

By: Representative Wooten

To: Judiciary B

HOUSE BILL NO. 561

1 AN ACT TO AMEND SECTIONS 21-23-7 AND 99-19-71, MISSISSIPPI  
2 CODE OF 1972, TO REVISE EXPUNCTION OF CERTAIN CONVICTIONS; AND FOR  
3 RELATED PURPOSES.

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

5 **SECTION 1.** Section 21-23-7, Mississippi Code of 1972, is  
6 amended as follows:

7 21-23-7. (1) The municipal judge shall hold court in a  
8 public building designated by the governing authorities of the  
9 municipality and may hold court every day except Sundays and legal  
10 holidays if the business of the municipality so requires;  
11 provided, however, the municipal judge may hold court outside the  
12 boundaries of the municipality but not more than within a  
13 sixty-mile radius of the municipality to handle preliminary  
14 matters and criminal matters such as initial appearances and  
15 felony preliminary hearings. The municipal judge may hold court  
16 outside the boundaries of the municipality but not more than  
17 within a one-mile radius of the municipality for any purpose. The  
18 municipal judge shall have the jurisdiction to hear and determine,



19 without a jury and without a record of the testimony, all cases  
20 charging violations of the municipal ordinances and state  
21 misdemeanor laws made offenses against the municipality and to  
22 punish offenders therefor as may be prescribed by law. Except as  
23 otherwise provided by law, criminal proceedings shall be brought  
24 by sworn complaint filed in the municipal court. Such complaint  
25 shall state the essential elements of the offense charged and the  
26 statute or ordinance relied upon. Such complaint shall not be  
27 required to conclude with a general averment that the offense is  
28 against the peace and dignity of the state or in violation of the  
29 ordinances of the municipality. He may sit as a committing court  
30 in all felonies committed within the municipality, and he shall  
31 have the power to bind over the accused to the grand jury or to  
32 appear before the proper court having jurisdiction to try the  
33 same, and to set the amount of bail or refuse bail and commit the  
34 accused to jail in cases not bailable. The municipal judge is a  
35 conservator of the peace within his municipality. He may conduct  
36 preliminary hearings in all violations of the criminal laws of  
37 this state occurring within the municipality, and any person  
38 arrested for a violation of law within the municipality may be  
39 brought before him for initial appearance. The municipal court  
40 shall have jurisdiction of any case remanded to it by a circuit  
41 court grand jury. The municipal court shall have civil  
42 jurisdiction over actions filed pursuant to and as provided in



43 Title 93, Chapter 21, Mississippi Code of 1972, the Protection  
44 from Domestic Abuse Act.

45 (2) In the discretion of the court, where the objects of  
46 justice would be more likely met, as an alternative to imposition  
47 or payment of fine and/or incarceration, the municipal judge shall  
48 have the power to sentence convicted offenders to work on a public  
49 service project where the court has established such a program of  
50 public service by written guidelines filed with the clerk for  
51 public record. Such programs shall provide for reasonable  
52 supervision of the offender and the work shall be commensurate  
53 with the fine and/or incarceration that would have ordinarily been  
54 imposed. Such program of public service may be utilized in the  
55 implementation of the provisions of Section 99-19-20, and public  
56 service work thereunder may be supervised by persons other than  
57 the sheriff.

58 (3) The municipal judge may solemnize marriages, take oaths,  
59 affidavits and acknowledgments, and issue orders, subpoenas,  
60 summonses, citations, warrants for search and arrest upon a  
61 finding of probable cause, and other such process under seal of  
62 the court to any county or municipality, in a criminal case, to be  
63 executed by the lawful authority of the county or the municipality  
64 of the respondent, and enforce obedience thereto. The absence of  
65 a seal shall not invalidate the process.

66 (4) When a person shall be charged with an offense in  
67 municipal court punishable by confinement, the municipal judge,



68 being satisfied that such person is an indigent person and is  
69 unable to employ counsel, may, in the discretion of the court,  
70 appoint counsel from the membership of The Mississippi Bar  
71 residing in his county who shall represent him. Compensation for  
72 appointed counsel in criminal cases shall be approved and allowed  
73 by the municipal judge and shall be paid by the municipality. The  
74 maximum compensation shall not exceed Two Hundred Dollars  
75 (\$200.00) for any one (1) case. The governing authorities of a  
76 municipality may, in their discretion, appoint a public  
77 defender(s) who must be a licensed attorney and who shall receive  
78 a salary to be fixed by the governing authorities.

