearing on the
38 petition. In all cases, the court wherein the petition is filed
39 may grant the petition if the court determines, on the record or
40 in writing, that the applicant is rehabilitated from the offense
41 which is the subject of the petition. In those cases where the
42 court denies the petition, the findings of the court in this
43 respect shall be identified specifically and not generally.



44 (3) Upon entering an order of expunction under this section,
45 a nonpublic record thereof shall be retained by the Mississippi
46 Criminal Information Center solely for the purpose of determining
47 whether, in subsequent proceedings, the person is a first
48 offender. The order of expunction shall not preclude a district
49 attorney's office from retaining a nonpublic record thereof for
50 law enforcement purposes only. The existence of an order of
51 expunction shall not preclude an employer from asking a
52 prospective employee if the employee has had an order of
53 expunction entered on his behalf. The effect of the expunction
54 order shall be to restore the person, in the contemplation of the
55 law, to the status he occupied before any arrest or indictment for
56 which convicted. No person as to whom an expunction order has
57 been entered shall be held thereafter under any provision of law
58 to be guilty of perjury or to have otherwise given a false
59 statement by reason of his failure to recite or acknowledge such
60 arrest, indictment or conviction in response to any inquiry made
61 of him for any purpose other than the purpose of determining, in
62 any subsequent proceedings under this section, whether the person
63 is a first offender. A person as to whom an order has been
64 entered, upon request, shall be required to advise the court, in
65 camera, of the previous conviction and expunction in any legal
66 proceeding wherein the person has been called as a prospective
67 juror. The court shall thereafter and before the selection of the



68 jury advise the attorneys representing the parties of the previous
69 conviction and expunction.

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

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

77 **SECTION 2.** Section 21-23-7, Mississippi Code of 1972, is
78 amended as follows:

79 21-23-7. (1) The municipal judge shall hold court in a
80 public building designated by the governing authorities of the
81 municipality and may hold court every day except Sundays and legal
82 holidays if the business of the municipality so requires;
83 provided, however, the municipal judge may hold court outside the
84 boundaries of the municipality but not more than within a
85 sixty-mile radius of the municipality to handle preliminary
86 matters and criminal matters such as initial appearances and
87 felony preliminary hearings. The municipal judge may hold court
88 outside the boundaries of the municipality but not more than
89 within a one-mile radius of the municipality for any purpose. The
90 municipal judge shall have the jurisdiction to hear and determine,
91 without a jury and without a record of the testimony, all cases
92 charging violations of the municipal ordinances and state



93 misdemeanor laws made offenses against the municipality and to
94 punish offenders therefor as may be prescribed by law. Except as
95 otherwise provided by law, criminal proceedings shall be brought
96 by sworn complaint filed in the municipal court. Such complaint
97 shall state the essential elements of the offense charged and the
98 statute or ordinance relied upon. Such complaint shall not be
99 required to conclude with a general averment that the offense is
100 against the peace and dignity of the state or in violation of the
101 ordinances of the municipality. He may sit as a committing court
102 in all felonies committed within the municipality, and he shall
103 have the power to bind over the accused to the grand jury or to
104 appear before the proper court having jurisdiction to try the
105 same, and to set the amount of bail or refuse bail and commit the
106 accused to jail in cases not bailable. The municipal judge is a
107 conservator of the peace within his municipality. He may conduct
108 preliminary hearings in all violations of the criminal laws of
109 this state occurring within the municipality, and any person
110 arrested for a violation of law within the municipality may be
111 brought before him for initial appearance. The municipal court
112 shall have jurisdiction of any case remanded to it by a circuit
113 court grand jury. The municipal court shall have civil
114 jurisdiction over actions filed pursuant to and as provided in
115 Title 93, Chapter 21, Mississippi Code of 1972, the Protection
116 from Domestic Abuse Act.



117 (2) In the discretion of the court, where the objects of
118 justice would be more likely met, as an alternative to imposition
119 or payment of fine and/or incarceration, the municipal judge shall
120 have the power to sentence convicted offenders to work on a public
121 service project where the court has established such a program of
122 public service by written guidelines filed with the clerk for
123 public record. Such programs shall provide for reasonable
124 supervision of the offender and the work shall be commensurate
125 with the fine and/or incarceration that would have ordinarily been
126 imposed. Such program of public service may be utilized in the
127 implementation of the provisions of Section 99-19-20, and public
128 service work thereunder may be supervised by persons other than
129 the sheriff.

130 (3) The municipal judge may solemnize marriages, take oaths,
131 affidavits and acknowledgments, and issue orders, subpoenas,
132 summonses, citations, warrants for search and arrest upon a
133 finding of probable cause, and other such process under seal of
134 the court to any county or municipality, in a criminal case, to be
135 executed by the lawful authority of the county or the municipality
136 of the respondent, and enforce obedience thereto. The absence of
137 a seal shall not invalidate the process.

138 (4) When a person shall be charged with an offense in
139 municipal court punishable by confinement, the municipal judge,
140 being satisfied that such person is an indigent person and is
141 unable to employ counsel, may, in the discretion of the court,



142 appoint counsel from the membership of The Mississippi Bar
143 residing in his county who shall represent him. Compensation for
144 appointed counsel in criminal cases shall be approved and allowed
145 by the municipal judge and shall be paid by the municipality. The
146 maximum compensation shall not exceed Two Hundred Dollars
147 (\$200.00) for any one (1) case. The governing authorities of a
148 municipality may, in their discretion, appoint a public
149 defender(s) who must be a licensed attorney and who shall receive
150 a salary to be fixed by the governing authorities.

