

1 SB359
2 116700-1
3 By Senator Waggoner
4 RFD: Judiciary
5 First Read: 02-FEB-10

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

This bill would authorize a person charged with a misdemeanor criminal offense to petition the court in which the charges were filed to have his or her records expunged when the person has not been convicted of the charge.

Amendment 621 of the Constitution of Alabama of 1901, now appearing as Section 111.05 of the Official ReCompilation of the Constitution of Alabama of 1901, as amended, prohibits a general law whose purpose or effect would be to require a new or increased expenditure of local funds from becoming effective with regard to a local governmental entity without enactment by a 2/3 vote unless: it comes within one of a number of specified exceptions; it is approved by the 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 charged with a
26 misdemeanor criminal offense may file a petition in the court
27 in the county or municipality in which the charges were filed,

1 or the court that dismissed the charges, to expunge all
2 records relating to the charge in any of the following
3 circumstances:

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

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

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

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

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

22 Section 3. (a) An administrative assessment fee of
23 seventy-five dollars (\$75) shall be paid at the time the
24 petition is filed. The administrative fee shall be distributed
25 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 (b) A person seeking relief under this act may apply
11 for indigent status by completing an affidavit of substantial
12 hardship and order which shall be submitted with the petition.
13 If the court finds the petitioner is indigent, the court may
14 set forth a payment plan for the petitioner to satisfy the
15 filing fee over a period of time.

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

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

25 (2) Circumstances under which the offense occurred.

26 (3) Date of the offense.

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

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

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

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

9 (8) Evidence of rehabilitation, including good
10 conduct in prison or jail, in the community, counseling or
11 psychiatric treatment received, acquisition of additional
12 academic or vocational schooling, successful business or
13 employment history, and the recommendation of his or her
14 supervisors or other persons in the community.

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

22 (c) The court shall grant the petition if it is
23 reasonably satisfied from the evidence that the petitioner has
24 complied with and satisfied the requirements of Section 1. The
25 court shall have discretion over the number of cases that may
26 be expunged pursuant to this act after the first case is
27 expunged. The ruling of the court shall be subject to

1 certiorari review and shall not be reversed absent a showing
2 of an abuse of discretion.

3 (d) If no objection to a petition is filed by the
4 prosecuting authority or victim, the court having jurisdiction
5 over the matter may rule on the merits of the petition without
6 setting the matter for hearing. In such cases, the court shall
7 grant the petition if it is reasonably satisfied from the
8 evidence that the petitioner has complied with and satisfied
9 the requirements of Section 1. The court shall have discretion
10 over the number of cases that may be expunged pursuant to this
11 act after the first case is expunged.

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

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

1 thereto on an application for employment, credit, or other
2 type of application.

3 Section 6. 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 7. This act shall become effective on the
15 first day of the third month following its passage and
16 approval by the Governor, or its otherwise becoming law.