79 (5) The municipal judge of any municipality is hereby  
80 authorized to suspend the sentence and to suspend the execution of  
81 the sentence, or any part thereof, on such terms as may be imposed  
82 by the municipal judge. However, the suspension of imposition or  
83 execution of a sentence hereunder may not be revoked after a  
84 period of two (2) years. The municipal judge shall have the power  
85 to establish and operate a probation program, dispute resolution  
86 program and other practices or procedures appropriate to the  
87 judiciary and designed to aid in the administration of justice.  
88 Any such program shall be established by the court with written  
89 policies and procedures filed with the clerk of the court for  
90 public record. Subsequent to original sentencing, the municipal  
91 judge, in misdemeanor cases, is hereby authorized to suspend  
92 sentence and to suspend the execution of a sentence, or any part



93 thereof, on such terms as may be imposed by the municipal judge,  
94 if (a) the judge or his or her predecessor was authorized to order  
95 such suspension when the sentence was originally imposed; and (b)  
96 such conviction (i) has not been appealed; or (ii) has been  
97 appealed and the appeal has been voluntarily dismissed.

98 (6) Upon prior notice to the municipal prosecuting attorney  
99 and upon a showing in open court of rehabilitation, good conduct  
100 for a period of two (2) years since the last conviction in any  
101 court and that the best interest of society would be served, the  
102 court may, in its discretion, order the record of conviction of a  
103 person of any or all misdemeanors in that court expunged, and upon  
104 so doing the said person thereafter legally stands as though he  
105 had never been convicted of the said misdemeanor(s) and may  
106 lawfully so respond to any query of prior convictions. This order  
107 of expunction does not apply to the confidential records of law  
108 enforcement agencies and has no effect on the driving record of a  
109 person maintained under Title 63, Mississippi Code of 1972, or any  
110 other provision of said Title 63.

111 (7) Notwithstanding the provisions of subsection (6) of this  
112 section, a person who was convicted in municipal court of a  
113 misdemeanor before reaching his \* \* \* twenty-sixth birthday,  
114 excluding conviction for a traffic violation, and who is a first  
115 offender, may utilize the provisions of Section 99-19-71, to  
116 expunge such misdemeanor conviction.



117 (8) In the discretion of the court, a plea of nolo  
118 contendere may be entered to any charge in municipal court. Upon  
119 the entry of a plea of nolo contendere the court shall convict the  
120 defendant of the offense charged and shall proceed to sentence the  
121 defendant according to law. The judgment of the court shall  
122 reflect that the conviction was on a plea of nolo contendere. An  
123 appeal may be made from a conviction on a plea of nolo contendere  
124 as in other cases.

125 (9) Upon execution of a sworn complaint charging a  
126 misdemeanor, the municipal court may, in its discretion and in  
127 lieu of an arrest warrant, issue a citation requiring the  
128 appearance of the defendant to answer the charge made against him.  
129 On default of appearance, an arrest warrant may be issued for the  
130 defendant. The clerk of the court or deputy clerk may issue such  
131 citations.

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

138 (11) The municipal court shall have the power to impose  
139 punishment of a fine of not more than One Thousand Dollars  
140 (\$1,000.00) or six (6) months imprisonment, or both, for contempt



141 of court. The municipal court may have the power to impose  
142 reasonable costs of court, not in excess of the following:

143	Dismissal of any affidavit, complaint or charge	
144	in municipal court.....	\$ 50.00
145	Suspension of a minor's driver's license in lieu of	
146	conviction.....	\$ 50.00
147	Service of scire facias or return "not found".....	\$ 20.00
148	Causing search warrant to issue or causing	
149	prosecution without reasonable cause or refusing to	
150	cooperate after initiating action.....	\$ 100.00
151	Certified copy of the court record.....	\$ 5.00
152	Service of arrest warrant for failure to answer	
153	citation or traffic summons.....	\$ 25.00
154	Jail cost per day - actual jail cost paid by the municipality but	
155	not to exceed.....	\$ 35.00
156	Service of court documents related to the filing	
157	of a petition or issuance of a protection from domestic	
158	abuse order under Title 93, Chapter 21, Mississippi	
159	Code of 1972 .....	\$ 25.00
160	Any other item of court cost.....	\$ 50.00

