

By: Representative Moak

To: Judiciary B

HOUSE BILL NO. 160  
(As Sent to Governor)

1 AN ACT TO AMEND SECTION 99-19-71, MISSISSIPPI CODE OF 1972,  
2 TO PROVIDE A PROCEDURE TO EXPUNGE CERTAIN FELONY CONVICTIONS; TO  
3 AMEND SECTION 41-29-150, MISSISSIPPI CODE OF 1972, TO CONFORM; AND  
4 FOR RELATED PURPOSES.

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

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

8 99-19-71. (1) Any person who has been convicted of a  
9 misdemeanor, excluding a conviction for a traffic violation, and  
10 who is a first offender, may petition the justice, county, circuit  
11 or municipal court in which the conviction was had for an order to  
12 expunge any such conviction from all public records.

13 (2) (a) Any person who has been convicted of one of the  
14 following felonies may petition the court in which the conviction  
15 was had for an order to expunge one (1) conviction from all public  
16 records five (5) years after the successful completion of all  
17 terms and conditions of the sentence for the conviction: a bad  
18 check offense under Section 97-19-55; possession of a controlled  
19 substance or paraphernalia under Section 41-29-139(c) or (d);  
20 false pretense under Section 97-19-39; larceny under Section  
21 97-17-41; malicious mischief under Section 97-17-67; or  
22 shoplifting under Section 97-23-93. A person is eligible for only  
23 one (1) felony expunction under this section.

24 (b) The petitioner shall give ten (10) days' written  
25 notice to the district attorney before any hearing on the  
26 petition. In all cases, the court wherein the petition is filed  
27 may grant the petition if the court determines, on the record or  
28 in writing, that the applicant is rehabilitated from the offense



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

32 (3) Upon entering an order of expunction under this section,  
33 a nonpublic record thereof shall be retained \* \* \* by the  
34 Mississippi Criminal Information Center solely for the purpose of  
35 determining whether, in subsequent proceedings, the person is a  
36 first offender. The order of expunction shall not preclude a  
37 district attorney's office from retaining a nonpublic record  
38 thereof for law enforcement purposes only. The existence of an  
39 order of expunction shall not preclude an employer from asking a  
40 prospective employee if the employee has had an order of  
41 expunction entered on his behalf. The effect of the expunction  
42 order shall be to restore the person, in the contemplation of the  
43 law, to the status he occupied before any arrest or indictment for  
44 which convicted. No person as to whom an expunction order has  
45 been entered shall be held thereafter under any provision of law  
46 to be guilty of perjury or to have otherwise given a false  
47 statement by reason of his failure to recite or acknowledge such  
48 arrest, indictment or conviction in response to any inquiry made  
49 of him for any purpose other than the purpose of determining, in  
50 any subsequent proceedings under this section, whether the person  
51 is a first offender. A person as to whom an order has been  
52 entered, upon request, shall be required to advise the court, in  
53 camera, of the previous conviction and expunction in any legal  
54 proceeding wherein the person has been called as a prospective  
55 juror. The court shall thereafter and before the selection of the  
56 jury advise the attorneys representing the parties of the previous  
57 conviction and expunction.

58 (4) Upon petition therefor, a justice, county, circuit or  
59 municipal court shall expunge the record of any case in which an  
60 arrest was made, the person arrested was released and the case was



61 dismissed or the charges were dropped or there was no disposition  
62 of such case.

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

65 41-29-150. (a) Any person convicted under Section 41-29-139  
66 may be required, in the discretion of the court, as a part of the  
67 sentence otherwise imposed, or in lieu of imprisonment in cases of  
68 probation or suspension of sentence, to attend a course of  
69 instruction conducted by the bureau, the State Board of Health, or  
70 any similar agency, on the effects, medically, psychologically and  
71 socially, of the misuse of controlled substances. The course may  
72 be conducted at any correctional institution, detention center or  
73 hospital, or at any center or treatment facility established for  
74 the purpose of education and rehabilitation of those persons  
75 committed because of abuse of controlled substances.

76 (b) Any person convicted under Section 41-29-139 who is  
77 found to be dependent upon or addicted to any controlled substance  
78 shall be required, as a part of the sentence otherwise imposed, or  
79 in lieu of imprisonment in cases of parole, probation or  
80 suspension of sentence, to receive medical treatment for such  
81 dependency or addiction. The regimen of medical treatment may  
82 include confinement in a medical facility of any correctional  
83 institution, detention center or hospital, or at any center or  
84 facility established for treatment of those persons committed  
85 because of a dependence or addiction to controlled substances.

