

By: Representative Henley

To: Judiciary B

HOUSE BILL NO. 1034

1 AN ACT TO AMEND SECTION 99-19-71, MISSISSIPPI CODE OF 1972,
2 TO REVISE THE EXPUNCTION PROCEDURE FOR MISDEMEANOR CONVICTIONS; TO
3 BRING FORWARD SECTION 21-23-7, MISSISSIPPI CODE OF 1972, WHICH
4 PROVIDES FOR MISDEMEANOR EXPUNCTION, FOR PURPOSES OF AMENDMENT;
5 AND FOR RELATED PURPOSES.

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

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

9 99-19-71. (1) The court may, in its discretion, order the
10 record of conviction of a person of any or all misdemeanors in
11 that court expunged, upon prior notice to the prosecuting attorney
12 and upon a showing in open court of rehabilitation, good conduct
13 for a period of two (2) years since the last conviction in any
14 court and that the best interest of society would be served. Such
15 expungement shall stand as though the person had never been
16 convicted of the misdemeanor(s) and may lawfully respond to any
17 questions of prior convictions in the same manner. This order of
18 expunction does not apply to the confidential records of law
19 enforcement agencies and has no effect on the driving record of a



20 person maintained under Title 63, Mississippi Code of 1972, or any
21 other provision of said Title 63. * * *

22 (2) (a) Any person who has been convicted of one (1) of the
23 following felonies may petition the court in which the conviction
24 was had for an order to expunge one (1) conviction from all public
25 records five (5) years after the successful completion of all
26 terms and conditions of the sentence for the conviction: a bad
27 check offense under Section 97-19-55; possession of a controlled
28 substance or paraphernalia under Section 41-29-139(c) or (d);
29 false pretense under Section 97-19-39; larceny under Section
30 97-17-41; malicious mischief under Section 97-17-67; or
31 shoplifting under Section 97-23-93. A person is eligible for only
32 one (1) felony expunction under this paragraph.

33 (b) Any person who was under the age of twenty-one (21)
34 years when he committed a felony may petition the court in which
35 the conviction was had for an order to expunge one (1) conviction
36 from all public records five (5) years after the successful
37 completion of all terms and conditions of the sentence for the
38 conviction; however, eligibility for expunction shall not apply to
39 a felony classified as a crime of violence under Section 97-3-2
40 and any felony that, in the determination of the circuit court, is
41 related to the distribution of a controlled substance and in the
42 court's discretion it should not be expunged. A person is
43 eligible for only one (1) felony expunction under this paragraph.



44 (c) The petitioner shall give ten (10) days' written
45 notice to the district attorney before any hearing on the
46 petition. In all cases, the court wherein the petition is filed
47 may grant the petition if the court determines, on the record or
48 in writing, that the applicant is rehabilitated from the offense
49 which is the subject of the petition. In those cases where the
50 court denies the petition, the findings of the court in this
51 respect shall be identified specifically and not generally.

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



of him for any purpose other than the purpose of determining, in any subsequent proceedings under this section, whether the person is a first offender. A person as to whom an order has been entered, upon request, shall be required to advise the court, in camera, of the previous conviction and expunction in any legal proceeding wherein the person has been called as a prospective juror. The court shall thereafter and before the selection of the jury advise the attorneys representing the parties of the previous conviction and expunction.

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

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

SECTION 2. Section 21-23-7, Mississippi Code of 1972, is brought forward as follows:

21-23-7. (1) The municipal judge shall hold court in a public building designated by the governing authorities of the municipality and may hold court every day except Sundays and legal holidays if the business of the municipality so requires; provided, however, the municipal judge may hold court outside the boundaries of the municipality but not more than within a sixty-mile radius of the municipality to handle preliminary



94 matters and criminal matters such as initial appearances and
95 felony preliminary hearings. The municipal judge may hold court
96 outside the boundaries of the municipality but not more than
97 within a one-mile radius of the municipality for any purpose. The
98 municipal judge shall have the jurisdiction to hear and determine,
99 without a jury and without a record of the testimony, all cases
100 charging violations of the municipal ordinances and state
101 misdemeanor laws made offenses against the municipality and to
102 punish offenders therefor as may be prescribed by law. Except as
103 otherwise provided by law, criminal proceedings shall be brought
104 by sworn complaint filed in the municipal court. Such complaint
105 shall state the essential elements of the offense charged and the
106 statute or ordinance relied upon. Such complaint shall not be
107 required to conclude with a general averment that the offense is
108 against the peace and dignity of the state or in violation of the
109 ordinances of the municipality. He may sit as a committing court
110 in all felonies committed within the municipality, and he shall
111 have the power to bind over the accused to the grand jury or to
112 appear before the proper court having jurisdiction to try the
113 same, and to set the amount of bail or refuse bail and commit the
114 accused to jail in cases not bailable. The municipal judge is a
115 conservator of the peace within his municipality. He may conduct
116 preliminary hearings in all violations of the criminal laws of
117 this state occurring within the municipality, and any person
118 arrested for a violation of law within the municipality may be



