

1 SB178  
2 116045-1  
3 By Senator Smitherman  
4 RFD: Judiciary  
5 First Read: 12-JAN-10

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

13 This bill would authorize a person charged  
14 or convicted of certain felony or misdemeanor  
15 criminal offenses, a violation, or a traffic  
16 violation to petition the court in which the  
17 charges were filed or in which the conviction  
18 occurred to have his or her records expunged,  
19 including, but not limited to, arrest records,  
20 fingerprints, photographs, or index references in  
21 documentary or electronic form, relating to the  
22 arrest or charge, or both, and conviction in  
23 certain instances.

24 Amendment 621 of the Constitution of Alabama  
25 of 1901, now appearing as Section 111.05 of the  
26 Official ReCompilation of the Constitution of  
27 Alabama of 1901, as amended, prohibits a general

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

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21 funds, or provides a local source of revenue, to  
22 the entity for the purpose.

23  
24 A BILL

25 TO BE ENTITLED

26 AN ACT  
27

1           To authorize a person to petition a court to have  
2     the record of certain felony or misdemeanor offenses, a  
3     violation, or traffic violations expunged in certain  
4     instances; and in connection therewith would have as its  
5     purpose or effect the requirement of a new or increased  
6     expenditure of local funds within the meaning of Amendment 621  
7     of the Constitution of Alabama of 1901, now appearing as  
8     Section 111.05 of the Official ReCompilation of the  
9     Constitution of Alabama of 1901, as amended.

10    BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

11           Section 1. (a) A person who has been charged with a  
12    misdemeanor criminal offense, a violation, or a traffic  
13    violation may file a petition in the court in the county or  
14    municipality in which the charges were filed, or the court  
15    that dismissed the charges, to expunge all records relating to  
16    the charge in any of the following circumstances:

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

18           (2) When the charge has been no billed by a grand  
19    jury.

20           (3) When the person has been found not guilty of the  
21    charge.

22           (4) When the charge was dismissed without prejudice,  
23    has not been refiled, and the person has not been convicted of  
24    any other felony or misdemeanor crime, any violation, or any  
25    traffic violation, excluding minor traffic violations, during  
26    the previous two years.

1           Section 2. A person who has been convicted of a  
2 violation, a misdemeanor criminal offense, or a traffic  
3 violation may file a petition in the court in the county or  
4 municipality in which the charges were filed or the conviction  
5 entered to expunge all records relating to the conviction when  
6 all of the following circumstances exist:

7           (1) All probation or parole requirements have been  
8 completed.

9           (2) Three years have passed from the date of  
10 conviction. If the conviction is for domestic violence in the  
11 third degree, five years must have passed from the date of  
12 conviction.

13           (3) The person has no conviction for a violent  
14 felony offense. For purposes of this act, a violent felony  
15 offense shall be defined as capital murder, murder,  
16 manslaughter, rape in the first degree, sodomy in the first  
17 degree, attempted murder, assault in the first degree, assault  
18 in the second degree, robbery in the first degree, or robbery  
19 in the second degree.

20           (4) The person has no conviction for a sexual  
21 offense involving a minor.

22           (5) The person is not a convicted sex offender.

23           (6) The person was not operating a commercial motor  
24 vehicle which required the person to possess a commercial  
25 driver's license at the time of the violation which led to the  
26 conviction.

1           (7) The person was not convicted of any of the  
2 offenses enumerated in 49 C.F.R. Section 383.51.

3           Section 3. A person who has been charged with a  
4 felony offense may file a petition in the court in the county  
5 or municipality in which the charges were filed, or the court  
6 that dismissed the charges, to expunge all records relating to  
7 the charge in any of the following circumstances:

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

9           (2) When the charge has been no billed by a grand  
10 jury.

11           (3) When the person has been found not guilty of the  
12 charge.

13           (4) The charge was dismissed after successful  
14 completion of a drug court program, mental health court  
15 program, diversion program, or any court-approved deferred  
16 prosecution program.

17           (5) The charge was dismissed without prejudice, has  
18 not been refiled, and the person has not been convicted of any  
19 other felony or misdemeanor crime, any violation, or any  
20 traffic violation, excluding minor traffic violations, during  
21 the previous five years.

