

1 SB444
2 105320-1
3 By Senator Smitherman
4 RFD: Judiciary
5 First Read: 26-FEB-09

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8 SYNOPSIS: Existing law does not authorize the
9 criminal record related to a charge to be sealed or
10 expunged if the person is found not guilty of a
11 crime or if the charges are dismissed or for a
12 conviction record to be sealed or expunged.

13 This bill would authorize a person charged
14 or convicted of certain felony or misdemeanor
15 criminal offenses, a violation, or a traffic
16 violation to petition the court in which the
17 charges were filed or in which the conviction
18 occurred to have his or her records expunged,
19 including, but not limited to, arrest records,
20 fingerprints, photographs, or index references in
21 documentary or electronic form, relating to the
22 arrest or charge, or both, and conviction in
23 certain instances.

24 Amendment 621 of the Constitution of Alabama
25 of 1901, now appearing as Section 111.05 of the
26 Official Recompilation of the Constitution of
27 Alabama of 1901, as amended, prohibits a general

1 law whose purpose or effect would be to require a
2 new or increased expenditure of local funds from
3 becoming effective with regard to a local
4 governmental entity without enactment by a 2/3 vote
5 unless: it comes within one of a number of
6 specified exceptions; it is approved by the
7 affected entity; or the Legislature appropriates
8 funds, or provides a local source of revenue, to
9 the entity for the purpose.

10 The purpose or effect of this bill would be
11 to require a new or increased expenditure of local
12 funds within the meaning of the amendment. If this
13 bill is not enacted by a 2/3 vote, it will not
14 become effective with regard to a local entity
15 unless approved by the local entity or until, and
16 only as long as, the Legislature appropriates funds
17 or provides for a local source of revenue.

18
19 A BILL
20 TO BE ENTITLED
21 AN ACT
22

23 To authorize a person to petition a court to have
24 the record of certain felony or misdemeanor offenses, a
25 violation, or traffic violations expunged in certain
26 instances; and in connection therewith would have as its
27 purpose or effect the requirement of a new or increased

1 expenditure of local funds within the meaning of Amendment 621
2 of the Constitution of Alabama of 1901, now appearing as
3 Section 111.05 of the Official ReCompilation of the
4 Constitution of Alabama of 1901, as amended.

5 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

6 Section 1. (a) A person who has been charged with a
7 misdemeanor criminal offense, a violation, or a traffic
8 violation may file a petition in the court in the county or
9 municipality in which the charges were filed, or the court
10 that dismissed the charges, to expunge all records relating to
11 the charge in any of the following circumstances:

12 (1) When the charge is dismissed with prejudice.

13 (2) When the charge has been no billed by a grand
14 jury.

15 (3) When the person has been found not guilty of the
16 charge.

17 (b) A person who has been charged with a felony
18 offense and the charge was dismissed without prejudice, has
19 not been refiled, and the person has not been convicted of any
20 other felony or misdemeanor crime, any violation, or any
21 traffic violation, excluding minor traffic violations, during
22 the previous two years.

23 Section 2. A person who has been convicted of a
24 violation, a misdemeanor criminal offense, or a traffic
25 violation may file a petition in the court in the county or
26 municipality in which the charges were filed or the conviction

1 entered to expunge all records relating to the conviction when
2 all of the following circumstances exist:

3 (1) All probation or parole requirements have been
4 completed.

5 (2) Three years have passed from the date of
6 conviction. If the conviction is for domestic violence in the
7 third degree, five years must have passed from the date of
8 conviction.

9 (3) The person has no conviction for a violent
10 felony offense. For purposes of this act, a violent felony
11 offense shall be defined as capital murder, murder,
12 manslaughter, rape in the first degree, sodomy in the first
13 degree, attempted murder, assault in the first degree, assault
14 in the second degree, robbery in the first degree, or robbery
15 in the second degree.

16 (4) The person has no conviction for a sexual
17 offense involving a minor.

18 (5) The person is not a convicted sex offender.

19 (6) The person does not hold a valid commercial
20 driver's license.

21 Section 3. A person who has been charged with a
22 felony offense may file a petition in the court in the county
23 or municipality in which the charges were filed, or the court
24 that dismissed the charges, to expunge all records relating to
25 the charge in any of the following circumstances:

26 (1) When the charge is dismissed with prejudice.

1 (2) When the charge has been no billed by a grand
2 jury.

3 (3) When the person has been found not guilty of the
4 charge.

5 (4) The charge was dismissed after successful
6 completion of a drug court program, mental health court
7 program, diversion program, or any court-approved deferred
8 prosecution program.

9 (5) The charge was dismissed without prejudice, has
10 not been refiled, and the person has not been convicted of any
11 other felony or misdemeanor crime, any violation, or any
12 traffic violation, excluding minor traffic violations, during
13 the previous five years.

