

By: Senator(s) Walls

To: Judiciary

SENATE BILL NO. 2306
(As Sent to Governor)

1 AN ACT TO AMEND SECTIONS 43-21-159, 99-15-57 AND 99-19-71,
2 MISSISSIPPI CODE OF 1972, TO REQUIRE THE COURT TO EXPUNGE THE
3 RECORD OF AN ARREST IF THERE IS NO PROSECUTION OF THE CASE, THE
4 CASE WAS DISMISSED OR THE CHARGES WERE DROPPED; TO AMEND SECTION
5 99-15-26, MISSISSIPPI CODE OF 1972, TO CONFORM AND TO AUTHORIZE
6 CONDITIONAL SENTENCING IN JUSTICE AND MUNICIPAL COURT; AND FOR
7 RELATED PURPOSES.

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

9 **SECTION 1.** Section 43-21-159, Mississippi Code of 1972, is
10 amended as follows:

11 43-21-159. (1) When a person appears before a court other
12 than the youth court, and it is determined that the person is a
13 child under jurisdiction of the youth court, such court shall,
14 unless the jurisdiction of the offense has been transferred to
15 such court as provided in this chapter, or unless the child has
16 previously been the subject of a transfer from the youth court to
17 the circuit court for trial as an adult and was convicted,
18 immediately dismiss the proceeding without prejudice and forward
19 all documents pertaining to the cause to the youth court; and all
20 entries in permanent records shall be expunged. The youth court
21 shall have the power to order and supervise the expunction or the
22 destruction of such records in accordance with Section 43-21-265.
23 Upon petition therefor, the youth court shall expunge the record
24 of any case within its jurisdiction in which an arrest was made,
25 the person arrested was released and the case was dismissed or the
26 charges were dropped or there was no disposition of such case. In
27 cases where the child is charged with a hunting or fishing
28 violation or a traffic violation whether it be any state or
29 federal law, a violation of the Mississippi Implied Consent Law,



30 or municipal ordinance or county resolution or where the child is
31 charged with a violation of Section 67-3-70, the appropriate
32 criminal court shall proceed to dispose of the same in the same
33 manner as for other adult offenders and it shall not be necessary
34 to transfer the case to the youth court of the county. Unless the
35 cause has been transferred, or unless the child has previously
36 been the subject of a transfer from the youth court to the circuit
37 court for trial as an adult, except for violations under the
38 Implied Consent Law, and was convicted, the youth court shall have
39 power on its own motion to remove jurisdiction from any criminal
40 court of any offense including a hunting or fishing violation, a
41 traffic violation, or a violation of Section 67-3-70, committed by
42 a child in a matter under the jurisdiction of the youth court and
43 proceed therewith in accordance with the provisions of this
44 chapter.

45 (2) After conviction and sentence of any child by any other
46 court having original jurisdiction on a misdemeanor charge, and
47 within the time allowed for an appeal of such conviction and
48 sentence, the youth court of the county shall have the full power
49 to stay the execution of the sentence and to release the child on
50 good behavior or on other order as the youth court may see fit to
51 make unless the child has previously been the subject of a
52 transfer from the youth court to the circuit court for trial as an
53 adult and was convicted. When a child is convicted of a
54 misdemeanor and is committed to, incarcerated in or imprisoned in
55 a jail or other place of detention by a criminal court having
56 proper jurisdiction of such charge, such court shall notify the
57 youth court judge or the judge's designee of the conviction and
58 sentence prior to the commencement of such incarceration. The
59 youth court shall have the power to order and supervise the
60 destruction of any records involving children maintained by the
61 criminal court in accordance with Section 43-21-265. However, the
62 youth court shall have the power to set aside a judgment of any



63 other court rendered in any matter over which the youth court has
64 exclusive original jurisdiction, to expunge or destroy the records
65 thereof in accordance with Section 43-21-265, and to order a
66 refund of fines and costs.

67 (3) Nothing in subsection (1) or (2) shall apply to a youth
68 who has a pending charge or a conviction for any crime over which
69 circuit court has original jurisdiction.

70 (4) In any case wherein the defendant is a child as defined
71 in this chapter and of which the circuit court has original
72 jurisdiction, the circuit judge, upon a finding that it would be
73 in the best interest of such child and in the interest of justice,
74 may at any stage of the proceedings prior to the attachment of
75 jeopardy transfer such proceedings to the youth court for further
76 proceedings unless the child has previously been the subject of a
77 transfer from the youth court to the circuit court for trial as an
78 adult and was convicted or has previously been convicted of a
79 crime which was in original circuit court jurisdiction, and the
80 youth court shall, upon acquiring jurisdiction, proceed as
81 provided in this chapter for the adjudication and disposition of
82 delinquent child proceeding proceedings. If the case is not
83 transferred to the youth court and the youth is convicted of a
84 crime by any circuit court, the trial judge shall sentence the
85 youth as though such youth was an adult. The circuit court shall
86 not have the authority to commit such child to the custody of the
87 Department of Youth Services for placement in a state-supported
88 training school.

89 (5) In no event shall a court sentence an offender over the
90 age of eighteen (18) to the custody of the Division of Youth
91 Services for placement in a state-supported training school.

92 (6) When a child's driver's license is suspended by the
93 youth court for any reason, the clerk of the youth court shall
94 report the suspension, without a court order under Section



95 43-21-261, to the Commissioner of Public Safety in the same manner
96 as such suspensions are reported in cases involving adults.