22           Section 4. (a) A petition filed under this act shall  
23 include a sworn statement made by the person seeking  
24 expungement under the penalty of perjury stating that the  
25 person has satisfied the requirements set out in Section 1, 2,  
26 or 3.

1 (b) A petitioner shall serve the prosecuting  
2 authority a copy of the petition and the sworn affidavit. The  
3 prosecuting authority shall notify the victim of the petition  
4 and the victim's right to object. The prosecuting authority  
5 shall have a period of 45 days to file a written objection to  
6 the granting of the petition or the prosecuting authority will  
7 be deemed to have consented to the granting of the petition.  
8 The prosecuting authority shall serve the petitioner or the  
9 petitioner's counsel a copy of the written objection.

10 Section 5. (a) An administrative assessment fee of  
11 six hundred dollars (\$600) shall be paid at the time the  
12 petition is filed. The administrative fee shall be distributed  
13 as follows:

14 (1) Three hundred dollars (\$300) to the Fair Trial  
15 Tax Fund.

16 (2) Seventy-five dollars (\$75) to the district  
17 attorney's office or municipal attorney's office that is the  
18 prosecuting authority in the case to be expunged.

19 (3) One hundred dollars (\$100) to the clerk's office  
20 of the circuit, district, or municipal court for the court  
21 having jurisdiction over the matter, for the use and benefit  
22 of the circuit, district, or municipal court clerk.

23 (4) Twenty-five dollars (\$25) to the Alabama Crime  
24 Victim's Compensation Commission.

25 (5) One hundred dollars (\$100) to the Alabama  
26 Department of Public Safety.

1 (b) A person seeking relief under this act may apply  
2 for indigent status by completing an Affidavit of Substantial  
3 Hardship and Order which shall be submitted with the petition.  
4 If the court finds the petitioner is indigent, the court may  
5 set forth a payment plan for the petitioner to satisfy the  
6 filing fee over a period of time.

7 Section 6. (a) If the prosecuting authority or  
8 victim files an objection to the granting of a petition under  
9 Section 5, the court having jurisdiction over the matter shall  
10 set a date for a hearing. The court shall notify the  
11 prosecuting authority and the petitioner of the hearing date.  
12 The prosecuting authority shall produce the petitioner's  
13 criminal history at the hearing. In the discretion of the  
14 court, the court may consider the following factors:

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

16 (2) Circumstances under which the offense occurred.

17 (3) Date of the offense.

18 (4) Age of the person when the offense was  
19 committed.

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

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

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

26 (8) Evidence of rehabilitation, including good  
27 conduct in prison or jail, in the community, counseling or



1 psychiatric treatment received, acquisition of additional  
2 academic or vocational schooling, successful business or  
3 employment history, and the recommendation of his or her  
4 supervisors or other persons in the community.

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

12 (c) The court shall grant the petition if it is  
13 reasonably satisfied from the evidence that the petitioner has  
14 complied with and satisfied the requirements of Section 1, 2,  
15 or 3. The court shall have discretion over the number of cases  
16 that may be expunged pursuant to this act after the first case  
17 is expunged. The ruling of the court shall be subject to  
18 certiorari review and shall not be reversed absent a showing  
19 of an abuse of discretion.

20 (d) If no objection to a petition is filed by the  
21 prosecuting authority or victim, the court having jurisdiction  
22 over the matter may rule on the merits of the petition without  
23 setting the matter for hearing. In such cases, the court shall  
24 grant the petition if it is reasonably satisfied from the  
25 evidence that the petitioner has complied with and satisfied  
26 the requirements of Section 1, 2, or 3. The court shall have

1 discretion over the number of cases that may be expunged  
2 pursuant to this act after the first case is expunged.

3 Section 7. (a) Upon the granting of a petition  
4 pursuant to Section 1 or 3, the court shall order the  
5 destruction of all records in the custody of the court and any  
6 records in the custody of any other agency or official,  
7 including law enforcement records. On the effective date of  
8 this act and for 18 months thereafter, every agency with  
9 records relating to the arrest, charge, or other matters  
10 arising out of the arrest or charge that is ordered to destroy  
11 the records shall certify to the court within 180 days of the  
12 entry of the expungement order that the required expungement  
13 action has been completed.

