

By: Senator(s) Fillingane

To: Judiciary, Division B

## SENATE BILL NO. 2792

1 AN ACT TO AMEND SECTIONS 9-23-23, 9-27-19, 63-11-30, 99-19-71  
2 AND 99-15-26, MISSISSIPPI CODE OF 1972, TO REQUIRE JUDGES EXPUNGE  
3 THE RECORD OF ANY CASE IN WHICH AN ARREST WAS MADE AND THE PERSON  
4 ARRESTED WAS RELEASED AND THE CASE WAS DISMISSED OR THE CHARGES  
5 WERE DROPPED; TO REQUIRE JUDGES EXPUNGE THE RECORD OF ANY CASE IN  
6 WHICH AN ARREST WAS MADE AND THERE WAS NO DISPOSITION OF SUCH  
7 CASE; TO REQUIRE JUDGES EXPUNGE THE RECORD OF ANY CASE IN WHICH AN  
8 ARREST WAS MADE AND THE PERSON WAS FOUND NOT GUILTY AT TRIAL; AND  
9 FOR RELATED PURPOSES.

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

11 **SECTION 1.** Section 9-23-23, Mississippi Code of 1972, is  
12 amended as follows:

13 9-23-23. (1) If the participant completes all requirements  
14 imposed upon him by the intervention court, including the payment  
15 of fines and fees assessed and not waived by the court, the charge  
16 and prosecution shall be dismissed. If the defendant or  
17 participant was sentenced at the time of entry of plea of guilty,  
18 the successful completion of the intervention court order and  
19 other requirements of probation or suspension of sentence will  
20 result in the record of the criminal conviction or adjudication



21 being expunged. However, no expunction of any implied consent  
22 violation shall be allowed.

23 (2) A judge shall expunge the record of any case in which an  
24 arrest was made and the person arrested was released and the case  
25 was dismissed or the charges were dropped; there was no  
26 disposition of such case; or the person was found not guilty at  
27 trial.

28 **SECTION 2.** Section 9-27-19, Mississippi Code of 1972, is  
29 amended as follows:

30 9-27-19. (1) If the participant completes all requirements  
31 imposed by the mental health treatment court, the charge and  
32 prosecution shall be dismissed. If the defendant was sentenced at  
33 the time of entry of a plea of guilty, the successful completion  
34 of the mental health treatment court order and other requirements  
35 of probation or suspension of sentence will result in the record  
36 of the criminal conviction or adjudication being expunged.  
37 However, no expunction of any implied consent violations shall be  
38 allowed.

39 (2) A judge shall expunge the record of any case in which an  
40 arrest was made and the person arrested was released and the case  
41 was dismissed or the charges were dropped; there was no  
42 disposition of such case; or the person was found not guilty at  
43 trial.

44 **SECTION 3.** Section 63-11-30, Mississippi Code of 1972, is  
45 amended as follows:



63-11-30. (1) It is unlawful for a person to drive or otherwise operate a vehicle within this state if the person:

- (a) Is under the influence of intoxicating liquor;
- (b) Is under the influence of any other substance that has impaired the person's ability to operate a motor vehicle;
- (c) Is under the influence of any drug or controlled substance, the possession of which is unlawful under the Mississippi Controlled Substances Law; or
- (d) Has an alcohol concentration in the person's blood, based upon grams of alcohol per one hundred (100) milliliters of blood, or grams of alcohol per two hundred ten (210) liters of breath, as shown by a chemical analysis of the person's breath, blood or urine administered as authorized by this chapter, of:
  - (i) Eight one-hundredths percent (.08%) or more for a person who is above the legal age to purchase alcoholic beverages under state law;
  - (ii) Two one-hundredths percent (.02%) or more for a person who is below the legal age to purchase alcoholic beverages under state law; or
  - (iii) Four one-hundredths percent (.04%) or more for a person operating a commercial motor vehicle.