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

163 (12) A municipal court judge shall not dismiss a criminal  
164 case but may transfer the case to the justice court of the county  
165 if the municipal court judge is prohibited from presiding over the



166 case by the Canons of Judicial Conduct and provided that venue and  
167 jurisdiction are proper in the justice court. Upon transfer of  
168 any such case, the municipal court judge shall give the municipal  
169 court clerk a written order to transmit the affidavit or complaint  
170 and all other records and evidence in the court's possession to  
171 the justice court by certified mail or to instruct the arresting  
172 officer to deliver such documents and records to the justice  
173 court. There shall be no court costs charged for the transfer of  
174 the case to the justice court.

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

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

181 99-19-71. (1) Any person who has been convicted of a  
182 misdemeanor that is not a traffic violation, and who is a first  
183 offender, may petition the justice, county, circuit or municipal  
184 court in which the conviction was had for an order to expunge any  
185 such conviction from all public records.

186 (2) (a) Any person who has been convicted of one (1) of the  
187 following felonies may petition the court in which the conviction  
188 was had for an order to expunge one (1) conviction from all public  
189 records five (5) years after the successful completion of all  
190 terms and conditions of the sentence for the conviction: a bad





191 check offense under Section 97-19-55; possession of a controlled  
192 substance or paraphernalia under Section 41-29-139(c) or (d);  
193 possession with intent to sell, barter, transfer, manufacture,  
194 distribute or dispense a controlled substance, counterfeit  
195 substance or paraphernalia under Section 41-29-139(a) or (d);  
196 false pretense under Section 97-19-39; larceny under Section  
197 97-17-41; malicious mischief under Section 97-17-67; or  
198 shoplifting under Section 97-23-93. A person is eligible for only  
199 one (1) felony expunction under this paragraph.

200 (b) Any person who was under the age of twenty-one (21)  
201 years when he committed a felony may petition the court in which  
202 the conviction was had for an order to expunge one (1) conviction  
203 from all public records five (5) years after the successful  
204 completion of all terms and conditions of the sentence for the  
205 conviction; however, eligibility for expunction shall not apply to  
206 a felony classified as a crime of violence under Section 97-3-2  
207 and any felony that, in the determination of the circuit court, is  
208 related to the distribution of a controlled substance and in the  
209 court's discretion it should not be expunged. A person is  
210 eligible for only one (1) felony expunction under this paragraph.

211 (c) The petitioner shall give ten (10) days' written  
212 notice to the district attorney before any hearing on the  
213 petition. In all cases, the court wherein the petition is filed  
214 may grant the petition if the court determines, on the record or  
215 in writing, that the applicant is rehabilitated from the offense



216 which is the subject of the petition. In those cases where the  
217 court denies the petition, the findings of the court in this  
218 respect shall be identified specifically and not generally.

219 (3) Upon entering an order of expunction under this section,  
220 a nonpublic record thereof shall be retained by the Mississippi  
221 Criminal Information Center solely for the purpose of determining  
222 whether, in subsequent proceedings, the person is a first  
223 offender. The order of expunction shall not preclude a district  
224 attorney's office from retaining a nonpublic record thereof for  
225 law enforcement purposes only. The existence of an order of  
226 expunction shall not preclude an employer from asking a  
227 prospective employee if the employee has had an order of  
228 expunction entered on his behalf. The effect of the expunction  
229 order shall be to restore the person, in the contemplation of the  
230 law, to the status he occupied before any arrest or indictment for  
231 which convicted. No person as to whom an expunction order has  
232 been entered shall be held thereafter under any provision of law  
233 to be guilty of perjury or to have otherwise given a false  
234 statement by reason of his failure to recite or acknowledge such  
235 arrest, indictment or conviction in response to any inquiry made  
236 of him for any purpose other than the purpose of determining, in  
237 any subsequent proceedings under this section, whether the person  
238 is a first offender. A person as to whom an order has been  
239 entered, upon request, shall be required to advise the court, in  
240 camera, of the previous conviction and expunction in any legal



241 proceeding wherein the person has been called as a prospective  
242 juror. The court shall thereafter and before the selection of the  
243 jury advise the attorneys representing the parties of the previous  
244 conviction and expunction.

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

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

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

