MISSISSIPPI LEGISLATURE REGULAR SESSION 2016

By: Representative Formby

To: Judiciary B

HOUSE BILL NO. 621

AN ACT TO AMEND SECTIONS 21-23-7, 41-29-150, 63-11-30, 99-15-57, 99-15-59 AND 99-19-71, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT CONVICTIONS MAY BE EXPUNGED ONLY UPON A SHOWING OF INNOCENCE BASED ON RELIABLE EVIDENCE; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 21-23-7, Mississippi Code of 1972, is amended as follows:

21-23-7. (1) The municipal judge shall hold court in a public building designated by the governing authorities of the municipality and may hold court every day except Sundays and legal holidays if the business of the municipality so requires; provided, however, the municipal judge may hold court outside the boundaries of the municipality but not more than within a sixty-mile radius of the municipality to handle preliminary matters and criminal matters such as initial appearances and felony preliminary hearings. The municipal judge shall have the jurisdiction to hear and determine, without a jury and without a record of the testimony, all cases charging violations of the municipal ordinances and state misdemeanor laws made offenses

against the municipality and to punish offenders therefor as may be prescribed by law. Except as otherwise provided by law, criminal proceedings shall be brought by sworn complaint filed in the municipal court. Such complaint shall state the essential elements of the offense charged and the statute or ordinance relied upon. Such complaint shall not be required to conclude with a general averment that the offense is against the peace and dignity of the state or in violation of the ordinances of the municipality. He may sit as a committing court in all felonies committed within the municipality, and he shall have the power to bind over the accused to the grand jury or to appear before the proper court having jurisdiction to try the same, and to set the amount of bail or refuse bail and commit the accused to jail in cases not bailable. The municipal judge is a conservator of the peace within his municipality. He may conduct preliminary hearings in all violations of the criminal laws of this state occurring within the municipality, and any person arrested for a violation of law within the municipality may be brought before him for initial appearance. The municipal court shall have jurisdiction of any case remanded to it by a circuit court grand jury. The municipal court shall have civil jurisdiction over actions filed pursuant to and as provided in Title 93, Chapter 21, Mississippi Code of 1972, the Protection from Domestic Abuse Act.

(2) In the discretion of the court, where the objects of justice would be more likely met, as an alternative to imposition

or payment of fine and/or incarceration, the municipal judge shall have the power to sentence convicted offenders to work on a public service project where the court has established such a program of public service by written guidelines filed with the clerk for public record. Such programs shall provide for reasonable supervision of the offender and the work shall be commensurate with the fine and/or incarceration that would have ordinarily been imposed. Such program of public service may be utilized in the implementation of the provisions of Section 99-19-20, and public service work thereunder may be supervised by persons other than the sheriff.

(3) The municipal judge may solemnize marriages, take oaths, affidavits and acknowledgments, and issue orders, subpoenas, summonses, citations, warrants for search and arrest upon a finding of probable cause, and other such process under seal of the court to any county or municipality, in a criminal case, to be executed by the lawful authority of the county or the municipality of the respondent, and enforce obedience thereto. The absence of a seal shall not invalidate the process.

(4) When a person shall be charged with an offense in municipal court punishable by confinement, the municipal judge, being satisfied that such person is an indigent person and is unable to employ counsel, may, in the discretion of the court, appoint counsel from the membership of The Mississippi Bar residing in his county who shall represent him. Compensation for

appointed counsel in criminal cases shall be approved and allowed by the municipal judge and shall be paid by the municipality. The maximum compensation shall not exceed Two Hundred Dollars ($200.00) for any one (1) case. The governing authorities of a municipality may, in their discretion, appoint a public defender(s) who must be a licensed attorney and who shall receive a salary to be fixed by the governing authorities.