14 Section 4. A person who has been convicted of a
15 Class C felony offense may file a petition in the court in the
16 county or municipality in which the charges were filed or the
17 conviction entered to expunge all records relating to the
18 conviction when all of the following circumstances exist:

19 (1) All probation or parole requirements have been
20 completed.

21 (2) Seven years have passed from the date of
22 conviction.

23 (3) The person has no conviction for the following
24 offenses: Capital murder, murder, manslaughter, rape in the
25 first degree, sodomy in the first degree, attempted murder,
26 assault in the first degree, assault in the second degree,
27 robbery in the first degree, robbery in the second degree,

1 kidnapping in the first degree, kidnapping in the second
2 degree, sexual torture, sexual abuse in the first degree,
3 enticing a child to enter a vehicle, house, etc. for immoral
4 purposes, aggravated stalking, soliciting a child by computer,
5 transmitting obscene material to a child by computer, domestic
6 violence first degree, domestic violence second degree,
7 chemical endangerment of a child by exposure to an environment
8 in which controlled substances are produced or distributed,
9 crime of terrorism, soliciting or providing support for an act
10 of terrorism, dissemination or public display of obscene
11 matter to persons under 17 years of age, possession and
12 possession with intent to disseminate obscene matter to
13 persons under 17 years of age, parent or guardian permitting
14 children to engage in production of obscene matter, production
15 of obscene matter of persons under 17 years of age, unlawful
16 distribution of controlled substances, unlawful manufacture of
17 a controlled substance first degree, unlawful manufacture of a
18 controlled substance second degree, trafficking in controlled
19 substance, or conducting a trafficking enterprise.

20 (4) The person has no conviction for a sexual or
21 violent offense involving a minor.

22 (5) The person is not a convicted sex offender.

23 Section 5. (a) A petition filed under this act shall
24 include a sworn statement made by the person seeking
25 expungement under the penalty of perjury stating that the
26 person has satisfied the requirements set out in Section 1, 2,
27 3, or 4.

1 (b) A petitioner shall serve the prosecuting
2 authority a copy of the petition and the sworn affidavit. The
3 prosecuting authority shall notify the victim of the petition
4 and the victim's right to object. The prosecuting authority
5 shall have a period of 30 days to file a written objection to
6 the granting of the petition or the prosecuting authority will
7 be deemed to have consented to the granting of the petition.
8 The prosecuting authority shall serve the petitioner or the
9 petitioner's counsel a copy of the written objection.

10 Section 6. (a) An administrative assessment fee of
11 five hundred dollars (\$500) shall be paid at the time the
12 petition is filed. The administrative fee shall be distributed
13 as follows:

14 (1) Three hundred dollars (\$300) to the Fair Trial
15 Tax Fund.

16 (2) One hundred dollars (\$100) to the district
17 attorney's office or municipal attorney's office that is the
18 prosecuting authority in the case to be expunged.

19 (3) Seventy-five dollars (\$75) to the clerk's office
20 of the circuit, district, or municipal court for the court
21 having jurisdiction over the matter.

22 (4) Twenty-five dollars (\$25) to the Alabama Crime
23 Victim's Compensation Commission.

24 (b) A person seeking relief under this act may apply
25 for indigent status by completing an Affidavit of Substantial
26 Hardship and Order which shall be submitted with the petition.
27 If the court finds the petitioner is indigent, the court may

1 set forth a payment plan for the petitioner to satisfy the
2 filing fee over a period of time.

3 Section 7. (a) If the prosecuting authority or
4 victim files an objection to the granting of a petition under
5 Section 5, the court having jurisdiction over the matter shall
6 set a date for a hearing. The court shall notify the
7 prosecuting authority and the petitioner of the hearing date.
8 The prosecuting authority shall produce the petitioner's
9 criminal history at the hearing. In the discretion of the
10 court, the court may consider the following factors:

11 (1) Nature and seriousness of the offense committed.

12 (2) Circumstances under which the offense occurred.

13 (3) Date of the offense.

14 (4) Age of the person when the offense was
15 committed.

16 (5) Whether the offense was an isolated or repeated
17 incident.

18 (6) Social conditions which may have contributed to
19 the offense.

20 (7) An available probation or parole record, report,
21 or recommendation.

22 (8) Evidence of rehabilitation, including good
23 conduct in prison or jail, in the community, counseling or
24 psychiatric treatment received, acquisition of additional
25 academic or vocational schooling, successful business or
26 employment history, and the recommendation of his or her
27 supervisors or other persons in the community.

1 (b) A hearing under subsection (a) shall be
2 conducted in a manner prescribed by the trial judge and shall
3 include oral argument and review of relevant documentation in
4 support of, or in objection to, the granting of the petition.
5 The Alabama Rules of Evidence shall apply to the hearing.
6 Leave of the court shall be obtained for the taking of witness
7 testimony relating to any disputed fact.