(2) Except as otherwise provided in subsection (3) of this section (Zero Tolerance for Minors):

- (a) **First offense DUI.** (i) Upon conviction of any person for the first offense of violating subsection (1) of this



71 section where chemical tests under Section 63-11-5 were given, or  
72 where chemical test results are not available, the person shall be  
73 fined not less than Two Hundred Fifty Dollars (\$250.00) nor more  
74 than One Thousand Dollars (\$1,000.00), or imprisoned for not more  
75 than forty-eight (48) hours in jail, or both; the court shall  
76 order the person to attend and complete an alcohol safety  
77 education program as provided in Section 63-11-32 within six (6)  
78 months of sentencing. The court may substitute attendance at a  
79 victim impact panel instead of forty-eight (48) hours in jail.

80 (ii) Suspension of commercial driving privileges  
81 is governed by Section 63-1-216.

82 (iii) A qualifying first offense may be  
83 nonadjudicated by the court under subsection (14) of this section.  
84 The holder of a commercial driver's license or a commercial  
85 learning permit at the time of the offense is ineligible for  
86 nonadjudication.

87 (iv) Eligibility for an interlock-restricted  
88 license is governed by Section 63-11-31 and suspension of regular  
89 driving privileges is governed by Section 63-11-23.

90 (b) **Second offense DUI.** (i) Upon any second  
91 conviction of any person violating subsection (1) of this section,  
92 the offenses being committed within a period of five (5) years,  
93 the person shall be guilty of a misdemeanor, fined not less than  
94 Six Hundred Dollars (\$600.00) nor more than One Thousand Five  
95 Hundred Dollars (\$1,500.00), shall be imprisoned not less than



96 five (5) days nor more than six (6) months and sentenced to  
97 community service work for not less than ten (10) days nor more  
98 than six (6) months. The minimum penalties shall not be suspended  
99 or reduced by the court and no prosecutor shall offer any  
100 suspension or sentence reduction as part of a plea bargain.

101 (ii) Suspension of commercial driving privileges  
102 is governed by Section 63-1-216.

103 (iii) Eligibility for an interlock-restricted  
104 license is governed by Section 63-11-31 and suspension of regular  
105 driving privileges is governed by Section 63-11-23.

106 (c) **Third offense DUI.** (i) For a third conviction of  
107 a person for violating subsection (1) of this section, the  
108 offenses being committed within a period of five (5) years, the  
109 person shall be guilty of a felony and fined not less than Two  
110 Thousand Dollars (\$2,000.00) nor more than Five Thousand Dollars  
111 (\$5,000.00), and shall serve not less than one (1) year nor more  
112 than five (5) years in the custody of the Department of  
113 Corrections. For any offense that does not result in serious  
114 injury or death to any person, the sentence of incarceration may  
115 be served in the county jail rather than in the State Penitentiary  
116 at the discretion of the circuit court judge. The minimum  
117 penalties shall not be suspended or reduced by the court and no  
118 prosecutor shall offer any suspension or sentence reduction as  
119 part of a plea bargain.



(ii) The suspension of commercial driving privileges is governed by Section 63-1-216.

(iii) The suspension of regular driving privileges is governed by Section 63-11-23.

(d) **Fourth and subsequent offense DUI.** (i) For any fourth or subsequent conviction of a violation of subsection (1) of this section, without regard to the time period within which the violations occurred, the person shall be guilty of a felony and fined not less than Three Thousand Dollars (\$3,000.00) nor more than Ten Thousand Dollars (\$10,000.00), and shall serve not less than two (2) years nor more than ten (10) years in the custody of the Department of Corrections.

(ii) The suspension of commercial driving privileges is governed by Section 63-1-216.

(iii) A person convicted of a fourth or subsequent offense is ineligible to exercise the privilege to operate a motor vehicle that is not equipped with an ignition-interlock device for ten (10) years.

