

1 SB202
2 215940-1
3 By Senator Orr
4 RFD: Judiciary
5 First Read: 09-FEB-22

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8 SYNOPSIS: Under existing law, law enforcement
9 investigative reports and related investigative
10 materials are privileged communications excepted
11 from disclosure as public records.

12 This bill would allow for public access to
13 law enforcement investigative reports and related
14 investigative material created before a criminal
15 investigation begins, or to reports and related
16 material relating to an investigation into a
17 criminal matter that is no longer pending.

18 This bill would also allow for public access
19 to law enforcement investigative reports and
20 related investigative materials created by third
21 parties, disclosed during criminal discovery,
22 introduced as evidence in criminal or civil
23 proceedings, or disclosed to third parties, except
24 when the next of kin or parents of a victim
25 petition a court to keep audio or visual images of
26 the incident sealed.

1 Amendment 621 of the Constitution of Alabama
2 of 1901, as amended by Amendment 890, now appearing
3 as Section 111.05 of the Official ReCompilation of
4 the Constitution of Alabama of 1901, as amended,
5 prohibits a general law whose purpose or effect
6 would be to require a new or increased expenditure
7 of local funds from becoming effective with regard
8 to a local governmental entity without enactment by
9 a 2/3 vote unless: it comes within one of a number
10 of specified exceptions; it is approved by the
11 affected entity; or the Legislature appropriates
12 funds, or provides a local source of revenue, to
13 the entity for the purpose.

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

22
23 A BILL
24 TO BE ENTITLED
25 AN ACT
26

1 Relating to public writings and public records; to
2 amend Section 12-21-3.1, Code of Alabama 1975, relating to the
3 confidentiality of law enforcement investigative reports and
4 related investigative material, to further provide for the
5 confidentiality of law enforcement investigative reports and
6 related investigative material, and to provide for exceptions
7 to that confidentiality; and in connection therewith to have
8 as its purpose or effect the requirement of a new or increased
9 expenditure of local funds within the meaning of Amendment 621
10 of the Constitution of Alabama of 1901, as amended by
11 Amendment 890, now appearing as Section 111.05 of the Official
12 Recompilation of the Constitution of Alabama of 1901, as
13 amended.

14 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

15 Section 1. Section 12-21-3.1, Code of Alabama 1975,
16 is amended to read as follows:

17 "§12-21-3.1.

18 "(a) Neither law enforcement investigative reports
19 nor the testimony of a law enforcement officer in a pending
20 criminal matter may be subject to a civil or administrative
21 subpoena, except as provided in subsection (c).

22 "(b) Law enforcement investigative reports and
23 related investigative material ~~are not~~ created by law
24 enforcement officers or employees after an investigation
25 begins shall be public records after a criminal matter is
26 disposed of as provided in subsection (g).

1 "(c) (1) Law enforcement investigative reports,
2 records, field notes, witness statements, and other
3 investigative writings or recordings, any of which are created
4 by law enforcement officers or employees after an
5 investigation begins, are privileged communications protected
6 from disclosure as public records. This privilege shall be
7 overcome upon a showing of any of the following:

8 "a. The requested records were disclosed to a
9 criminal defendant during discovery relating to that criminal
10 case.

11 "b. The requested records were introduced as
12 evidence in a criminal or civil proceeding.

13 "c. The requested records were disclosed to a third
14 party who is not a member of law enforcement.

15 "(2) Notwithstanding subdivision (1), the
16 communications shall remain privileged and exempt from
17 disclosure as public records if law enforcement or next of kin
18 of the victim shows a specific, material harm will result from
19 disclosure. Next of kin of a deceased or incapacitated adult
20 victim or a parent of a minor victim may petition a court
21 having jurisdiction over the custodian of the records to seal
22 any audio or visual images or recordings of the victim during
23 a criminal assault or showing the injuries suffered by the
24 victim in a way that the court deems to foster humiliation,
25 degradation, or dehumanization of the victim, or otherwise
26 violates the human dignity of the victim.

1 "~~(c)~~ (d) Under no circumstance may a party to a
2 civil or administrative proceeding discover material which is
3 not authorized discoverable by a defendant in a criminal
4 matter. Noncriminal parties may upon proper motion and order
5 from a court of record: Secure photographs, documents and
6 tangible evidence for examination and copying only by order of
7 a court imposing such conditions and qualifications as may be
8 necessary to protect a chain of custody of evidence; or
9 protect the prosecutors', law enforcement officers', or
10 investigators' work product; or to prevent the loss or
11 destruction of documents, objects, or evidence. Such discovery
12 order may be issued by a court of record upon proof by
13 substantial evidence, that the moving party will suffer undue
14 hardship and that the records, photographs or witnesses are
15 unavailable from other reasonable sources.

16 "~~(d)~~ (e) Discovery orders prior to the disposition
17 of the criminal matter under investigation are not favored and
18 should be granted only upon showing that the party seeking
19 discovery has substantial need of the materials and is unable,
20 without undue hardship, to obtain the substantial equivalent
21 by other means.

22 "~~(e)~~ (f) Nothing in this section shall preclude the
23 disclosure of investigative reports, including the testimony
24 of law enforcement officers, to a state administrative agency
25 authorized by law to investigate or conduct administrative
26 contested case hearings in any matter related to the
27 suspension, revocation, or restriction of a professional

1 license or registration for the protection of the public
2 health and safety.

3 ~~"(f)~~ (g) For purposes of this section, a criminal
4 matter is disposed of in any of the following ways:

5 "(1) When the prosecuting authority has presented
6 the matter to a grand jury and a no bill or true bill has been
7 returned.

8 "(2) After a written statement by the chief law
9 enforcement officer of the agency conducting the investigation
10 that the matter under investigation is closed.

11 "(3) When the entity or individual under
12 investigation has been tried and final judgment entered.

13 "(4) When the totality of the circumstances,
14 including, but not limited to, the passage of time without
15 activity, demonstrates that law enforcement is no longer
16 actively pursuing an investigation or when the statute of
17 limitations for the applicable criminal matter expires,
18 whichever occurs first.

19 "(h) A custodian of investigative reports shall
20 maintain and protect those reports and all related
21 investigative materials in accordance with state laws relating
22 to public writings.

23 "(i) For purposes of this section, "custodian" means
24 a person designated by a governmental agency to maintain
25 actual possession, custody, or control of governmental records
26 and who has been given the express, implied, or apparent
27 authority from the governmental agency or a governmental

1 official to grant or deny a request for access to a
2 governmental record. If a governmental agency has not
3 designated a custodian, the custodian shall be the
4 governmental official or governmental employee having ultimate
5 executive responsibility for any governmental agency having
6 possession, custody, or control of governmental records. The
7 term does not include a person employed by or working on
8 behalf of a governmental agency that holds or maintains
9 records as a service to another governmental agency."

10 Section 2. The purpose or effect of this bill would
11 be to require a new or increased expenditure of local funds
12 within the meaning of Amendment 621 of the Constitution of
13 Alabama of 1901, as amended by Amendment 890, now appearing as
14 Section 111.05 of the Official Recompilation of the
15 Constitution of Alabama of 1901, as amended. If this bill is
16 not enacted by a 2/3 vote, it will not become effective with
17 regard to a local entity unless approved by the local entity
18 or until, and only as long as, the Legislature appropriates
19 funds or provides for a local source of revenue.

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