8 (c) The court shall grant the petition if it is
9 reasonably satisfied from the evidence that the petitioner has
10 complied with and satisfied the requirements of Section 1, 2,
11 3, or 4. The court shall have discretion over the number of
12 cases that may be expunged pursuant to this act after the
13 first case is expunged. The ruling of the court shall be
14 subject to certiorari review and shall not be reversed absent
15 a showing of an abuse of discretion.

16 (d) If no objection to a petition is filed by the
17 prosecuting authority or victim, the court having jurisdiction
18 over the matter may rule on the merits of the petition without
19 setting the matter for hearing. In such cases, the court shall
20 grant the petition if it is reasonably satisfied from the
21 evidence that the petitioner has complied with and satisfied
22 the requirements of Section 1, 2, 3, or 4. The court shall
23 have discretion over the number of cases that may be expunged
24 pursuant to this act after the first case is expunged.

25 Section 8. (a) Upon the granting of a petition
26 pursuant to Section 1 or 3, the court shall order the
27 destruction of all records in the custody of the court and any

1 records in the custody of any other agency or official,
2 including law enforcement records. Every agency with records
3 relating to the arrest, charge, or other matters arising out
4 of the arrest or charge that is ordered to destroy the records
5 shall certify to the court within 60 days of the entry of the
6 expungement order that the required expungement action has
7 been completed.

8 (b) After the expungement of records pursuant to
9 subsection (a), the proceedings regarding the charge shall be
10 deemed never to have occurred. The court and other agencies
11 shall reply to any inquiry that no record exists on the
12 matter. The petitioner whose record was expunged shall not
13 have to disclose the fact of the record or any matter relating
14 thereto on an application for employment, credit, or other
15 type of application.

16 Section 9. (a) Upon the granting of a petition
17 pursuant to Section 2 or 4, the court shall order that all
18 records in the custody of the court and any records in the
19 custody of any other agency or official, including law
20 enforcement records, be sealed and removed from public
21 disclosure. Every agency with records relating to the arrest,
22 charge, or other matters arising out of the arrest or charge
23 that is ordered to seal records shall certify to the court
24 within 60 days of the entry of the expungement order that the
25 required expungement action has been completed.

26 (b) After the sealing of the records pursuant to
27 subsection (a), the proceedings regarding the charge shall be

1 deemed never to have occurred. The court and other agencies
2 shall reply to any inquiry that no record exists on the
3 matter. The petitioner whose record was sealed shall not have
4 to disclose the fact of the record or any matter relating
5 thereto on an application for employment, credit, or other
6 type of application.

7 (c) Inspection of the expunged records may be
8 permitted by the court only upon an application by the person
9 who is the subject of the records and only to those persons
10 directed to receive the information in the application except
11 for those circumstances provided for in this section. The
12 prosecuting authority may inspect the expunged records for any
13 legitimate law enforcement or prosecutorial purpose, without
14 requirement of notice or judicial process. A defendant may
15 move the court having jurisdiction over that defendant's case
16 to allow inspection by the defendant of the records of a
17 witness against the defendant to determine if that witness has
18 had any records expunged or to require the prosecuting
19 authority to provide all expunged records of its witnesses to
20 the defendant. Information contained in the expunged records
21 cannot be used by the prosecuting authority or the defendant
22 in future proceedings without approval of the court having
23 jurisdiction over the matter and only after the court has
24 sufficiently notified the person who is the subject of the
25 records and conducted a hearing on the matter prior to the
26 hearing or trial in which the records are sought to be used.

1 The admission of those records in any proceeding shall be
2 subject to the Alabama Rules of Evidence.

3 Section 10. For purposes of this act, the term
4 "record" includes, but is not limited to, all of the
5 following:

6 (1) Arrest records.

7 (2) Booking or arrest photographs of the petitioner.

8 (3) Index references such as SJICS or any other
9 governmental index references for public records search.

10 (4) Other data, whether in documentary or electronic
11 form, relating to the arrest, charge, or other matters arising
12 out of the arrest or charge or relating to the conviction or
13 other matters arising out of the conviction.

14 Section 11. Nothing in this act shall prohibit a law
15 enforcement agency or official or a prosecuting authority from
16 maintaining an investigative file, which may include evidence,
17 photographs, exhibits, or information in documentary or
18 electronic form.

19 Section 12. No order of expungement shall be granted
20 unless all court ordered restitution is paid in full,
21 including interest, to any victim, or the Alabama Crime
22 Victim's Compensation Commission, as well as court costs,
23 fines, or statutory fees ordered by the sentencing court to
24 have been paid, absent a finding of indigency by the court.

25 Section 13. This act shall become effective on the
26 first day of the third month following its passage and
27 approval by the Governor, or its otherwise becoming law.