(e) Any person convicted of a second or subsequent violation of subsection (1) of this section shall receive an in-depth diagnostic assessment, and if as a result of the assessment is determined to be in need of treatment for alcohol or drug abuse, the person must successfully complete treatment at a program site certified by the Department of Mental Health. Each person who receives a diagnostic assessment shall pay a fee



representing the cost of the assessment. Each person who participates in a treatment program shall pay a fee representing the cost of treatment.

(f) The use of ignition-interlock devices is governed by Section 63-11-31.

(3) **Zero tolerance for minors.** (a) This subsection shall be known and may be cited as Zero Tolerance for Minors. The provisions of this subsection shall apply only when a person under the age of twenty-one (21) years has a blood alcohol concentration of two one-hundredths percent (.02%) or more, but lower than eight one-hundredths percent (.08%). If the person's blood alcohol concentration is eight one-hundredths percent (.08%) or more, the provisions of subsection (2) shall apply.

(b) (i) A person under the age of twenty-one (21) is eligible for nonadjudication of a qualifying first offense by the court pursuant to subsection (14) of this section.

(ii) Upon conviction of any person under the age of twenty-one (21) years for the first offense of violating subsection (1) of this section where chemical tests provided for under Section 63-11-5 were given, or where chemical test results are not available, the person shall be fined Two Hundred Fifty Dollars (\$250.00); the court shall order the person to attend and complete an alcohol safety education program as provided in Section 63-11-32 within six (6) months. The court may also require attendance at a victim impact panel.



170 (c) A person under the age of twenty-one (21) years who  
171 is convicted of a second violation of subsection (1) of this  
172 section, the offenses being committed within a period of five (5)  
173 years, shall be fined not more than Five Hundred Dollars  
174 (\$500.00).

175 (d) A person under the age of twenty-one (21) years who  
176 is convicted of a third or subsequent violation of subsection (1)  
177 of this section, the offenses being committed within a period of  
178 five (5) years, shall be fined not more than One Thousand Dollars  
179 (\$1,000.00).

180 (e) License suspension is governed by Section 63-11-23  
181 and ignition interlock is governed by Section 63-11-31.

182 (f) Any person under the age of twenty-one (21) years  
183 convicted of a third or subsequent violation of subsection (1) of  
184 this section must complete treatment of an alcohol or drug abuse  
185 program at a site certified by the Department of Mental Health.

186 (4) **DUI test refusal.** In addition to the other penalties  
187 provided in this section, every person refusing a law enforcement  
188 officer's request to submit to a chemical test of the person's  
189 breath as provided in this chapter, or who was unconscious at the  
190 time of a chemical test and refused to consent to the introduction  
191 of the results of the test in any prosecution, shall suffer an  
192 additional administrative suspension of driving privileges as set  
193 forth in Section 63-11-23.





194           (5) **Aggravated DUI.** (a) (i) Except as otherwise provided  
195 in subparagraph (ii) of this paragraph (a), every person who  
196 operates any motor vehicle in violation of the provisions of  
197 subsection (1) of this section and who in a negligent manner  
198 causes the death of another or mutilates, disfigures, permanently  
199 disables or destroys the tongue, eye, lip, nose or any other limb,  
200 organ or member of another shall, upon conviction, be guilty of a  
201 separate felony for each victim who suffers death, mutilation,  
202 disfigurement or other injury and shall be committed to the  
203 custody of the State Department of Corrections for a period of  
204 time of not less than five (5) years and not to exceed twenty-five  
205 (25) years for each death, mutilation, disfigurement or other  
206 injury, and the imprisonment for the second or each subsequent  
207 conviction, in the discretion of the court, shall commence either  
208 at the termination of the imprisonment for the preceding  
209 conviction or run concurrently with the preceding conviction. Any  
210 person charged with causing the death of another as described in  
211 this subsection shall be required to post bail before being  
212 released after arrest.