86 (c) Those persons previously convicted of a felony under  
87 Section 41-29-139 and who are now confined at the Mississippi  
88 State Hospital at Whitfield, Mississippi, or at the East  
89 Mississippi State Hospital at Meridian, Mississippi, for the term  
90 of their sentence shall remain under the jurisdiction of the  
91 Mississippi Department of Corrections and shall be required to  
92 abide by all reasonable rules and regulations promulgated by the  
93 director and staff of said institutions and of the Department of



94 Corrections. Any persons so confined who shall refuse to abide by  
95 said rules or who attempt an escape or who shall escape shall be  
96 transferred to the State Penitentiary or to a county jail, where  
97 appropriate, to serve the remainder of the term of imprisonment;  
98 this provision shall not preclude prosecution and conviction for  
99 escape from said institutions.

100 (d) (1) If any person who has not previously been convicted  
101 of violating Section 41-29-139, or the laws of the United States  
102 or of another state relating to narcotic drugs, stimulant or  
103 depressant substances, other controlled substances or marihuana is  
104 found to be guilty of a violation of subsection (c) or (d) of  
105 Section 41-29-139, after trial or upon a plea of guilty, the court  
106 may, without entering a judgment of guilty and with the consent of  
107 such person, defer further proceedings and place him on probation  
108 upon such reasonable conditions as it may require and for such  
109 period, not to exceed three (3) years, as the court may prescribe.  
110 Upon violation of a condition of the probation, the court may  
111 enter an adjudication of guilt and proceed as otherwise provided.  
112 The court may, in its discretion, dismiss the proceedings against  
113 such person and discharge him from probation before the expiration  
114 of the maximum period prescribed for such person's probation. If  
115 during the period of his probation such person does not violate  
116 any of the conditions of the probation, then upon expiration of  
117 such period the court shall discharge such person and dismiss the  
118 proceedings against him. Discharge and dismissal under this  
119 subsection shall be without court adjudication of guilt, but a  
120 nonpublic record thereof shall be retained by the bureau solely  
121 for the purpose of use by the courts in determining whether or  
122 not, in subsequent proceedings, such person qualifies under this  
123 subsection. Such discharge or dismissal shall not be deemed a  
124 conviction for purposes of disqualifications or disabilities  
125 imposed by law upon conviction of a crime, including the penalties  
126 prescribed under this article for second or subsequent conviction,



127 or for any other purpose. Discharge and dismissal under this  
128 subsection may occur only once with respect to any person; and

129 (2) Upon the dismissal of a person and discharge of  
130 proceedings against him under paragraph (1) of this  
131 subsection, the person \* \* \* may apply to the court for an order  
132 to expunge from all official records, other than the nonpublic  
133 records to be retained by the bureau under paragraph (1) of this  
134 subsection, all recordation relating to his arrest, indictment,  
135 trial, finding of guilt, and dismissal and discharge pursuant to  
136 this section. If the court determines, after hearing, that such  
137 person was dismissed and the proceedings against him  
138 discharged \* \* \*, or that the person had satisfactorily served his  
139 sentence or period of probation and parole, \* \* \* it shall enter  
140 an order of expunction. The effect of the order shall be to  
141 restore the person, in the contemplation of the law, to the status  
142 he occupied before such arrest or indictment. No person as to  
143 whom such an order has been entered shall be held thereafter under  
144 any provision of any law to be guilty of perjury or otherwise  
145 giving a false statement by reason of his failures to recite or  
146 acknowledge such arrest, \* \* \* indictment or trial in response to  
147 any inquiry made of him for any purpose. A person as to whom an  
148 order has been entered, upon request, shall be required to advise  
149 the court, in camera, of the previous conviction and expunction in  
150 any legal proceeding wherein the person has been called as a  
151 prospective juror. The court shall thereafter and before the  
152 selection of the jury advise the attorneys representing the  
153 parties of the previous conviction and expunction.

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

158 (f) It shall be unlawful for any person confined under the  
159 provisions of subsection (b) or (c) of this section to escape or



160 attempt to escape from said institution, and, upon conviction,  
161 said person shall be guilty of a felony and shall be imprisoned  
162 for a term not to exceed two (2) years.

163 (g) It is the intent and purpose of the Legislature to  
164 promote the rehabilitation of persons convicted of offenses under  
165 the Uniform Controlled Substances Law.

166 **SECTION 3.** This act shall take effect and be in force from  
167 and after July 1, 2010, and the provisions of this act shall be  
168 considered additional and supplemental to any other relief.

