

By: Representative Evans (91st)

To: Judiciary B

HOUSE BILL NO. 905

1 AN ACT TO PROVIDE FOR THE AUTOMATIC EXPUNCTION OF CRIMES OF
2 FIRST-TIME OFFENDERS UPON COMPLETION OF ALL THE TERMS AND
3 CONDITIONS OF THE SENTENCE; TO AMEND SECTIONS 41-29-150, 99-15-57
4 AND 99-19-71, MISSISSIPPI CODE OF 1972, IN CONFORMITY TO THE
5 PROVISIONS OF THIS ACT; AND FOR RELATED PURPOSES.

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

7 **SECTION 1.** Any person who has been convicted as a first-time
8 offender of a criminal offense which is eligible for expunction as
9 provided in Section 99-19-71 shall be automatically granted an
10 order from the court, in which he or she was convicted, an order
11 to expunge any such conviction from all public records after the
12 successful completion of all the terms and conditions of the
13 sentence for such conviction. Upon entering such an order, a
14 nonpublic record thereof shall be retained solely for the purpose
15 of use in determining whether in subsequent proceedings, such
16 person is a first offender. The fees and costs associated with an
17 automatic expunction granted to a first time offender under this
18 section shall be waived by the court and performed as a pro bono
19 service by the representing legal counsel.



20 The effect of such an order shall be to restore such person,
21 in the contemplation of the law to the status he occupied before
22 such arrest.

23 **SECTION 2.** Section 41-29-150, Mississippi Code of 1972, is
24 amended as follows:

25 41-29-150. (a) Any person convicted under Section 41-29-139
26 may be required, in the discretion of the court, as a part of the
27 sentence otherwise imposed, or in lieu of imprisonment in cases of
28 probation or suspension of sentence, to attend a course of
29 instruction conducted by the bureau, the State Board of Health, or
30 any similar agency, on the effects, medically, psychologically and
31 socially, of the misuse of controlled substances. The course may
32 be conducted at any correctional institution, detention center or
33 hospital, or at any center or treatment facility established for
34 the purpose of education and rehabilitation of those persons
35 committed because of abuse of controlled substances.

36 (b) Any person convicted under Section 41-29-139 who is
37 found to be dependent upon or addicted to any controlled substance
38 shall be required, as a part of the sentence otherwise imposed, or
39 in lieu of imprisonment in cases of parole, probation or
40 suspension of sentence, to receive medical treatment for such
41 dependency or addiction. The regimen of medical treatment may
42 include confinement in a medical facility of any correctional
43 institution, detention center or hospital, or at any center or



44 facility established for treatment of those persons committed
45 because of a dependence or addiction to controlled substances.

46 (c) Those persons previously convicted of a felony under
47 Section 41-29-139 and who are now confined at the Mississippi
48 State Hospital at Whitfield, Mississippi, or at the East
49 Mississippi State Hospital at Meridian, Mississippi, for the term
50 of their sentence shall remain under the jurisdiction of the
51 Mississippi Department of Corrections and shall be required to
52 abide by all reasonable rules and regulations promulgated by the
53 director and staff of said institutions and of the Department of
54 Corrections. Any persons so confined who shall refuse to abide by
55 said rules or who attempt an escape or who shall escape shall be
56 transferred to the * * * Mississippi Department of Corrections or
57 to a county jail, where appropriate, to serve the remainder of the
58 term of imprisonment; this provision shall not preclude
59 prosecution and conviction for escape from said institutions.

60 (d) (1) If any person who has not previously been convicted
61 of violating Section 41-29-139, or the laws of the United States
62 or of another state relating to narcotic drugs, stimulant or
63 depressant substances, other controlled substances or marihuana is
64 found to be guilty of a violation of subsection (c) or (d) of
65 Section 41-29-139, after trial or upon a plea of guilty, the court
66 may, without entering a judgment of guilty and with the consent of
67 such person, defer further proceedings and place him on probation
68 upon such reasonable conditions as it may require and for such



69 period, not to exceed three (3) years, as the court may prescribe.
70 Upon violation of a condition of the probation, the court may
71 enter an adjudication of guilt and proceed as otherwise provided.
72 The court may, in its discretion, dismiss the proceedings against
73 such person and discharge him from probation before the expiration
74 of the maximum period prescribed for such person's probation. If
75 during the period of his probation such person does not violate
76 any of the conditions of the probation, then upon expiration of
77 such period the court shall discharge such person and dismiss the
78 proceedings against him. Discharge and dismissal under this
79 subsection shall be without court adjudication of guilt, but a
80 nonpublic record thereof shall be retained by the bureau solely
81 for the purpose of use by the courts in determining whether or
82 not, in subsequent proceedings, such person qualifies under this
83 subsection. Such discharge or dismissal shall not be deemed a
84 conviction for purposes of disqualifications or disabilities
85 imposed by law upon conviction of a crime, including the penalties
86 prescribed under this article for second or subsequent conviction,
87 or for any other purpose. Discharge and dismissal under this
88 subsection may occur only once with respect to any person; and
89 (2) Upon the dismissal of a person and discharge of
90 proceedings against him under paragraph (1) of this subsection,
91 the person may apply to the court for an order to expunge from all
92 official records, other than the nonpublic records to be retained
93 by the bureau under paragraph (1) of this subsection, all