213                       (ii) Every person who is below the legal age to  
214 purchase alcoholic beverages under state law and has an alcohol  
215 concentration in the person's blood, based upon grams of alcohol  
216 per one hundred (100) milliliters of blood, or grams of alcohol  
217 per two hundred ten (210) liters of breath, as shown by a chemical  
218 analysis of the person's breath, blood or urine administered as



219 authorized by this chapter, of eight one-hundredths percent  
220 (0.08%) or more and who in a negligent manner causes the death of  
221 another or mutilates, disfigures, permanently disables or destroys  
222 the tongue, eye, lip, nose or any other limb, organ or member of  
223 another shall, upon conviction, be guilty of a separate felony for  
224 each victim who suffers death, mutilation, disfigurement or other  
225 injury and shall be committed to the custody of the State  
226 Department of Corrections for a period of time not less than five  
227 (5) years and not to exceed twenty-five (25) years for each death,  
228 mutilation, disfigurement or other injury, and the imprisonment  
229 for the second or each subsequent conviction, in the discretion of  
230 the court, shall commence either at the termination of the  
231 imprisonment for the preceding conviction or run concurrently with  
232 the preceding conviction. Any such person charged with causing  
233 the death of another as described in this subparagraph shall be  
234 required to post bail before being released after arrest.

235 (b) A holder of a commercial driver's license who is  
236 convicted of operating a commercial motor vehicle with an alcohol  
237 concentration of eight one-hundredths percent (.08%) or more shall  
238 be guilty of a felony and shall be committed to the custody of the  
239 Department of Corrections for not less than two (2) years and not  
240 more than ten (10) years.

241 (c) The court shall order an ignition-interlock  
242 restriction on the offender's privilege to drive as a condition of  
243 probation or post-release supervision not to exceed five (5) years



244 unless a longer restriction is required under other law. The  
245 ignition-interlock restriction shall not be applied to commercial  
246 license privileges until the driver serves the full  
247 disqualification period required by Section 63-1-216.

248       (6) **DUI citations.** (a) Upon conviction of a violation of  
249 subsection (1) of this section, the trial judge shall sign in the  
250 place provided on the traffic ticket, citation or affidavit  
251 stating that the person arrested either employed an attorney or  
252 waived his right to an attorney after having been properly  
253 advised. If the person arrested employed an attorney, the name,  
254 address and telephone number of the attorney shall be written on  
255 the ticket, citation or affidavit. The court clerk must  
256 immediately send a copy of the traffic ticket, citation or  
257 affidavit, and any other pertinent documents concerning the  
258 conviction or other order of the court, to the Department of  
259 Public Safety as provided in Section 63-11-37.

260       (b) A copy of the traffic ticket, citation or affidavit  
261 and any other pertinent documents, having been attested as true  
262 and correct by the Commissioner of Public Safety, or his designee,  
263 shall be sufficient proof of the conviction for purposes of  
264 determining the enhanced penalty for any subsequent convictions of  
265 violations of subsection (1) of this section. The Department of  
266 Public Safety shall maintain a central database for verification  
267 of prior offenses and convictions.



268           (7) **Out-of-state prior convictions.** Convictions in another  
269 state, territory or possession of the United States, or under the  
270 law of a federally recognized Native American tribe, of violations  
271 for driving or operating a vehicle while under the influence of an  
272 intoxicating liquor or while under the influence of any other  
273 substance that has impaired the person's ability to operate a  
274 motor vehicle occurring within five (5) years before an offense  
275 shall be counted for the purposes of determining if a violation of  
276 subsection (1) of this section is a second, third, fourth or  
277 subsequent offense and the penalty that shall be imposed upon  
278 conviction for a violation of subsection (1) of this section.

279           (8) **Charging of subsequent offenses.** (a) For the purposes  
280 of determining how to impose the sentence for a second, third,  
281 fourth or subsequent conviction under this section, the affidavit  
282 or indictment shall not be required to enumerate previous  
283 convictions. It shall only be necessary that the affidavit or  
284 indictment states the number of times that the defendant has been  
285 convicted and sentenced within the past five (5) years for a  
286 second or third offense, or without a time limitation for a fourth  
287 or subsequent offense, under this section to determine if an  
288 enhanced penalty shall be imposed. The amount of fine and  
289 imprisonment imposed in previous convictions shall not be  
290 considered in calculating offenses to determine a second, third,  
291 fourth or subsequent offense of this section.