brought before him for initial appearance. The municipal court shall have jurisdiction of any case remanded to it by a circuit court grand jury. The municipal court shall have civil jurisdiction over actions filed pursuant to and as provided in Title 93, Chapter 21, Mississippi Code of 1972, the Protection from Domestic Abuse Act.

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

(3) The municipal judge may solemnize marriages, take oaths, affidavits and acknowledgments, and issue orders, subpoenas, summonses, citations, warrants for search and arrest upon a finding of probable cause, and other such process under seal of the court to any county or municipality, in a criminal case, to be executed by the lawful authority of the county or the municipality



of the respondent, and enforce obedience thereto. The absence of a seal shall not invalidate the process.

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

(5) The municipal judge of any municipality is hereby authorized to suspend the sentence and to suspend the execution of the sentence, or any part thereof, on such terms as may be imposed by the municipal judge. However, the suspension of imposition or execution of a sentence hereunder may not be revoked after a period of two (2) years. The municipal judge shall have the power to establish and operate a probation program, dispute resolution program and other practices or procedures appropriate to the judiciary and designed to aid in the administration of justice. Any such program shall be established by the court with written



169 policies and procedures filed with the clerk of the court for
170 public record. Subsequent to original sentencing, the municipal
171 judge, in misdemeanor cases, is hereby authorized to suspend
172 sentence and to suspend the execution of a sentence, or any part
173 thereof, on such terms as may be imposed by the municipal judge,
174 if (a) the judge or his or her predecessor was authorized to order
175 such suspension when the sentence was originally imposed; and (b)
176 such conviction (i) has not been appealed; or (ii) has been
177 appealed and the appeal has been voluntarily dismissed.

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

191 (7) Notwithstanding the provisions of subsection (6) of this
192 section, a person who was convicted in municipal court of a
193 misdemeanor before reaching his twenty-third birthday, excluding



conviction for a traffic violation, and who is a first offender, may utilize the provisions of Section 99-19-71, to expunge such misdemeanor conviction.

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

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

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



218 (11) The municipal court shall have the power to impose
219 punishment of a fine of not more than One Thousand Dollars
220 (\$1,000.00) or six (6) months imprisonment, or both, for contempt
221 of court. The municipal court may have the power to impose
222 reasonable costs of court, not in excess of the following:
223 Dismissal of any affidavit, complaint or charge
224 in municipal court.....\$ 50.00
225 Suspension of a minor's driver's license in lieu of
226 conviction.....\$ 50.00
227 Service of scire facias or return "not found".....\$ 20.00
228 Causing search warrant to issue or causing
229 prosecution without reasonable cause or refusing to
230 cooperate after initiating action.....\$ 100.00
231 Certified copy of the court record.....\$ 5.00
232 Service of arrest warrant for failure to answer
233 citation or traffic summons.....\$ 25.00
234 Jail cost per day - actual jail cost paid by the municipality but
235 not to exceed.....\$ 35.00
236 Service of court documents related to the filing
237 of a petition or issuance of a protection from domestic
238 abuse order under Title 93, Chapter 21, Mississippi
239 Code of 1972\$ 25.00
240 Any other item of court cost.....\$ 50.00
241 No filing fee or such cost shall be imposed for the bringing
242 of an action in municipal court.



(12) A municipal court judge shall not dismiss a criminal case but may transfer the case to the justice court of the county if the municipal court judge is prohibited from presiding over the case by the Canons of Judicial Conduct and provided that venue and jurisdiction are proper in the justice court. Upon transfer of any such case, the municipal court judge shall give the municipal court clerk a written order to transmit the affidavit or complaint and all other records and evidence in the court's possession to the justice court by certified mail or to instruct the arresting officer to deliver such documents and records to the justice court. There shall be no court costs charged for the transfer of the case to the justice court.

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

SECTION 3. This act shall take effect and be in force from and after July 1, 2019.

