

1 SB208
2 156510-1
3 By Senator Ward
4 RFD: Governmental Affairs
5 First Read: 15-JAN-14

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

13 This bill would authorize a person charged
14 with certain misdemeanor and felony offenses to
15 petition the circuit court to have all records
16 relating to the charge expunged in certain
17 instances.

18 This bill would require the person seeking
19 expunction to obtain a certificate of eligibility
20 from the Department of Public Safety.

21 This bill would provide procedural
22 requirements for a person filing a petition to have
23 records expunged and for law enforcement agencies
24 required to expunge records and would provide for
25 criminal penalties for certain violations.

26 Amendment 621 of the Constitution of Alabama
27 of 1901, now appearing as Section 111.05 of the

1 Official ReCompilation of the Constitution of
2 Alabama of 1901, as amended, prohibits a general
3 law whose purpose or effect would be to require a
4 new or increased expenditure of local funds from
5 becoming effective with regard to a local
6 governmental entity without enactment by a 2/3 vote
7 unless: it comes within one of a number of
8 specified exceptions; it is approved by the
9 affected entity; or the Legislature appropriates
10 funds, or provides a local source of revenue, to
11 the entity for the purpose.

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

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21 A BILL

22 TO BE ENTITLED

23 AN ACT

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25 To authorize a person to petition a court to have
26 all records relating to the charge of certain felonies and
27 misdemeanors to be expunged in certain instances; to require a

1 person to obtain a certificate of eligibility from the
2 Department of Public Safety; to provide procedural
3 requirements; to provide penalties for violations; and in
4 connection therewith would have as its purpose or effect the
5 requirement of a new or increased expenditure of local funds
6 within the meaning of Amendment 621 of the Constitution of
7 Alabama of 1901, now appearing as Section 111.05 of the
8 Official Recompilation of the Constitution of Alabama of 1901,
9 as amended.

10 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

11 Section 1. (a) Except as provided in subsection (b),
12 a circuit court may order a law enforcement agency in this
13 state to expunge the criminal history record of a minor or an
14 adult who complies with the requirements of this act. The
15 court shall not order a law enforcement agency to expunge a
16 criminal history record until the person seeking to expunge a
17 criminal history record has applied for and received a
18 certificate of eligibility for expunction pursuant to Section
19 2.

20 (b) A criminal history record that relates to a
21 violation of any of the following offenses may not be
22 expunged:

23 (1) A violent felony offense. For purposes of this
24 act, a violent felony means capital murder, murder,
25 manslaughter, rape in the first degree, sodomy in the first
26 degree, attempted murder, assault in the first degree, assault

1 in the second degree, robbery in the first degree, or robbery
2 in the second degree.

3 (2) Any sex offense involving a minor.

4 (3) Any offense specified as a predicate offense for
5 registration as a sexual predator or sexual offender.

6 (4) Aggravated child abuse.

7 (5) Terrorism.

8 (6) Soliciting or providing support for terrorism.

9 (7) Any offense involving domestic violence.

10 (8) Chemical endangerment - exposing child to an
11 environment where controlled substances are produced or
12 distributed.

13 (9) Unlawful distribution of a controlled substance.

14 (10) Unlawful manufacture of a controlled substance.

15 (11) Trafficking in a controlled substance.

16 (c) The court may only order expunction of a
17 criminal history record pertaining to one arrest or one
18 incident of alleged criminal activity, except as provided in
19 this section. The court, at its sole discretion, may order the
20 expunction of a criminal history record pertaining to more
21 than one arrest if the additional arrests directly relate to
22 the original arrest. If the court intends to order the
23 expunction of records pertaining to additional arrests, the
24 intent must be specified in the order. A law enforcement
25 agency may not expunge any record pertaining to such
26 additional arrests if the order to expunge does not articulate
27 the intention of the court to expunge a record pertaining to

1 more than one arrest. This section does not prevent the court
2 from ordering the expunction of only a portion of a criminal
3 history record pertaining to one arrest or one incident of
4 alleged criminal activity.

5 (d) This section does not confer any right to the
6 expunction of any criminal history record, and any request for
7 expunction of a criminal history record may be denied at the
8 sole discretion of the court.