(b) Before a defendant enters a plea of guilty to an offense under this section, law enforcement must submit certification to the prosecutor that the defendant's driving record, the confidential registry and National Crime Information Center record have been searched for all prior convictions, nonadjudications, pretrial diversions and arrests for driving or operating a vehicle while under the influence of an intoxicating liquor or while under the influence of any other substance that has impaired the person's ability to operate a motor vehicle. The results of the search must be included in the certification.

(9) **License eligibility for underage offenders.** A person who is under the legal age to obtain a license to operate a motor vehicle at the time of the offense and who is convicted under this section shall not be eligible to receive a driver's license until the person reaches the age of eighteen (18) years.

(10) **License suspensions and restrictions to run consecutively.** Suspension or restriction of driving privileges for any person convicted of or nonadjudicated for violations of subsection (1) of this section shall run consecutively to and not concurrently with any other administrative license suspension.

(11) **Ignition interlock.** If the court orders installation and use of an ignition-interlock device as provided in Section 63-11-31 for every vehicle operated by a person convicted or nonadjudicated under this section, each device shall be installed, maintained and removed as provided in Section 63-11-31.



317           (12) **DUI child endangerment.** A person over the age of  
318 twenty-one (21) who violates subsection (1) of this section while  
319 transporting in a motor vehicle a child under the age of sixteen  
320 (16) years is guilty of the separate offense of endangering a  
321 child by driving under the influence of alcohol or any other  
322 substance which has impaired the person's ability to operate a  
323 motor vehicle. The offense of endangering a child by driving  
324 under the influence of alcohol or any other substance which has  
325 impaired the person's ability to operate a motor vehicle shall not  
326 be merged with an offense of violating subsection (1) of this  
327 section for the purposes of prosecution and sentencing. An  
328 offender who is convicted of a violation of this subsection shall  
329 be punished as follows:

330           (a) A person who commits a violation of this subsection  
331 which does not result in the serious injury or death of a child  
332 and which is a first conviction shall be guilty of a misdemeanor  
333 and, upon conviction, shall be fined not more than One Thousand  
334 Dollars (\$1,000.00) or shall be imprisoned for not more than  
335 twelve (12) months, or both;

336           (b) A person who commits a violation of this subsection  
337 which does not result in the serious injury or death of a child  
338 and which is a second conviction shall be guilty of a misdemeanor  
339 and, upon conviction, shall be fined not less than One Thousand  
340 Dollars (\$1,000.00) nor more than Five Thousand Dollars  
341 (\$5,000.00) or shall be imprisoned for one (1) year, or both;



342 (c) A person who commits a violation of this subsection  
343 which does not result in the serious injury or death of a child  
344 and which is a third or subsequent conviction shall be guilty of a  
345 felony and, upon conviction, shall be fined not less than Ten  
346 Thousand Dollars (\$10,000.00) or shall be imprisoned for not less  
347 than one (1) year nor more than five (5) years, or both; and

348 (d) A person who commits a violation of this subsection  
349 which results in the serious injury or death of a child, without  
350 regard to whether the offense was a first, second, third or  
351 subsequent offense, shall be guilty of a felony and, upon  
352 conviction, shall be punished by a fine of not less than Ten  
353 Thousand Dollars (\$10,000.00) and shall be imprisoned for not less  
354 than five (5) years nor more than twenty-five (25) years.