97 (7) No offense involving the use or possession of a firearm
98 by a child who has reached his fifteenth birthday and which, if
99 committed by an adult would be a felony, shall be transferred to
100 the youth court.

101 **SECTION 2.** Section 99-15-26, Mississippi Code of 1972, is
102 amended as follows:

103 99-15-26. (1) In all criminal cases, felony and
104 misdemeanor, other than crimes against the person, the circuit or
105 county court shall be empowered, upon the entry of a plea of
106 guilty by a criminal defendant, to withhold acceptance of the plea
107 and sentence thereon pending successful completion of such
108 conditions as may be imposed by the court pursuant to subsection
109 (2) of this section. In all misdemeanor criminal cases, other
110 than crimes against the person, the justice or municipal court
111 shall be empowered, upon the entry of a plea of guilty by a
112 criminal defendant, to withhold acceptance of the plea and
113 sentence thereon pending successful completion of such conditions
114 as may be imposed by the court pursuant to subsection (2) of this
115 section. No person having previously qualified under the
116 provisions of this section or having ever been convicted of a
117 felony shall be eligible to qualify for release in accordance with
118 this section. A person shall not be eligible to qualify for
119 release in accordance with this section if such person has been
120 charged (a) with an offense pertaining to the sale, barter,
121 transfer, manufacture, distribution or dispensing of a controlled
122 substance, or the possession with intent to sell, barter,
123 transfer, manufacture, distribute or dispense a controlled
124 substance, as provided in Section 41-29-139(a)(1), Mississippi
125 Code of 1972, except for a charge under said provision when the
126 controlled substance involved is one (1) ounce or less of
127 marihuana; (b) with an offense pertaining to the possession of one



128 (1) kilogram or more of marihuana as provided in Section
129 41-29-139(c) (2) (D), Mississippi Code of 1972; or (c) with an
130 offense under the Mississippi Implied Consent Law.

131 (2) Conditions which the circuit, county, justice or
132 municipal court may impose under subsection (1) of this section
133 shall consist of:

134 (a) Reasonable restitution to the victim of the crime.

135 (b) Performance of not more than nine hundred sixty
136 (960) hours of public service work approved by the court.

137 (c) Payment of a fine not to exceed the statutory
138 limit.

139 (d) Successful completion of drug, alcohol,
140 psychological or psychiatric treatment or any combination thereof
141 if the court deems such treatment necessary.

142 (e) The circuit or county court * * *, in its
143 discretion, may require the defendant to remain in the program
144 subject to good behavior for a period of time not to exceed five
145 (5) years. The justice or municipal court, in its discretion, may
146 require the defendant to remain in the program subject to good
147 behavior for a period of time not to exceed two (2) years.

148 (3) When the court has imposed upon the defendant the
149 conditions set out in this section, the court shall release the
150 bail bond, if any.

151 (4) Upon successful completion of the court-imposed
152 conditions permitted by subsection (2) of this section, the court
153 shall direct that the cause be dismissed and the case be closed.

154 (5) Upon petition therefor, the court shall expunge the
155 record of any case in which an arrest was made, the person
156 arrested was released and the case was dismissed or the charges
157 were dropped or there was no disposition of such case.

158 (6) This section shall take effect and be in force from and
159 after March 31, 1983.



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

162 99-15-57. (1) Any person who pled guilty within six (6)
163 months prior to the effective date of Section 99-15-26,
164 Mississippi Code of 1972, and who would have otherwise been
165 eligible for the relief allowed in such section, may apply to the
166 court in which such person was sentenced for an order to expunge
167 from all official public records all recordation relating to his
168 arrest, indictment, trial, finding of guilty and sentence. If the
169 court determines, after hearing, that such person has
170 satisfactorily served his sentence or period of probation and
171 parole, pled guilty within six (6) months prior to the effective
172 date of Section 99-15-26 and would have otherwise been eligible
173 for the relief allowed in such section, it may enter such order.
174 The effect of such order shall be to restore such person, in the
175 contemplation of the law, to the status he occupied before such
176 arrest or indictment. No person as to whom such order has been
177 entered shall be held thereafter under any provision of any law to
178 be guilty of perjury or otherwise giving a false statement by
179 reason of his failures to recite or acknowledge such arrest, or
180 indictment or trial in response to any inquiry made of him for any
181 purpose.

182 (2) Upon petition therefor, the court shall expunge the
183 record of any case in which an arrest was made, the person
184 arrested was released and the case was dismissed or the charges
185 were dropped or there was no disposition of such case.

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

188 99-19-71. (1) Any person who has been convicted of a
189 misdemeanor * * *, excluding a conviction for a traffic violation,
190 and who is a first offender, may petition the justice, county,
191 circuit or municipal court, as may be applicable, for an order to
192 expunge any such conviction from all public records. Upon



193 entering such order, a nonpublic record thereof shall be retained
194 by the court and by the Mississippi Criminal Information Center
195 solely for the purpose of * * * determining whether, * * * in
196 subsequent proceedings, such person is a first offender. The
197 effect of such order shall be to restore such person, in the
198 contemplation of the law, to the status he occupied before such
199 arrest. No person as to whom such order has been entered shall be
200 held thereafter under any provision of law to be guilty of perjury
201 or to have otherwise given a false statement by reason of his
202 failure to recite or acknowledge such arrest or conviction in
203 response to any inquiry made of him for any purpose, except for
204 the purpose of determining in any subsequent proceedings under
205 this section, whether such person is a first offender.

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

211 **SECTION 5.** This act shall take effect and be in force from
212 and after its passage.