94 recordation relating to his arrest, indictment, trial, finding of
95 guilt, and dismissal and discharge pursuant to this section. If
96 the court determines, after hearing, that such person was
97 dismissed and the proceedings against him discharged, or that the
98 person had satisfactorily served his sentence or period of
99 probation and parole, it shall enter an order of expunction. The
100 effect of the order shall be to restore the person, in the
101 contemplation of the law, to the status he occupied before such
102 arrest or indictment. No person as to whom such an order has been
103 entered shall be held thereafter under any provision of any law to
104 be guilty of perjury or otherwise giving a false statement by
105 reason of his failures to recite or acknowledge such arrest,
106 indictment or trial in response to any inquiry made of him for any
107 purpose. A person as to whom an order has been entered, upon
108 request, shall be required to advise the court, in camera, of the
109 previous conviction and expunction in any legal proceeding wherein
110 the person has been called as a prospective juror. The court
111 shall thereafter and before the selection of the jury advise the
112 attorneys representing the parties of the previous conviction and
113 expunction.

114 (e) Every person who has been or may hereafter be convicted
115 of a felony offense under Section 41-29-139 and sentenced under
116 Section 41-29-150(c) shall be under the jurisdiction of the
117 Mississippi Department of Corrections.



118 (f) It shall be unlawful for any person confined under the
119 provisions of subsection (b) or (c) of this section to escape or
120 attempt to escape from said institution, and, upon conviction,
121 said person shall be guilty of a felony and shall be imprisoned
122 for a term not to exceed two (2) years.

123 (g) It is the intent and purpose of the Legislature to
124 promote the rehabilitation of persons convicted of offenses under
125 the Uniform Controlled Substances Law.

126 (h) Convictions of first-time offenders shall be expunged
127 automatically as provided in Section 1 of this act.

128 **SECTION 3.** Section 99-15-57, Mississippi Code of 1972, is
129 amended as follows:

130 99-15-57. (1) Any person who pled guilty within six (6)
131 months prior to March 31, 1983, and who would have otherwise been
132 eligible for the relief allowed in Section 99-15-26, may apply to
133 the court in which such person was sentenced for an order to
134 expunge from all official public records all recordation relating
135 to his arrest, indictment, trial, finding of guilty and sentence.
136 If the court determines, after hearing, that such person has
137 satisfactorily served his sentence or period of probation and
138 parole, pled guilty within six (6) months prior to March 31, 1983,
139 and would have otherwise been eligible for the relief allowed in
140 Section 99-15-26, it may enter such order. The effect of such
141 order shall be to restore such person, in the contemplation of the
142 law, to the status he occupied before such arrest or indictment.



143 No person as to whom such order has been entered shall be held
144 thereafter under any provision of any law to be guilty of perjury
145 or otherwise giving a false statement by reason of his failures to
146 recite or acknowledge such arrest, or indictment or trial in
147 response to any inquiry made of him for any purpose.

148 (2) Upon petition therefor, the court shall expunge the
149 record of any case in which an arrest was made, the person
150 arrested was released and the case was dismissed or the charges
151 were dropped, there was no disposition of such case, or the person
152 was found not guilty at trial.

153 (3) A conviction of a first-time offender shall be expunged
154 automatically as provided in Section 1 of this act.

155 **SECTION 4.** Section 99-19-71, Mississippi Code of 1972, is
156 amended as follows:

157 99-19-71. (1) Any person who has been convicted of a
158 misdemeanor that is not a traffic violation, and who is a first
159 offender, may petition the justice, county, circuit or municipal
160 court in which the conviction was had for an order to expunge any
161 such conviction from all public records.

162 (2) (a) Except as otherwise provided in this subsection, a
163 person who has been convicted of a felony and who has paid all
164 criminal fines and costs of court imposed in the sentence of
165 conviction may petition the court in which the conviction was had
166 for an order to expunge one (1) conviction from all public
167 records * * * two (2) years after the successful completion of all



168 terms and conditions of the sentence for the conviction upon a
169 hearing as determined in the discretion of the court; however, a
170 person is not eligible to expunge a felony classified as:

171 (i) A crime of violence as provided in Section
172 97-3-2;

173 (ii) Arson, first degree as provided in Sections
174 97-17-1 and 97-17-3;

175 (iii) Trafficking in controlled substances as
176 provided in Section 41-29-139;

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

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

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

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

184 (viii) Witness intimidation as provided in Section
185 97-9-113;

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

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

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



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

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

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



218 statement by reason of his failure to recite or acknowledge such
219 arrest, indictment or conviction in response to any inquiry made
220 of him for any purpose other than the purpose of determining, in
221 any subsequent proceedings under this section, whether the person
222 is a first offender. A person as to whom an order has been
223 entered, upon request, shall be required to advise the court, in
224 camera, of the previous conviction and expunction in any legal
225 proceeding wherein the person has been called as a prospective
226 juror. The court shall thereafter and before the selection of the
227 jury advise the attorneys representing the parties of the previous
228 conviction and expunction.

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

234 Convictions of first-time offenders shall be expunged
235 automatically as provided in Section 1 of this act.

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

238 **SECTION 5.** This act shall take effect and be in force from
239 and after July 1, 2021.