151 (5) The municipal judge of any municipality is hereby
152 authorized to suspend the sentence and to suspend the execution of
153 the sentence, or any part thereof, on such terms as may be imposed
154 by the municipal judge. However, the suspension of imposition or
155 execution of a sentence hereunder may not be revoked after a
156 period of two (2) years. The municipal judge shall have the power
157 to establish and operate a probation program, dispute resolution
158 program and other practices or procedures appropriate to the
159 judiciary and designed to aid in the administration of justice.
160 Any such program shall be established by the court with written
161 policies and procedures filed with the clerk of the court for
162 public record. Subsequent to original sentencing, the municipal
163 judge, in misdemeanor cases, is hereby authorized to suspend
164 sentence and to suspend the execution of a sentence, or any part
165 thereof, on such terms as may be imposed by the municipal judge,
166 if (a) the judge or his or her predecessor was authorized to order



167 such suspension when the sentence was originally imposed; and (b)
168 such conviction (i) has not been appealed; or (ii) has been
169 appealed and the appeal has been voluntarily dismissed.

170 (6) Upon prior notice to the municipal prosecuting attorney
171 and upon a showing in open court of rehabilitation, good conduct
172 for a period of two (2) years since the last conviction in any
173 court and that the best interest of society would be served, the
174 court may, in its discretion, order the record of conviction of a
175 person of any or all misdemeanors in that court expunged, and upon
176 so doing the said person thereafter legally stands as though he
177 had never been convicted of the said misdemeanor(s) and may
178 lawfully so respond to any query of prior convictions. This order
179 of expunction does not apply to the confidential records of law
180 enforcement agencies and has no effect on the driving record of a
181 person maintained under Title 63, Mississippi Code of 1972, or any
182 other provision of said Title 63.

183 (7) Notwithstanding the provisions of subsection (6) of this
184 section, a person who was convicted in municipal court of a
185 misdemeanor before reaching his * * * thirty-fifth birthday,
186 excluding conviction for a traffic violation, and who is a first
187 offender, may utilize the provisions of Section 99-19-71, to
188 expunge such misdemeanor conviction.

189 (8) In the discretion of the court, a plea of nolo
190 contendere may be entered to any charge in municipal court. Upon
191 the entry of a plea of nolo contendere the court shall convict the



192 defendant of the offense charged and shall proceed to sentence the
193 defendant according to law. The judgment of the court shall
194 reflect that the conviction was on a plea of nolo contendere. An
195 appeal may be made from a conviction on a plea of nolo contendere
196 as in other cases.

197 (9) Upon execution of a sworn complaint charging a
198 misdemeanor, the municipal court may, in its discretion and in
199 lieu of an arrest warrant, issue a citation requiring the
200 appearance of the defendant to answer the charge made against him.
201 On default of appearance, an arrest warrant may be issued for the
202 defendant. The clerk of the court or deputy clerk may issue such
203 citations.

204 (10) The municipal court shall have the power to make rules
205 for the administration of the court's business, which rules, if
206 any, shall be in writing filed with the clerk of the court and
207 shall include the enactment of rules related to the court's
208 authority to issue domestic abuse protection orders pursuant to
209 Section 93-21-1 et seq.

210 (11) The municipal court shall have the power to impose
211 punishment of a fine of not more than One Thousand Dollars
212 (\$1,000.00) or six (6) months imprisonment, or both, for contempt
213 of court. The municipal court may have the power to impose
214 reasonable costs of court, not in excess of the following:

215 Dismissal of any affidavit, complaint or charge
216 in municipal court.....\$ 50.00



217 Suspension of a minor's driver's license in lieu of
 218 conviction.....\$ 50.00
 219 Service of scire facias or return "not found".....\$ 20.00
 220 Causing search warrant to issue or causing
 221 prosecution without reasonable cause or refusing to
 222 cooperate after initiating action.....\$ 100.00
 223 Certified copy of the court record.....\$ 5.00
 224 Service of arrest warrant for failure to answer
 225 citation or traffic summons.....\$ 25.00
 226 Jail cost per day - actual jail cost paid by the municipality but
 227 not to exceed..... \$ 35.00
 228 Service of court documents related to the filing
 229 of a petition or issuance of a protection from domestic
 230 abuse order under Title 93, Chapter 21, Mississippi
 231 Code of 1972\$ 25.00
 232 Any other item of court cost.....\$ 50.00

233 No filing fee or such cost shall be imposed for the bringing
 234 of an action in municipal court.

235 (12) A municipal court judge shall not dismiss a criminal
 236 case but may transfer the case to the justice court of the county
 237 if the municipal court judge is prohibited from presiding over the
 238 case by the Canons of Judicial Conduct and provided that venue and
 239 jurisdiction are proper in the justice court. Upon transfer of
 240 any such case, the municipal court judge shall give the municipal
 241 court clerk a written order to transmit the affidavit or complaint



242 and all other records and evidence in the court's possession to
243 the justice court by certified mail or to instruct the arresting
244 officer to deliver such documents and records to the justice
245 court. There shall be no court costs charged for the transfer of
246 the case to the justice court.

247 (13) A municipal court judge shall expunge the record of any
248 case in which an arrest was made, the person arrested was released
249 and the case was dismissed or the charges were dropped or there
250 was no disposition of such case.

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

