MISSISSIPPI LEGISLATURE REGULAR SESSION 2021

By: Senator(s) Simmons (12th)

To: Corrections; Judiciary, Division B

SENATE BILL NO. 2136

AN ACT TO AMEND SECTION 99-19-71, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE COURT OF CONVICTION TO EXPUNGE THE RECORD OF CERTAIN FELONIES AFTER 20 YEARS; 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 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) (i) 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 * * * have expunged a felony under this subparagraph (i) that was classified as:

* * *1. A crime of violence as provided in Section 97-3-2;

* * *2. Arson, first degree as provided in Sections 97-17-1 and 97-17-3;

* * *3. Trafficking in controlled substances as provided in Section 41-29-139;

* * *4. A third, fourth or subsequent offense DUI as provided in Section 63-11-30(2)(c) and (2)(d);

* * *5. Felon in possession of a firearm as provided in Section 97-37-5;

* * *6. Failure to register as a sex offender as provided in Section 45-33-33;

* * *7. Voyeurism as provided in Section 97-29-61;

* * *8. Witness intimidation as provided in Section 97-9-113;

* * *9. Abuse, neglect or exploitation of a vulnerable person as provided in Section 43-47-19; or

* * *10. Embezzlement as provided in Sections 97-11-25 and 97-23-19.

A person is eligible for only one (1) felony expunction under this subparagraph (i). 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.

(ii) Notwithstanding the exclusions listed in subparagraph (i), a person who has been convicted of any felony other than those listed in this subparagraph (ii) may petition the court in which the conviction was had for an order to expunge the conviction from all public records twenty (20) years after the successful completion of all terms and conditions of the sentence for the conviction. A person is not eligible to have expunged under this subparagraph (ii) the following felonies:

1. Rape as provided in Sections 97-3-65 and 97-3-71;

2. Sexual battery as provided in Section 97-3-95;

3. A third, fourth or subsequent offense DUI as provided in Section 63-11-30(2)(c) and (2)(d);

4. Failure to register as a sex offender as provided in Section 45-33-33;

5. Witness intimidation as provided in Section 97-9-113; or

6. Abuse, neglect or exploitation of a vulnerable person as provided in Section 43-47-19.

(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 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, 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.

SECTION 2. This act shall take effect and be in force from and after July 1, 2021.