355 (13) **Expunction.** (a) Any person convicted under subsection  
356 (2) or (3) of this section of a first offense of driving under the  
357 influence and who was not the holder of a commercial driver's  
358 license or a commercial learning permit at the time of the offense  
359 may petition the circuit court of the county in which the  
360 conviction was had for an order to expunge the record of the  
361 conviction at least five (5) years after successful completion of  
362 all terms and conditions of the sentence imposed for the  
363 conviction. Expunction under this subsection will only be  
364 available to a person:

365 (i) Who has successfully completed all terms and  
366 conditions of the sentence imposed for the conviction;



(ii) Who did not refuse to submit to a test of his blood or breath;

(iii) Whose blood alcohol concentration tested below sixteen one-hundredths percent (.16%) if test results are available;

(iv) Who has not been convicted of and does not have pending any other offense of driving under the influence;

(v) Who has provided the court with justification as to why the conviction should be expunged; and

(vi) Who has not previously had a nonadjudication or expunction of a violation of this section.

(b) Except as provided in paragraph (d) of this subsection, a person is eligible for only one (1) expunction under this subsection, and the Department of Public Safety shall maintain a permanent confidential registry of all cases of expunction under this subsection for the sole purpose of determining a person's eligibility for expunction, for nonadjudication, or as a first offender under this section.

(c) The court in its order of expunction shall state in writing the justification for which the expunction was granted and forward the order to the Department of Public Safety within five (5) days of the entry of the order.

(d) A judge shall expunge the record of any case under this section in which an arrest was made and the person arrested was released and the case was dismissed or the charges were





392 dropped; there was no disposition of such case; or the person was  
393 found not guilty at trial.

394       (14) **Nonadjudication.** (a) For the purposes of this  
395 chapter, "nonadjudication" means that the court withholds  
396 adjudication of guilt and sentencing, either at the conclusion of  
397 a trial on the merits or upon the entry of a plea of guilt by a  
398 defendant, and places the defendant in a nonadjudication program  
399 conditioned upon the successful completion of the requirements  
400 imposed by the court under this subsection.

401       (b) A person is eligible for nonadjudication of an  
402 offense under this Section 63-11-30 only one (1) time under any  
403 provision of a law that authorizes nonadjudication and only for an  
404 offender:

405               (i) Who has successfully completed all terms and  
406 conditions imposed by the court after placement of the defendant  
407 in a nonadjudication program;

408               (ii) Who was not the holder of a commercial  
409 driver's license or a commercial learning permit at the time of  
410 the offense;

411               (iii) Who has not previously been convicted of and  
412 does not have pending any former or subsequent charges under this  
413 section; and

414               (iv) Who has provided the court with justification  
415 as to why nonadjudication is appropriate.



416 (c) Nonadjudication may be initiated upon the filing of  
417 a petition for nonadjudication or at any stage of the proceedings  
418 in the discretion of the court; the court may withhold  
419 adjudication of guilt, defer sentencing, and upon the agreement of  
420 the offender to participate in a nonadjudication program, enter an  
421 order imposing requirements on the offender for a period of court  
422 supervision before the order of nonadjudication is entered.  
423 Failure to successfully complete a nonadjudication program  
424 subjects the person to adjudication of the charges against him and  
425 to imposition of all penalties previously withheld due to entrance  
426 into a nonadjudication program. The court shall immediately  
427 inform the commissioner of the conviction as required in Section  
428 63-11-37.

429 (i) The court shall order the person to:

430 1. Pay the nonadjudication fee imposed under  
431 Section 63-11-31 if applicable;

432 2. Pay all fines, penalties and assessments  
433 that would have been imposed for conviction;

434 3. Attend and complete an alcohol safety  
435 education program as provided in Section 63-11-32 within six (6)  
436 months of the date of the order;

437 4. a. If the court determines that the  
438 person violated this section with respect to alcohol or  
439 intoxicating liquor, the person must install an ignition-interlock  
440 device on every motor vehicle operated by the person, obtain an



interlock-restricted license, and maintain that license for one hundred twenty (120) days or suffer a one-hundred-twenty-day suspension of the person's regular driver's license, during which time the person must not operate any vehicle.

b. If the court determines that the person violated this section by operating a vehicle when under the influence of a substance other than alcohol that has impaired the person's ability to operate a motor vehicle, including any drug or controlled substance which is unlawful to possess under the Mississippi Controlled Substances Law, the person must submit to a one-hundred-twenty-day period of a nonadjudication program that includes court-ordered drug testing at the person's own expense not less often than every thirty (30) days, during which time the person may drive if compliant with the terms of the program, or suffer a one-hundred-twenty-day suspension of the person's regular driver's license, during which time the person will not operate any vehicle.

