



*Lynn Fitch*  
**ATTORNEY GENERAL**  
OPINIONS AND POLICY

September 29, 2020

The Honorable Patricia A. Booker  
Lambert Municipal Court Judge  
Post Office Box 1198  
Lambert, Mississippi 38643

Re: Expungement of Drug-Related DUIs

Dear Judge Booker:

The Office of the Attorney General has received your request for an official opinion.

### Questions Presented

1. Are drug-related DUIs eligible for expungement by a municipal court judge?
2. If the answer to Question Number 1 is “yes,” what are the criteria for expunging such DUI charges?

### Brief Response

In response to your first question, yes. The charge and arrest record of a first-offense drug-related DUI that has been nonadjudicated may be expunged by the nonadjudicating court, including municipal courts. However, a municipal court judge is not authorized to expunge DUI convictions; that role is specifically reserved for the circuit courts of Mississippi.

In response to your second question, Section 63-11-30(14) authorizes expungement of a nonadjudicated DUI charge and arrest record by the nonadjudicating court automatically or upon petition. Additionally, a municipal judge may expunge a nonadjudicated DUI pursuant to Sections 99-15-26(5) or 21-23-7(13).

### Applicable Law and Discussion

Mississippi Code Annotated Section 63-11-30(13)(a) authorizes, under certain circumstances, expungement of first-offense *convictions* for driving under the influence (“DUI”), providing, in pertinent part:

(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 at the time of the offense 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 to a person: (i) Who has successfully completed all terms and 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.

Miss. Code Ann. § 63-11-30(13)(a) (emphasis added). Accordingly, a municipal court judge is not authorized to expunge any DUI *conviction* in Mississippi.

However, a municipal court does have authority to expunge a first-offense DUI charge that was nonadjudicated by that court. This office has previously opined that the record related to a charge of first-offense DUI, which has been nonadjudicated, may be expunged by the nonadjudicating court. MS AG Op., *Wilson* at \*1 (Mar. 16, 2017) (citing Section 63-11-30(14) and finding that “[i]t is the opinion of this office that the provision for a confidential registry authorizes automatic expungement by the nonadjudicating court, or upon petition, of the public record of the arrest and charge. To not expunge the record nullifies the mandated provision of the confidential registry.”). In addition to our finding in *Wilson* that Section 63-11-30(14) authorized an automatic expungement of a nonadjudicated DUI charge, we also opined that a nonadjudicated, first-offense DUI may be expunged by a justice or municipal court, pursuant to Section 99-15-26(5), or, separately, by a municipal court, pursuant to Section 21-23-7(13). MS AG Op., *Wilson* at \*1–2 (Mar. 16, 2017).

Nonadjudication of a DUI is governed by, and must be granted only by strict compliance with, Section 63-11-30(14). Section 63-11-30(14)(c)(i) requires a court granting a DUI nonadjudication to order the defendant to make certain payments, attend certain programs, and impose other requirements, and includes the following provision:

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.

Miss. Code Ann. § 63-11-30(14)(c)(i)(4)(b) (emphasis added). This language explicitly covers drug-related DUIs. Accordingly, a drug-related DUI may be nonadjudicated in strict conformance with Section 63-11-30(14).

As discussed above, a municipal judge may expunge a nonadjudicated DUI pursuant to Sections 99-15-26(5) or 21-23-7(13). Moreover, automatic expungement of a nonadjudicated DUI is authorized by Section 63-11-30(14). MS AG Op., *Wilson* at \*1 (Mar. 16, 2017).

As further noted in *Wilson*, the confidential record of the nonadjudication kept at the Department of Public Safety, pursuant to 63-11-30(14), cannot be expunged. *Id.*

If this office may be of any further assistance to you, please do not hesitate to contact us.

Sincerely,

LYNN FITCH, ATTORNEY GENERAL

By: /s/ *Gregory Alston*

Gregory Alston  
Special Assistant Attorney General

OFFICIAL OPINION