(5) The municipal judge of any municipality is hereby authorized to suspend the sentence and to suspend the execution of the sentence, or any part thereof, * * * if the judge has reliable evidence that the person is innocent. However, the suspension of imposition or execution of a sentence hereunder may not be revoked after a period of two (2) years. The municipal judge shall have the power to establish and operate a probation program, dispute resolution program and other practices or procedures appropriate to the judiciary and designed to aid in the administration of justice. Any such program shall be established by the court with written policies and procedures filed with the clerk of the court for public record. Subsequent to original sentencing, the municipal judge, in misdemeanor cases, is hereby authorized to suspend sentence and to suspend the execution of a sentence, or any part thereof, on such terms as may be imposed by the municipal judge, if (a) the judge or his or her predecessor was authorized to order such suspension when the sentence was originally imposed; and (b) such conviction (i) * * * was not supported by reliable

evidence; or (ii) has been appealed and the appeal has been voluntarily dismissed.

(6) Upon prior notice to the municipal prosecuting attorney and upon a showing in open court of * * * innocence by reliable evidence, the court may, in its discretion, order the record of conviction of a person of any or all misdemeanors in that court expunged, and upon so doing the said person thereafter legally stands as though he had never been convicted of the said misdemeanor(s) and may lawfully so respond to any query of prior convictions. This order of expunction does not apply to the confidential records of law enforcement agencies and has no effect on the driving record of a person maintained under Title 63, Mississippi Code of 1972, or any other provision of said Title 63.

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(* * *7) In the discretion of the court, a plea of nolo contendere may be entered to any charge in municipal court. Upon the entry of a plea of nolo contendere the court shall convict the defendant of the offense charged and shall proceed to sentence the defendant according to law. The judgment of the court shall reflect that the conviction was on a plea of nolo contendere. An appeal may be made from a conviction on a plea of nolo contendere as in other cases.

(* * *8) Upon execution of a sworn complaint charging a misdemeanor, the municipal court may, in its discretion and in lieu of an arrest warrant, issue a citation requiring the

appearance of the defendant to answer the charge made against him. On default of appearance, an arrest warrant may be issued for the defendant. The clerk of the court or deputy clerk may issue such citations.

(* * *9) The municipal court shall have the power to make rules for the administration of the court's business, which rules, if any, shall be in writing filed with the clerk of the court and shall include the enactment of rules related to the court's authority to issue domestic abuse protection orders pursuant to Section 93-21-1 et seq.

(* * *10) The municipal court shall have the power to impose punishment of a fine of not more than One Thousand Dollars ($1,000.00) or six (6) months' imprisonment, or both, for contempt of court. The municipal court may have the power to impose reasonable costs of court, not in excess of the following:

Dismissal of any affidavit, complaint or charge in municipal court.....$ 50.00

Suspension of a minor's driver's license in lieu of conviction.....$ 50.00

Service of scire facias or return "not found".....$ 20.00

Causing search warrant to issue or causing prosecution without reasonable cause or refusing to cooperate after initiating action.....$ 100.00

Certified copy of the court record.....$ 5.00

Service of arrest warrant for failure to answer

citation or traffic summons.....$ 25.00

Jail cost per day, actual jail cost paid by the municipality but not to exceed.....$ 35.00

Service of court documents related to the filing of a petition or issuance of a protection from domestic abuse order under Title 93, Chapter 21, Mississippi Code of 1972 .....$ 25.00

Any other item of court cost.....$ 50.00

No filing fee or such cost shall be imposed for the bringing of an action in municipal court.

(* * *11) A municipal court judge shall not dismiss a criminal case but may transfer the case to the justice court of the county if the municipal court judge is prohibited from presiding over the case by the Canons of Judicial Conduct and provided that venue and jurisdiction are proper in the justice court. Upon transfer of any such case, the municipal court judge shall give the municipal court clerk a written order to transmit the affidavit or complaint and all other records and evidence in the court's possession to the justice court by certified mail or to instruct the arresting officer to deliver such documents and records to the justice court. There shall be no court costs charged for the transfer of the case to the justice court.