(ii) Other conditions that may be imposed by the court include, but are not limited to, alcohol or drug screening, or both, proof that the person has not committed any other traffic violations while under court supervision, proof of immobilization or impoundment of vehicles owned by the offender if required, and attendance at a victim-impact panel.

(d) The court may enter an order of nonadjudication only if the court finds, after a hearing or after ex parte



examination of reliable documentation of compliance, that the offender has successfully completed all conditions imposed by law and previous orders of the court. The court shall retain jurisdiction over cases involving nonadjudication for a period of not more than two (2) years.

(e) (i) The clerk shall immediately forward a record of every person placed in a nonadjudication program and of every nonadjudication order to the Department of Public Safety for inclusion in the permanent confidential registry of all cases that are nonadjudicated under this subsection (14).

(ii) Judges, clerks and prosecutors involved in the trial of implied consent violations and law enforcement officers involved in the issuance of citations for implied consent violations shall have secure online access to the confidential registry for the purpose of determining whether a person has previously been the subject of a nonadjudicated case and 1. is therefore ineligible for another nonadjudication; 2. is ineligible as a first offender for a violation of this section; or 3. is ineligible for expunction of a conviction of a violation of this section.

(iii) The Driver Services Bureau of the department shall have access to the confidential registry for the purpose of determining whether a person is eligible for a form of license not restricted to operating a vehicle equipped with an ignition-interlock device.



(iv) The Mississippi Alcohol Safety Education Program shall have secure online access to the confidential registry for research purposes only.

(15) The provisions of this section are fully applicable to any person who is under the influence of medical cannabis that is lawful under the Mississippi Medical Cannabis Act and in compliance with rules and regulations adopted thereunder which has impaired the person's ability to operate a motor vehicle.

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

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

(2) (a) Except as otherwise provided in this subsection, a person who has been convicted of a felony and who has paid all criminal fines and costs of court imposed in the sentence of conviction may petition the court in which the conviction was had for an order to expunge one (1) conviction from all public records five (5) years after the successful completion of all terms and conditions of the sentence for the conviction upon a hearing as determined in the discretion of the court; however, a person is not eligible to expunge a felony classified as:



- (i) A crime of violence as provided in Section 97-3-2;
- (ii) Arson, first degree as provided in Sections 97-17-1 and 97-17-3;
- (iii) Trafficking in controlled substances as provided in Section 41-29-139;
- (iv) A third, fourth or subsequent offense DUI as provided in Section 63-11-30(2)(c) and (2)(d);
- (v) Felon in possession of a firearm as provided in Section 97-37-5;
- (vi) Failure to register as a sex offender as provided in Section 45-33-33;
- (vii) Voyeurism as provided in Section 97-29-61;
- (viii) Witness intimidation as provided in Section 97-9-113;
- (ix) Abuse, neglect or exploitation of a vulnerable person as provided in Section 43-47-19; or
- (x) Embezzlement as provided in Sections 97-11-25 and 97-23-19.

A person is eligible for only one (1) felony expunction under this paragraph. For the purposes of this section, the terms "one (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.



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

547           (3) Upon entering an order of expunction under this section,  
548 a nonpublic record thereof shall be retained by the Mississippi  
549 Criminal Information Center solely for the purpose of determining  
550 whether, in subsequent proceedings, the person is a first  
551 offender. The order of expunction shall not preclude a district  
552 attorney's office from retaining a nonpublic record thereof for  
553 law enforcement purposes only. The existence of an order of  
554 expunction shall not preclude an employer from asking a  
555 prospective employee if the employee has had an order of  
556 expunction entered on his behalf. The effect of the expunction  
557 order shall be to restore the person, in the contemplation of the  
558 law, to the status he occupied before any arrest or indictment for  
559 which convicted. No person as to whom an expunction order has  
560 been entered shall be held thereafter under any provision of law  
561 to be guilty of perjury or to have otherwise given a false  
562 statement by reason of his failure to recite or acknowledge such  
563 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, or the person was found not guilty at trial.

