

1 HB23
2 117442-1
3 By Representative England
4 RFD: Judiciary
5 First Read: 01-MAR-11
6 PFD: 02/25/2011

2
3
4
5
6
7
8 SYNOPSIS: Existing law does not authorize the criminal
9 record related to a charge to be sealed or expunged
10 if the person is found not guilty of a crime or if
11 the charges are dismissed or for a conviction
12 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 Amendment 621 of the Constitution of Alabama
11 of 1901, now appearing as Section 111.05 of the
12 Official Recompilation of the Constitution of
13 Alabama of 1901, as amended, prohibits a general
14 law whose purpose or effect would be to require a
15 new or increased expenditure of local funds from
16 becoming effective with regard to a local
17 governmental entity without enactment by a 2/3 vote
18 unless: it comes within one of a number of
19 specified exceptions; it is approved by the
20 affected entity; or the Legislature appropriates
21 funds, or provides a local source of revenue, to
22 the entity for the purpose.

23
24 A BILL

25 TO BE ENTITLED

26 AN ACT
27

1 To authorize a person to petition a court to have
2 the record of certain felony or misdemeanor offenses, a
3 violation, or traffic violations expunged in certain
4 instances; and in connection therewith would have as its
5 purpose or effect the requirement of a new or increased
6 expenditure of local funds within the meaning of Amendment 621
7 of the Constitution of Alabama of 1901, now appearing as
8 Section 111.05 of the Official Recompilation of the
9 Constitution of Alabama of 1901, as amended.

10 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

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

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

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

22 (4) When the charge was dismissed without prejudice,
23 has not been refiled, and the person has not been convicted of
24 any other felony or misdemeanor crime, any violation, or any
25 traffic violation, excluding minor traffic violations, during
26 the previous two years.

1 Section 2. A person who has been convicted of a
2 violation, a misdemeanor criminal offense, or a traffic
3 violation may file a petition in the court in the county or
4 municipality in which the charges were filed or the conviction
5 entered to expunge all records relating to the conviction when
6 all of the following circumstances exist:

7 (1) All probation or parole requirements have been
8 completed.

9 (2) Three years have passed from the date of
10 conviction. If the conviction is for domestic violence in the
11 third degree, five years must have passed from the date of
12 conviction.

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

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

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

23 (6) The person was not operating a commercial motor
24 vehicle which required the person to possess a commercial
25 driver's license at the time of the violation which led to the
26 conviction.

1 (7) The person was not convicted of any of the
2 offenses enumerated in 49 C.F.R. Section 383.51.

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

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

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

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

13 (4) The charge was dismissed after successful
14 completion of a drug court program, mental health court
15 program, diversion program, or any court-approved deferred
16 prosecution program.

17 (5) The charge was dismissed without prejudice, has
18 not been refiled, and the person has not been convicted of any
19 other felony or misdemeanor crime, any violation, or any
20 traffic violation, excluding minor traffic violations, during
21 the previous five years.

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

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 45 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 5. (a) An administrative assessment fee of
11 six hundred dollars (\$600) 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) Seventy-five dollars (\$75) 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) One hundred dollars (\$100) to the clerk's office
20 of the circuit, district, or municipal court for the court
21 having jurisdiction over the matter, for the use and benefit
22 of the circuit, district, or municipal court clerk.

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

25 (5) One hundred dollars (\$100) to the Alabama
26 Department of Public Safety.

1 (b) A person seeking relief under this act may apply
2 for indigent status by completing an Affidavit of Substantial
3 Hardship and Order which shall be submitted with the petition.
4 If the court finds the petitioner is indigent, the court may
5 set forth a payment plan for the petitioner to satisfy the
6 filing fee over a period of time.

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

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

16 (2) Circumstances under which the offense occurred.

17 (3) Date of the offense.

18 (4) Age of the person when the offense was
19 committed.

20 (5) Whether the offense was an isolated or repeated
21 incident.

22 (6) Social conditions which may have contributed to
23 the offense.

24 (7) An available probation or parole record, report,
25 or recommendation.

26 (8) Evidence of rehabilitation, including good
27 conduct in prison or jail, in the community, counseling or

1 psychiatric treatment received, acquisition of additional
2 academic or vocational schooling, successful business or
3 employment history, and the recommendation of his or her
4 supervisors or other persons in the community.