(* * *12) A municipal court judge 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.

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

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

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

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

(d) (1) If any person who has not previously been convicted of violating Section 41-29-139, or the laws of the United States or of another state relating to narcotic drugs, stimulant or depressant substances, other controlled substances or marihuana is found to be guilty of a violation of subsection (c) or (d) of Section 41-29-139, after trial or upon a plea of guilty, the court may, without entering a judgment of guilty and with the consent of such person, defer further proceedings and place him on probation upon such reasonable conditions as it may require and for such period, not to exceed three (3) years, as the court may prescribe. Upon violation of a condition of the probation, the court may

enter an adjudication of guilt and proceed as otherwise provided. The court may, in its discretion, dismiss the proceedings against such person and discharge him from probation before the expiration of the maximum period prescribed for such person's probation. If during the period of his probation such person does not violate any of the conditions of the probation, then upon expiration of such period the court shall discharge such person and dismiss the proceedings against him. Discharge and dismissal under this subsection shall be without court adjudication of guilt, but a nonpublic record thereof shall be retained by the bureau solely for the purpose of use by the courts in determining whether or not, in subsequent proceedings, such person qualifies under this subsection. Such discharge or dismissal shall not be deemed a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime, including the penalties prescribed under this article for second or subsequent conviction, or for any other purpose. Discharge and dismissal under this subsection may occur only once with respect to any person; and

(2) Upon the dismissal of a person and discharge of proceedings against him under paragraph (1) of this subsection, the person may apply to the court for an order to expunge from all official records <u>if the court determines that the conviction was not based on reliable evidence</u>, other than the nonpublic records to be retained by the bureau under paragraph (1) of this subsection, all recordation relating to his arrest, indictment,

trial, finding of guilt, and dismissal and discharge pursuant to this section. If the court determines, after hearing, that such person was *** * *** convicted on evidence that was not reliable, it shall enter an order of expunction. The effect of the order shall be to restore the person, in the contemplation of the law, to the status he occupied before such arrest or indictment. No person as to whom such an order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, indictment or trial in response to any inquiry made of him for any purpose. 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.

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

(f) It shall be unlawful for any person confined under the provisions of subsection (b) or (c) of this section to escape or attempt to escape from said institution, and, upon conviction,

said person shall be guilty of a felony and shall be imprisoned for a term not to exceed two (2) years.

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

SECTION 3. Section 63-11-30, Mississippi Code of 1972, is 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) (a) **First offense DUI.** (i) Except as otherwise provided in subsection (3) of this section, upon conviction of any person 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 not less than Two Hundred Fifty Dollars ($250.00) nor more than One Thousand Dollars ($1,000.00), or imprisoned for not more than forty-eight (48) hours in jail, or both; the court shall order the person to attend and complete an alcohol safety education program as provided in Section 63-11-32 within one (1) year. The court may substitute attendance at a victim impact panel instead of forty-eight (48) hours in jail. Thirty (30) days after receipt of the court abstract, the Department of Public Safety shall suspend the driver's license and driving privileges of the person for ninety (90) days unless the person has surrendered his driver's license to be voided and obtained a new driver's license that is restricted to operation of vehicles equipped with an ignition-interlock device that complies with Section 63-11-31; the person will not be eligible for an unrestricted license for ninety (90) days and until the person has

attended and successfully completed an alcohol safety education program as provided in Section 63-11-32.

(ii) Commercial driving privileges shall be suspended as provided in Section 63-1-216 for a violation of subsection (1) of this section.

(iii) A qualifying first offense under subsection (1) of this section may be nonadjudicated by the court under subsection (14) of this section. The holder of a commercial driver's license or a commercial learning permit is ineligible for nonadjudication.

