

1 SB178
2 119978-2
3 By Senator Smitherman
4 RFD: Judiciary
5 First Read: 12-JAN-10

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4 ENGROSSED

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7 A BILL
8 TO BE ENTITLED
9 AN ACT

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

19 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

20 Section 1. (a) A person who has been charged with a
21 misdemeanor criminal offense may file a petition in the court
22 in the county or municipality in which the charges were filed,
23 or the court that dismissed the charges, to expunge all
24 records relating to the charge in any of the following
25 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 Section 2. (a) A petition filed under this act shall
6 include a sworn statement made by the person seeking
7 expungement under the penalty of perjury stating that the
8 person has satisfied the requirements set out in Section 1.

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

18 Section 3. (a) An administrative assessment fee of
19 seventy-five dollars (\$75) shall be paid at the time the
20 petition is filed. The administrative fee shall be distributed
21 as follows:

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

25 (2) Twenty-five dollars (\$25) to the clerk's office
26 of the circuit, district, or municipal court having

1 jurisdiction over the matter, for the use and benefit of the
2 circuit, district, or municipal court clerk.

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

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

11 Section 4. (a) If the prosecuting authority or
12 victim files an objection to the granting of a petition under
13 Section 2, the court having jurisdiction over the matter shall
14 set a date for a hearing. The court shall notify the
15 prosecuting authority and the petitioner of the hearing date.
16 The prosecuting authority shall produce the petitioner's
17 criminal history at the hearing. In the discretion of the
18 court, the court may consider the following factors:

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

20 (2) Circumstances under which the offense occurred.

21 (3) Date of the offense.

22 (4) Age of the person when the offense was
23 committed.

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

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

1 (7) An available probation or parole record, report,
2 or recommendation.

3 (8) Evidence of rehabilitation, including good
4 conduct in prison or jail, in the community, counseling or
5 psychiatric treatment received, acquisition of additional
6 academic or vocational schooling, successful business or
7 employment history, and the recommendation of his or her
8 supervisors or other persons in the community.

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

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

24 (d) If no objection to a petition is filed by the
25 prosecuting authority or victim, the court having jurisdiction
26 over the matter may rule on the merits of the petition without
27 setting the matter for hearing. In such cases, the court shall

1 grant the petition if it is reasonably satisfied from the
2 evidence that the petitioner has complied with and satisfied
3 the requirements of Section 1. The court shall have discretion
4 over the number of cases that may be expunged pursuant to this
5 act after the first case is expunged.

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

15 (b) After the expungement of records pursuant to
16 subsection (a), the proceedings regarding the charge shall be
17 deemed never to have occurred. The court and other agencies
18 shall reply to any inquiry that no record exists on the
19 matter. The petitioner whose record was expunged shall not
20 have to disclose the fact of the record or any matter relating
21 thereto on an application for employment, credit, or other
22 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. This act shall become effective on the
8 first day of the third month following its passage and
9 approval by the Governor, or its otherwise becoming law.

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Senate

Read for the first time and referred to the Senate
committee on Judiciary 12-JAN-10

Reported from Judiciary as Favorable 02-FEB-10

Read for the third time and passed as amended ... 06-APR-10

Yeas 21
Nays 4

McDowell Lee
Secretary