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

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

20 (d) If no objection to a petition is filed by the
21 prosecuting authority or victim, the court having jurisdiction
22 over the matter may rule on the merits of the petition without
23 setting the matter for hearing. In such cases, the court shall
24 grant the petition if it is reasonably satisfied from the
25 evidence that the petitioner has complied with and satisfied
26 the requirements of Section 1, 2, or 3. The court shall have

1 discretion over the number of cases that may be expunged
2 pursuant to this act after the first case is expunged.

3 Section 7. (a) Upon the granting of a petition
4 pursuant to Section 1 or 3, the court shall order the
5 destruction of all records in the custody of the court and any
6 records in the custody of any other agency or official,
7 including law enforcement records. On the effective date of
8 this act and for 18 months thereafter, every agency with
9 records relating to the arrest, charge, or other matters
10 arising out of the arrest or charge that is ordered to destroy
11 the records shall certify to the court within 180 days of the
12 entry of the expungement order that the required expungement
13 action has been completed.

14 (b) Eighteen months after the effective date of this
15 act, every agency with records relating to the arrest, charge,
16 or other matters arising out of the arrest or charge that is
17 ordered to destroy the records shall certify to the court
18 within 60 days of the entry of the expungement order that the
19 required expungement action has been completed.

20 (c) After the expungement of records pursuant to
21 subsection (a), the proceedings regarding the charge shall be
22 deemed never to have occurred. The court and other agencies
23 shall reply to any inquiry that no record exists on the
24 matter. The petitioner whose record was expunged shall not
25 have to disclose the fact of the record or any matter relating
26 thereto on an application for employment, credit, or other
27 type of application.

1 Section 8. (a) Upon the granting of a petition
2 pursuant to Section 2, the court shall order that all records
3 in the custody of the court and any records in the custody of
4 any other agency or official, including law enforcement
5 records, be sealed and removed from public disclosure. On the
6 effective date of this act and for 18 months thereafter, every
7 agency with records relating to the arrest, charge, or other
8 matters arising out of the arrest or charge that is ordered to
9 seal records shall certify to the court within 180 days of the
10 entry of the expungement order that the required expungement
11 action has been completed.

12 (b) Eighteen months after the effective date of this
13 act, every agency with records relating to the arrest, charge,
14 or other matters arising out of the arrest or charge that is
15 ordered to seal records shall certify to the court within 60
16 days of the entry of the expungement order that the required
17 expungement action has been completed.

18 (c) After the sealing of the records pursuant to
19 subsection (a), the proceedings regarding the charge shall be
20 deemed never to have occurred. The court and other agencies
21 shall reply to any inquiry that no record exists on the
22 matter. The petitioner whose record was sealed shall not have
23 to disclose the fact of the record or any matter relating
24 thereto on an application for employment, credit, or other
25 type of application.

26 (d) Inspection of the expunged records may be
27 permitted by the court only upon an application by the person

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

21 Section 9. For purposes of this act, the term record
22 includes, but is not limited to, all of the following:

- 23 (1) Arrest records.
- 24 (2) Booking or arrest photographs of the petitioner.
- 25 (3) Index references such as SJICS or any other
26 governmental index references for public records search.

1 (4) Other data, whether in documentary or electronic
2 form, relating to the arrest, charge, or other matters arising
3 out of the arrest or charge or relating to the conviction or
4 other matters arising out of the conviction.

5 Section 10. Nothing in this act shall prohibit a law
6 enforcement agency or official or a prosecuting authority or
7 the Alabama Department of Forensic Sciences from maintaining
8 an investigative file, which may include evidence, biological
9 evidence photographs, exhibits, or information in documentary
10 or electronic form.

11 Section 11. No order of expungement shall be granted
12 unless all court ordered restitution is paid in full,
13 including interest, to any victim, or the Alabama Crime
14 Victim's Compensation Commission, as well as court costs,
15 fines, or statutory fees ordered by the sentencing court to
16 have been paid, absent a finding of indigency by the court.

17 Section 12. Although this bill would have as its
18 purpose or effect the requirement of a new or increased
19 expenditure of local funds, the bill is excluded from further
20 requirements and application under Amendment 621, now
21 appearing as Section 111.05 of the Official Recompilation of
22 the Constitution of Alabama of 1901, as amended, because the
23 bill defines a new crime or amends the definition of an
24 existing crime.

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.