(b) **Second offense DUI.** (i) Except as otherwise provided in subsection (3), upon any second conviction of any person violating subsection (1) of this section, the offenses being committed within a period of five (5) years, the person shall be fined not less than Six Hundred Dollars ($600.00) nor more than One Thousand Five Hundred Dollars ($1,500.00), shall be imprisoned not less than five (5) days nor more than one (1) year and sentenced to community service work for not less than ten (10) days nor more than one (1) year. The minimum penalties shall not be suspended or reduced by the court and no prosecutor shall offer any suspension or sentence reduction as part of a plea bargain. Thirty (30) days after receipt of the court abstract, the Department of Public Safety shall suspend the driver's license of the person for one (1) year unless the person has surrendered his driver's license to be voided and obtained a new driver's license

that is restricted to operation of vehicles equipped with an ignition-interlock device that complies with Section 63-11-31; the person will not be eligible for an unrestricted license until the person has either been subject to a full one-year suspension of license or has exercised the driving privilege solely under an interlock-restricted driver's license for one (1) full year.

(ii) Suspension of commercial driving privileges shall be governed by Section 63-1-216.

(c) **Third and subsequent offense DUI.** (i) Except as otherwise provided in subsection (3), for any third conviction of any person violating subsection (1) of this section, the offenses being committed within a period of five (5) years, the person shall be guilty of a felony and fined not less than Two Thousand Dollars ($2,000.00) nor more than Five Thousand Dollars ($5,000.00), and shall serve not less than one (1) year nor more than five (5) years in the custody of the Department of Corrections. For any offense that does not result in serious injury or death to any person, the sentence of incarceration may be served in the county jail rather than in the State Penitentiary at the discretion of the circuit court judge. The minimum penalties shall not be suspended or reduced by the court and no prosecutor shall offer any suspension or sentence reduction as part of a plea bargain. The person may exercise the privilege to drive only under a driver's license that is restricted to operation of vehicles equipped with an ignition-interlock device

that complies with Section 63-11-31 for three (3) years following release from incarceration and will not be eligible for an unrestricted driver's license for three (3) years.

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

(d) Except as otherwise provided in subsection (3), 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 shall 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.

(e) The use of ignition-interlock devices shall be as provided in 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 one (1) year. Thirty (30) days after receipt of the court abstract, the Department of Public Safety shall suspend the driver's license and driving privileges of the person for ninety (90) days unless the person has surrendered his driver's license to be voided and obtained a new driver's license that is restricted to operation of vehicles equipped with an ignition-interlock device that complies with Section 63-11-31; the person will not be eligible for any other form of license for ninety (90) days. The court may also require attendance at a victim impact panel.

(c) A person under the age of twenty-one (21) years who is convicted of a second violation of subsection (1) of this section, the offenses being committed within a period of five (5) years, shall be fined not more than Five Hundred Dollars ($500.00). Thirty (30) days after receipt of the court abstract,

the Department of Public Safety shall suspend the driver's license of the person for one (1) year unless the person has surrendered his driver's license to be voided and obtained a new driver's license that is restricted to operation of vehicles equipped with an ignition-interlock device that complies with Section 63-11-31; the person will not be eligible for an unrestricted license until the person has either been subject to a full one-year suspension or has exercised the driving privilege solely under an interlock-restricted license for one (1) full year.

(d) A person under the age of twenty-one (21) years who is convicted of a third or subsequent violation of subsection (1) of this section, the offenses being committed within a period of five (5) years, shall be fined not more than One Thousand Dollars ($1,000.00) and, upon receipt of the court abstract, the Department of Public Safety shall suspend the driver's license of the person until the person reaches the age of twenty-one (21) or for two (2) years, whichever is longer.

(e) Any person under the age of twenty-one (21) years convicted of a second violation of subsection (1) of this section, may have the period of driver's license suspension reduced to six (6) months if the person receives an in-depth diagnostic assessment, and as a result of the assessment is determined to be in need of treatment for alcohol or drug abuse and successfully completes treatment for alcohol or drug abuse 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 such assessment. Each person who participates in a treatment program shall pay a fee representing the cost of such treatment.