9 (e) A person filing a motion for expungement may not
10 be required to pay any court costs or filing fees.

11 Section 2. Prior to petitioning the court to expunge
12 a criminal history record, a person seeking to expunge a
13 criminal history record shall apply to the Department of
14 Public Safety for a certificate of eligibility for expunction.
15 The department, by rule, shall establish procedures pertaining
16 to the application for and issuance of certificates of
17 eligibility for expunction. The application must be as simple
18 as practical, may not seek any extraneous information, and a
19 fee may not be charged for its submission. A certificate of
20 eligibility for expunction is valid for 12 months after the
21 date stamped on the certificate when issued by the department.
22 After that time, the petitioner must reapply to the department
23 for a new certificate of eligibility. Eligibility for a
24 renewed certification of eligibility must be based on the
25 status of the applicant and the law in effect at the time of
26 the renewal application. The department shall issue a
27 certificate of eligibility for expunction to a person who is

1 the subject of a criminal history record if that person
2 satisfies all of the following:

3 (1) Has obtained, and submitted to the department, a
4 written, certified statement from the appropriate district
5 attorney or prosecutor which indicates all of the following:

6 a. That an indictment, information, or other
7 charging document was not filed or issued in the case.

8 b. That an indictment, information, or other
9 charging document, if filed or issued in the case, was
10 dismissed or nolle prosequi by the district attorney or
11 prosecutor, or was dismissed by a court of competent
12 jurisdiction, and that none of the charges related to the
13 arrest or alleged criminal activity to which the petition to
14 expunge pertains resulted in a trial, without regard to
15 whether the outcome of the trial was other than an
16 adjudication of guilt.

17 c. That the criminal history record does not relate
18 to a violation of any of the offenses enumerated in subsection
19 (b) of Section 1.

20 (2) Has submitted to the department a certified copy
21 of the disposition of the charge to which the petition to
22 expunge pertains.

23 (3) Has never, prior to the date on which the
24 application for a certificate of eligibility is filed, been
25 adjudicated guilty of a criminal offense or comparable
26 ordinance violation, or been adjudicated delinquent for

1 committing any felony or a misdemeanor specified in subsection
2 (b) of Section 1.

3 (4) Has not been adjudicated guilty of, or
4 adjudicated delinquent for committing, any of the acts
5 stemming from the arrest or alleged criminal activity to which
6 the petition to expunge pertains.

7 (5) Has never secured a prior expunction of a
8 criminal history record under this section.

9 (6) Is no longer under court supervision applicable
10 to the disposition of the arrest or alleged criminal activity
11 to which the petition to expunge pertains.

12 Section 3. (a) Upon obtaining a certificate of
13 eligibility from the Department of Public Safety under Section
14 2, the person may petition the circuit court to expunge a
15 criminal history record.

16 (b) The petition shall be accompanied by both of the
17 following:

18 (1) A valid certificate of eligibility for
19 expunction issued by the department pursuant to Section 2.

20 (2) The petitioner's sworn statement attesting that
21 the petitioner:

22 a. Has never, prior to the date on which the
23 petition is filed, been adjudicated guilty of a criminal
24 offense or comparable ordinance violation, or been adjudicated
25 delinquent for committing any felony or a misdemeanor
26 specified in subsection (b) of Section 1.

1 b. Has not been adjudicated guilty of, or
2 adjudicated delinquent for committing, any of the acts
3 stemming from the arrest or alleged criminal activity to which
4 the petition pertains.

5 c. Has never secured a prior sealing or expunction
6 of a criminal history record under this section.

7 d. Is eligible for such an expunction to the best of
8 his or her knowledge or belief and does not have any other
9 petition to expunge or any petition to seal pending before any
10 court.

11 (c) Any person who knowingly provides false
12 information on the sworn statement to the court commits a
13 Class C felony.

14 Section 4. (a) In judicial proceedings under this
15 act, a copy of the completed petition to expunge shall be
16 served upon the appropriate district attorney or prosecutor
17 and upon the arresting agency; however, it is not necessary to
18 make any agency other than the state a party. The appropriate
19 district attorney or other prosecutor and the arresting agency
20 may respond to the court regarding the completed petition to
21 expunge.