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

(6) A judge shall expunge the record of any case in which an arrest was made and the person arrested was released and the case was dismissed or the charges were dropped; there was no disposition of such case; or the person was found not guilty at trial.

**SECTION 5.** Section 99-15-26, Mississippi Code of 1972, is amended as follows:

99-15-26. (1) (a) In all criminal cases, felony and misdemeanor, other than crimes against the person, a crime of





589 violence as defined in Section 97-3-2, a violation of Section  
590 97-11-31, or crimes in which a person unlawfully takes, obtains or  
591 misappropriates funds received by or entrusted to the person by  
592 virtue of his or her public office or employment, the circuit or  
593 county court shall be empowered, upon the entry of a plea of  
594 guilty by a criminal defendant made on or after July 1, 2014, to  
595 withhold acceptance of the plea and sentence thereon pending  
596 successful completion of such conditions as may be imposed by the  
597 court pursuant to subsection (2) of this section.

598 (b) In all misdemeanor criminal cases, other than  
599 crimes against the person, the justice or municipal court shall be  
600 empowered, upon the entry of a plea of guilty by a criminal  
601 defendant, to withhold acceptance of the plea and sentence thereon  
602 pending successful completion of such conditions as may be imposed  
603 by the court pursuant to subsection (2) of this section.

604 (c) Notwithstanding paragraph (a) of this subsection  
605 (1), in all criminal cases charging a misdemeanor of domestic  
606 violence as defined in Section 99-3-7(5), a circuit, county,  
607 justice or municipal court shall be empowered, upon the entry of a  
608 plea of guilty by the criminal defendant, to withhold acceptance  
609 of the plea and sentence thereon pending successful completion of  
610 such conditions as may be imposed by the court pursuant to  
611 subsection (2) of this section.

612 (d) No person having previously qualified under the  
613 provisions of this section shall be eligible to qualify for



release in accordance with this section for a repeat offense. A person shall not be eligible to qualify for release in accordance with this section if charged with the offense of trafficking of a controlled substance as provided in Section 41-29-139(f) or if charged with an offense under the Mississippi Implied Consent Law. Violations under the Mississippi Implied Consent Law can only be nonadjudicated under the provisions of Section 63-11-30.

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

(i) Reasonable restitution to the victim of the crime.

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

(iii) Payment of a fine not to exceed the statutory limit.

(iv) Successful completion of drug, alcohol, psychological or psychiatric treatment, successful completion of a program designed to bring about the cessation of domestic abuse, or any combination thereof, if the court deems treatment necessary.

(v) The circuit or county court, in its discretion, may require the defendant to remain in the program subject to good behavior for a period of time not to exceed five (5) years. The justice or municipal court, in its discretion, may



require the defendant to remain in the program subject to good behavior for a period of time not to exceed two (2) years.

(b) Conditions which the circuit or county court may impose under subsection (1) of this section also include successful completion of an effective evidence-based program or a properly controlled pilot study designed to contribute to the evidence-based research literature on programs targeted at reducing recidivism. Such program or pilot study may be community based or institutionally based and should address risk factors identified in a formal assessment of the offender's risks and needs.

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

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

(5) Upon petition therefor, the 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, there was no disposition of such case, or the person was found not guilty at trial.

(6) A judge shall expunge the record of any case in which an arrest was made and the person arrested was released and the case was dismissed or the charges were dropped; there was no



664 disposition of such case; or the person was found not guilty at  
665 trial.

666       **SECTION 6.** This act shall take effect and be in force from  
667 and after July 1, 2026.