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

(4) **DUI test refusal.** In addition to the other penalties provided in this section, every person refusing a law enforcement officer's request to submit to a chemical test of the person's breath as provided in this chapter, or who was unconscious at the time of a chemical test and refused to consent to the introduction of the results of the test in any prosecution, shall suffer an additional administrative suspension of driving privileges as set forth in Section 63-11-23 unless the person surrenders his driver's license to be voided and obtains a new driver's license that is restricted to operation of vehicles equipped with an ignition-interlock device that complies with Section 63-11-31; the person will be limited to exercise of the driving privilege only under an interlock-restricted driver's license for twice the period imposed for administrative driver's license suspension under Section 63-11-23. Any other license restriction or suspension imposed upon the person under this chapter will run consecutively and not concurrently with the administrative

suspension for test refusal imposed under this section or Section 63-11-23.

(5) **Aggravated DUI.** (a) Every person who operates any motor vehicle in violation of the provisions of subsection (1) of this section and who in a negligent manner causes the death of another or mutilates, disfigures, permanently disables or destroys the tongue, eye, lip, nose or any other limb, organ or member of another shall, upon conviction, be guilty of a separate felony for each victim who suffers death, mutilation, disfigurement or other injury and shall be committed to the custody of the State Department of Corrections for a period of time of not less than five (5) years and not to exceed twenty-five (25) years for each death, mutilation, disfigurement or other injury, and the imprisonment for the second or each subsequent conviction, in the discretion of the court, shall commence either at the termination of the imprisonment for the preceding conviction or run concurrently with the preceding conviction. Any person charged with causing the death of another as described in this subsection shall be required to post bail before being released after arrest.

(b) The court may order an ignition-interlock restriction on the offender's privilege to drive as a condition of probation or post-release supervision not to exceed four (4) years.

(6) **DUI citations.** Upon conviction of any violation of subsection (1) of this section, the trial judge shall sign in the

place provided on the traffic ticket, citation or affidavit stating that the person arrested either employed an attorney or waived his right to an attorney after having been properly advised. If the person arrested employed an attorney, the name, address and telephone number of the attorney shall be written on the ticket, citation or affidavit. The court clerk shall send a copy of the traffic ticket, citation or affidavit, and any other pertinent documents concerning the conviction or other order of the court, to the Department of Public Safety. A copy of the traffic ticket, citation or affidavit and any other pertinent documents, having been attested as true and correct by the Commissioner of Public Safety, or his designee, shall be sufficient proof of the conviction for purposes of determining the enhanced penalty for any subsequent convictions of violations of subsection (1) of this section.

(7) **Out-of-state prior convictions.** Convictions in another state, territory or possession of the United States, or under the law of a federally recognized Native American tribe, of violations 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 occurring within five (5) years before an offense shall be counted for the purposes of determining if a violation of subsection (1) of this section is a second, third or subsequent

offense and the penalty that shall be imposed upon conviction for a violation of subsection (1) of this section.

(8) **Charging of subsequent offenses.** For the purposes of determining how to impose the sentence for a second, third or subsequent conviction under this section, the affidavit or indictment shall not be required to enumerate previous convictions. It shall only be necessary that the affidavit or indictment state the number of times that the defendant has been convicted and sentenced within the past five (5) years under this section to determine if an enhanced penalty shall be imposed. The amount of fine and imprisonment imposed in previous convictions shall not be considered in calculating offenses to determine a second, third or subsequent offense of this section.

(9) **License eligibility for underage offenders.** Any person under the legal age to obtain a license to operate a motor vehicle 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 and not concurrently.

(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, the device shall be installed as provided in Section 63-11-31.