22 (b) If relief is granted by the court, the clerk of
23 the court shall certify copies of the order to the appropriate
24 district attorney or other prosecutor, the arresting agency,
25 and the Department of Public Safety. The arresting agency is
26 responsible for forwarding the order to any other agency to
27 which the arresting agency disseminated the criminal history

1 record information to which the order pertains. The Department
2 of Public Safety shall forward the order to expunge to the
3 Federal Bureau of Investigation. The clerk of the court shall
4 certify a copy of the order to any other agency which the
5 records of the court reflect has received the criminal history
6 record from the court.

7 (c) The department or any other law enforcement
8 agency is not required to act on an order to expunge entered
9 by a court when the order does not comply with the
10 requirements of this act. Upon receipt of such an order, the
11 department must notify the issuing court, the appropriate
12 district attorney or other prosecutor, the petitioner or the
13 petitioner's attorney, and the arresting agency of the reason
14 for noncompliance. The appropriate district attorney or other
15 prosecutor shall take action within 60 days to correct the
16 record and petition the court to void the order. No cause of
17 action, including contempt of court, shall arise against any
18 law enforcement agency for failure to comply with an order to
19 expunge when the petitioner for such order failed to obtain
20 the certificate of eligibility as required by this act or the
21 order does not otherwise comply with the requirements of this
22 act.

23 Section 5. (a) Any criminal history record of a
24 minor or an adult which is ordered expunged by a circuit court
25 pursuant to this act must be physically destroyed or
26 obliterated by any law enforcement agency having custody of
27 such record, except that any criminal history record in the

1 custody of the Department of Public Safety must be retained in
2 all cases. A criminal history record ordered expunged that is
3 retained by the department is confidential and exempt from
4 public disclosure and not available to any person or entity
5 except upon order of a court of the circuit court. A law
6 enforcement agency may retain a notation indicating compliance
7 with an order to expunge.

8 (b) The person who is the subject of a criminal
9 history record that is expunged under this act may lawfully
10 deny or fail to acknowledge the arrests covered by the
11 expunged record, except when the subject of the record is any
12 of the following:

13 (1) A candidate for employment with a law
14 enforcement agency.

15 (2) Is a defendant in a criminal prosecution.

16 (3) Is a candidate for admission to the Alabama
17 State Bar.

18 (4) Is seeking to be employed or licensed by the
19 Department of Education, any district school board, or any
20 other educational institution.

21 (5) Is seeking authorization from a seaport in this
22 state for employment within or access to one or more of the
23 seaports in this state.

24 (c) Subject to the exceptions in subsection (b), a
25 person who has been granted an expunction under this section
26 may not be held under any provision of law of this state to
27 commit perjury or to be otherwise liable for giving a false

1 statement by reason of the person's failure to recite or
2 acknowledge an expunged criminal history record.

3 (d) Information relating to the existence of an
4 expunged criminal history record which is provided in
5 accordance with subsection (b) is confidential and exempt from
6 public disclosure, except that the department shall disclose
7 the existence of a criminal history record ordered expunged to
8 the entities set forth subsection (b) for their respective
9 licensing, access authorization, and employment purposes, and
10 to law enforcement agencies for their respective law
11 enforcement purposes. It is unlawful for any employee of an
12 entity set forth in subsection (b) to disclose information
13 relating to the existence of an expunged criminal history
14 record of a person seeking employment, access authorization,
15 or licensure with such entity or contractor, except to the
16 person to whom the criminal history record relates or to
17 persons having direct responsibility for employment, access
18 authorization, or licensure decisions. Any person who violates
19 this subsection commits a Class A misdemeanor.

20 Section 6. Although this bill would have as its
21 purpose or effect the requirement of a new or increased
22 expenditure of local funds, the bill is excluded from further
23 requirements and application under Amendment 621, now
24 appearing as Section 111.05 of the Official Recompilation of
25 the Constitution of Alabama of 1901, as amended, because the
26 bill defines a new crime or amends the definition of an
27 existing crime.

1 Section 7. This act shall become effective on the
2 first day of the third month following its passage and
3 approval by the Governor, or its otherwise becoming law.