14 (b) Eighteen months after the effective date of this  
15 act, every agency with records relating to the arrest, charge,  
16 or other matters arising out of the arrest or charge that is  
17 ordered to destroy the records shall certify to the court  
18 within 60 days of the entry of the expungement order that the  
19 required expungement action has been completed.

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

1           Section 8. (a) Upon the granting of a petition  
2 pursuant to Section 2, the court shall order that all records  
3 in the custody of the court and any records in the custody of  
4 any other agency or official, including law enforcement  
5 records, be sealed and removed from public disclosure. On the  
6 effective date of this act and for 18 months thereafter, every  
7 agency with records relating to the arrest, charge, or other  
8 matters arising out of the arrest or charge that is ordered to  
9 seal records shall certify to the court within 180 days of the  
10 entry of the expungement order that the required expungement  
11 action has been completed.

12           (b) Eighteen months after the effective date of this  
13 act, every agency with records relating to the arrest, charge,  
14 or other matters arising out of the arrest or charge that is  
15 ordered to seal records shall certify to the court within 60  
16 days of the entry of the expungement order that the required  
17 expungement action has been completed.

18           (c) After the sealing of the records pursuant to  
19 subsection (a), the proceedings regarding the charge shall be  
20 deemed never to have occurred. The court and other agencies  
21 shall reply to any inquiry that no record exists on the  
22 matter. The petitioner whose record was sealed shall not have  
23 to disclose the fact of the record or any matter relating  
24 thereto on an application for employment, credit, or other  
25 type of application.

26           (d) Inspection of the expunged records may be  
27 permitted by the court only upon an application by the person

1 who is the subject of the records and only to those persons  
2 directed to receive the information in the application except  
3 for those circumstances provided for in this section. The  
4 prosecuting authority may inspect the expunged records for any  
5 legitimate law enforcement or prosecutorial purpose, without  
6 requirement of notice or judicial process. A defendant may  
7 move the court having jurisdiction over that defendant's case  
8 to allow inspection by the defendant of the records of a  
9 witness against the defendant to determine if that witness has  
10 had any records expunged or to require the prosecuting  
11 authority to provide all expunged records of its witnesses to  
12 the defendant. Information contained in the expunged records  
13 cannot be used by the prosecuting authority or the defendant  
14 in future proceedings without approval of the court having  
15 jurisdiction over the matter and only after the court has  
16 sufficiently notified the person who is the subject of the  
17 records and conducted a hearing on the matter prior to the  
18 hearing or trial in which the records are sought to be used.  
19 The admission of those records in any proceeding shall be  
20 subject to the Alabama Rules of Evidence.

21 Section 9. For purposes of this act, the term record  
22 includes, but is not limited to, all of the following:

- 23 (1) Arrest records.
- 24 (2) Booking or arrest photographs of the petitioner.
- 25 (3) Index references such as SJICS or any other  
26 governmental index references for public records search.

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

5           Section 10. Nothing in this act shall prohibit a law  
6 enforcement agency or official or a prosecuting authority or  
7 the Alabama Department of Forensic Sciences from maintaining  
8 an investigative file, which may include evidence, biological  
9 evidence photographs, exhibits, or information in documentary  
10 or electronic form.

11          Section 11. No order of expungement shall be granted  
12 unless all court ordered restitution is paid in full,  
13 including interest, to any victim, or the Alabama Crime  
14 Victim's Compensation Commission, as well as court costs,  
15 fines, or statutory fees ordered by the sentencing court to  
16 have been paid, absent a finding of indigency by the court.

17          Section 12. Although this bill would have as its  
18 purpose or effect the requirement of a new or increased  
19 expenditure of local funds, the bill is excluded from further  
20 requirements and application under Amendment 621, now  
21 appearing as Section 111.05 of the Official ReCompilation of  
22 the Constitution of Alabama of 1901, as amended, because the  
23 bill defines a new crime or amends the definition of an  
24 existing crime.

25          Section 13. This act shall become effective on the  
26 first day of the third month following its passage and  
27 approval by the Governor, or its otherwise becoming law.