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

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

(b) A person who commits a violation of this subsection which does not result in the serious injury or death of a child and which is a second conviction shall be guilty of a misdemeanor

and, upon conviction, shall be fined not less than One Thousand Dollars ($1,000.00) nor more than Five Thousand Dollars ($5,000.00) or shall be imprisoned for one (1) year, or both;

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

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

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

courts that the conviction under subsection (2) or (3) of this section was based on unreliable evidence and that such convicted person was innocent.

(b) A person is eligible for only one (1) expunction under this subsection, and the Department of Public Safety shall maintain a confidential registry of all cases of expunction under this subsection for the sole purpose of determining a person's eligibility 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.

(14) **Nonadjudication.** (a) For the purposes of this chapter, "nonadjudication" means that the court withholds adjudication of guilt, either at the conclusion of a trial on the merits, or upon the entry of a plea of guilt by a defendant. Nonadjudication must be conditioned upon the successful completion of any conditions imposed by the court under this subsection.

(b) The court may rule that a first offense under subsection (1) or (3) of this section be nonadjudicated. A person is eligible for nonadjudication only one (1) time under any provision of a law that authorizes nonadjudication.

(c) Nonadjudication may be initiated upon the filing of a petition for nonadjudication or at any stage of the proceedings before conviction in the discretion of the court; the court may

withhold adjudication of guilt, defer sentencing, and enter an order imposing requirements on the offender.

(i) The court shall order the person to:

1. Pay the nonadjudication fee imposed under Section 63-11-31;

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

3. Attend and complete an alcohol safety education program as provided in Section 63-11-32;

4. a. Install an ignition-interlock device on every motor vehicle driven by the person, obtain an interlock-restricted license, and maintain that license for one hundred twenty (120) days; or

b. Suffer a one-hundred-twenty-day suspension of the person's driver's license, whether the license is an in-state or out-of-state driver's license.

(ii) Other conditions to be imposed by the court may 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, 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) The clerk shall forward a record of every nonadjudicated case to the Department of Public Safety which shall maintain a confidential registry of all cases that are nonadjudicated as provided in this subsection (14). Judges, clerks and prosecutors involved in the trial of implied consent violations shall have access to the confidential registry for the purpose of determining whether a person has previously been the subject of a nonadjudicated case and is therefore ineligible for another nonadjudication. 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. The Mississippi Alcohol Safety Education Program shall have access to the confidential registry for research purposes only.

SECTION 4. Section 99-15-57, Mississippi Code of 1972, is amended as follows:

99-15-57. (1) Any person who pled guilty within six (6) months prior to March 31, 1983, and who would have otherwise been eligible for the relief allowed in Section 99-15-26, may apply to the court in which such person was sentenced for an order to expunge from all official public records all recordation relating

to his arrest, indictment, trial, finding of guilty and sentence if such person has evidence that a finding of innocence would have been made before accepting the guilty plea. If the court determines, after hearing, that such person * * * was innocent of the charges, it may enter such order. The effect of such order shall be to restore such person, in the contemplation of the law, to the status he occupied before such arrest or indictment. No person as to whom such order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or trial in response to any inquiry made of him for any purpose.

(2) 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 or there was no disposition of such case.

SECTION 5. Section 99-15-59, Mississippi Code of 1972, is amended as follows:

99-15-59. Any person who is arrested, issued a citation, or held for any misdemeanor and not formally charged or prosecuted with an offense within twelve (12) months of arrest, * * * upon dismissal of the charge, or upon proof of innocence through reliable evidence, may apply to the court with jurisdiction over the matter for the charges to be expunged.

SECTION 6. 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 if the person can prove by reliable evidence that he was innocent of such charges leading to the conviction.

(2) (a) Any person who has been convicted of one * * * a felony of the following felonies may petition the court in which the conviction was had for an order to expunge * * * the conviction from all public records * * * if such person can prove by reliable evidence that he was innocent of such charges leading to the conviction.

* * *

(* * *b) 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 * * * innocent of the offense which is the subject of the petition. In those cases where the court * * * grants 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 7. This act shall take effect and be in force from and after July 1, 2016.