

By: Representative Owen

To: Judiciary B

HOUSE BILL NO. 885

1 AN ACT TO AMEND SECTION 99-19-71, MISSISSIPPI CODE OF 1972,
2 TO REMOVE THE FIRST OFFENDER RESTRICTION FOR MISDEMEANOR
3 EXPUNGEMENT; AND FOR RELATED PURPOSES.

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

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

7 99-19-71. (1) Any person who has been convicted of a
8 misdemeanor that is not a traffic violation, * * * may petition
9 the justice, county, circuit or municipal court in which the
10 conviction was had for an order to expunge any such conviction
11 from all public records.

12 (2) (a) Except as otherwise provided in this subsection, a
13 person who has been convicted of a felony and who has paid all
14 criminal fines and costs of court imposed in the sentence of
15 conviction may petition the court in which the conviction was had
16 for an order to expunge one (1) conviction from all public records
17 five (5) years after the successful completion of all terms and
18 conditions of the sentence for the conviction upon a hearing as



19 determined in the discretion of the court; however, a person is
20 not eligible to expunge a felony classified as:

21 (i) A crime of violence as provided in Section
22 97-3-2;

23 (ii) Arson, first degree as provided in Sections
24 97-17-1 and 97-17-3;

25 (iii) Trafficking in controlled substances as
26 provided in Section 41-29-139;

27 (iv) A third, fourth or subsequent offense DUI as
28 provided in Section 63-11-30(2)(c) and (2)(d);

29 (v) Felon in possession of a firearm as provided
30 in Section 97-37-5;

31 (vi) Failure to register as a sex offender as
32 provided in Section 45-33-33;

33 (vii) Voyeurism as provided in Section 97-29-61;

34 (viii) Witness intimidation as provided in Section
35 97-9-113;

36 (ix) Abuse, neglect or exploitation of a
37 vulnerable person as provided in Section 43-47-19; or

38 (x) Embezzlement as provided in Sections 97-11-25
39 and 97-23-19.

40 A person is eligible for only one (1) felony expunction under
41 this paragraph. For the purposes of this section, the terms "one
42 (1) conviction" and "one (1) felony expunction" mean and include



all convictions that arose from a common nucleus of operative facts as determined in the discretion of the court.

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

(3) Upon entering an order of expunction under this section, a nonpublic record thereof shall be retained by the Mississippi Criminal Information Center solely for the purpose of determining whether, in subsequent proceedings, the person is a first offender. The order of expunction shall not preclude a district attorney's office from retaining a nonpublic record thereof for law enforcement purposes only. The existence of an order of expunction shall not preclude an employer from asking a prospective employee if the employee has had an order of expunction entered on his behalf. The effect of the expunction order shall be to restore the person, in the contemplation of the law, to the status he occupied before any arrest or indictment for which convicted. No person as to whom an expunction order has been entered shall be held thereafter under any provision of law to be guilty of perjury or to have otherwise given a false



68 statement by reason of his failure to recite or acknowledge such
69 arrest, indictment or conviction in response to any inquiry made
70 of him for any purpose other than the purpose of determining, in
71 any subsequent proceedings under this section, whether the person
72 is a first offender. A person as to whom an order has been
73 entered, upon request, shall be required to advise the court, in
74 camera, of the previous conviction and expunction in any legal
75 proceeding wherein the person has been called as a prospective
76 juror. The court shall thereafter and before the selection of the
77 jury advise the attorneys representing the parties of the previous
78 conviction and expunction.

79 (4) Upon petition therefor, a justice, county, circuit or
80 municipal court shall expunge the record of any case in which an
81 arrest was made, the person arrested was released and the case was
82 dismissed or the charges were dropped or there was no disposition
83 of such case, or the person was found not guilty at trial.

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

86 **SECTION 2.** This act shall take effect and be in force from
87 and after July 1, 2021.

