

1 HB38  
2 144522-1  
3 By Representative Johnson (R)  
4 RFD: Judiciary  
5 First Read: 05-FEB-13  
6 PFD: 01/24/2013

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8 SYNOPSIS: Existing law does not authorize the criminal  
9 record related to a charge to be expunged after a  
10 conviction.

11 This bill would authorize a person convicted  
12 of the misdemeanor criminal offense of harassment  
13 pursuant to Section 13A-11-8, Code of Alabama 1975,  
14 to petition the court in which the charges were  
15 filed to have his or her records expunged under  
16 certain conditions.

17 Amendment 621 of the Constitution of Alabama  
18 of 1901, now appearing as Section 111.05 of the  
19 Official Recompilation of the Constitution of  
20 Alabama of 1901, as amended, prohibits a general  
21 law whose purpose or effect would be to require a  
22 new or increased expenditure of local funds from  
23 becoming effective with regard to a local  
24 governmental entity without enactment by a 2/3 vote  
25 unless: it comes within one of a number of  
26 specified exceptions; it is approved by the  
27 affected entity; or the Legislature appropriates

1 funds, or provides a local source of revenue, to  
2 the entity for the purpose.

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

11  
12 A BILL  
13 TO BE ENTITLED  
14 AN ACT  
15

16 To authorize a person to petition a court to have  
17 the record of certain misdemeanor offenses expunged in certain  
18 instances; and in connection therewith would have as its  
19 purpose or effect the requirement of a new or increased  
20 expenditure of local funds within the meaning of Amendment 621  
21 of the Constitution of Alabama of 1901, now appearing as  
22 Section 111.05 of the Official Recompilation of the  
23 Constitution of Alabama of 1901, as amended.

24 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

25 Section 1. (a) A person who has been convicted of  
26 the misdemeanor criminal offense of harassment pursuant to  
27 paragraph a. of subdivision (1) of subsection (a) of Section

1 13A-8-11, Code of Alabama 1975, may file a petition in the  
2 court in the county or municipality in which the charges were  
3 filed, or the court that dismissed the charges, to expunge all  
4 records relating to the charge in any of the following  
5 circumstances:

6 (1) All probation and parole requirements have been  
7 completed.

8 (2) One year has passed from the date of the  
9 conviction.

10 Section 2. (a) A petition filed under this act shall  
11 include a sworn statement made by the person seeking  
12 expungement under the penalty of perjury stating that the  
13 person has satisfied the requirements set out in Section 1.

14 (b) A petitioner shall serve the prosecuting  
15 authority a copy of the petition and the sworn affidavit. The  
16 prosecuting authority shall notify the victim of the petition  
17 and the victim's right to object. The prosecuting authority  
18 shall have a period of 45 days to file a written objection to  
19 the granting of the petition or the prosecuting authority will  
20 be deemed to have consented to the granting of the petition.  
21 The prosecuting authority shall serve the petitioner or the  
22 petitioner's counsel a copy of the written objection.

23 Section 3. (a) An administrative assessment fee of  
24 one hundred dollars (\$100) shall be paid at the time the  
25 petition is filed. The administrative fee shall be distributed  
26 as follows:

1           (1) Twenty-five dollars (\$25) to the district  
2 attorney's office or municipal attorney's office that is the  
3 prosecuting authority in the case to be expunged.

4           (2) Twenty-five dollars (\$25) to the clerk's office  
5 of the circuit, district, or municipal court having  
6 jurisdiction over the matter, for the use and benefit of the  
7 circuit, district, or municipal court clerk.

8           (3) Twenty-five dollars (\$25) to the Alabama  
9 Department of Public Safety.

10           (4) Twenty-five dollars (\$25) to the Alabama  
11 Criminal Justice Information Center.

12           (b) A person seeking relief under this act may apply  
13 for indigent status by completing an affidavit of substantial  
14 hardship and order which shall be submitted with the petition.  
15 If the court finds the petitioner is indigent, the court may  
16 set forth a payment plan for the petitioner to satisfy the  
17 filing fee over a period of time.

18           Section 4. (a) If the prosecuting authority or  
19 victim files an objection to the granting of a petition under  
20 Section 2, the court having jurisdiction over the matter shall  
21 set a date for a hearing. The court shall notify the  
22 prosecuting authority and the petitioner of the hearing date.  
23 The prosecuting authority shall produce the petitioner's  
24 criminal history at the hearing. In the discretion of the  
25 court, the court may consider the following factors:

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

27           (2) Circumstances under which the offense occurred.

1 (3) Date of the offense.

2 (4) Age of the person when the offense was  
3 committed.

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

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

8 (7) An available probation or parole record, report,  
9 or recommendation.

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

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

25 (d) If no objection to a petition is filed by the  
26 prosecuting authority or victim, the court having jurisdiction  
27 over the matter may rule on the merits of the petition without

1 setting the matter for hearing. In such cases, the court shall  
2 grant the petition if it is reasonably satisfied from the  
3 evidence that the petitioner has complied with and satisfied  
4 the requirements of Section 1.

5 Section 5. (a) Upon the granting of a petition  
6 pursuant to Section 1, the court shall order the destruction  
7 of all records in the custody of the court and any records in  
8 the custody of any other agency or official, including law  
9 enforcement records. Every agency with records relating to the  
10 arrest, charge, or other matters arising out of the arrest or  
11 charge that is ordered to destroy the records shall certify to  
12 the court within 120 days of the entry of the expungement  
13 order that the required expungement action has been completed.

14 (b) After the expungement of records pursuant to  
15 subsection (a), the proceedings regarding the charge shall be  
16 deemed never to have occurred and no disclosure of the  
17 proceeding shall be required by any person. The court and  
18 other agencies shall reply to any inquiry that no record  
19 exists on the matter. The petitioner whose record was expunged  
20 shall not have to disclose the fact of the record or any  
21 matter relating thereto on an application for employment,  
22 credit, or other type of application.

23 Section 6. For purposes of this act, the term  
24 "record" includes, but is not limited to, all of the  
25 following:

26 (1) Arrest records.

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

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

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

7                   Section 7. All laws or parts of laws which conflict  
8 with this act are repealed.

9                   Section 8. This act shall become effective on the  
10 first day of the third month following its passage and  
11 approval by the Governor, or its otherwise becoming law.