

MISSISSIPPI LEGISLATURE  
2013 Regular Session  
To: Judiciary A  
By: Representative Smith (39th)

## **House Bill 1043**

### ***(As Sent to Governor)***

AN ACT TO AMEND SECTION 99-19-71, MISSISSIPPI CODE OF 1972, TO PROVIDE A PROCEDURE TO EXPUNGE CERTAIN FELONY CONVICTIONS FOR PERSONS WHO WERE UNDER THE AGE OF 18 AT THE TIME OF CONVICTION; TO LIMIT EXPUNCTIONS FOR PUBLIC OFFICIALS; AND FOR RELATED PURPOSES.

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

**SECTION 1.** 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, excluding a conviction for 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) Any person who has been convicted of one (1) of the following felonies 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: a bad check offense under Section 97-19-55; possession of a controlled substance or paraphernalia under Section 41-

29-139(c) or (d); false pretense under Section 97-19-39; larceny under Section 97-17-41; malicious mischief under Section 97-17-67; or shoplifting under Section 97-23-93. A person is eligible for only one (1) felony expunction under this \* \* \* paragraph.

(b) Any person who was under the age of eighteen (18) years when he committed a felony 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; however, eligibility for expunction shall not apply to the following felonies: rape under Sections 97-3-65 and 97-3-71; sexual battery under Section 97-3-95; murder under Section 97-3-21; manslaughter under Section 97-3-25; carjacking under Sections 97-3-113 through 97-3-117; burglary of a commercial establishment or occupied dwelling; cyberstalking under Section 97-45-15; exploitation of children by the use of computers or other means under Sections 97-5-31 through 97-5-37; armed robbery under Section 97-3-79; and any felony that, in the determination of the circuit court, is a violent crime or a felony that is related to the distribution of a controlled substance and in the court's discretion it should not be expunged. A person is eligible for only one (1) felony expunction under this paragraph.

( \* \* \*c) 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

statement by reason of his failure to recite or acknowledge such 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.

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

**SECTION 2.** This act shall take effect and be in force from and after July 1, 2013.