

1 SB202  
2 152108-2  
3 By Senator Bedford  
4 RFD: Judiciary  
5 First Read: 14-FEB-13

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4 ENGROSSED

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7 A BILL  
8 TO BE ENTITLED  
9 AN ACT

10  
11 To authorize a person to petition a circuit or  
12 district court to have the record of certain felony or  
13 misdemeanor offenses, violations, or traffic violations  
14 expunged when the person is found not guilty or the charges  
15 are dismissed; and in connection therewith would have as its  
16 purpose or effect the requirement of a new or increased  
17 expenditure of local funds within the meaning of Amendment 621  
18 of the Constitution of Alabama of 1901, now appearing as  
19 Section 111.05 of the Official ReCompilation of the  
20 Constitution of Alabama of 1901, as amended.

21 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

22 Section 1. (a) A person who has been charged with a  
23 misdemeanor criminal offense, violation, or traffic violation  
24 may file a petition in the circuit or district court in the  
25 county in which the charges were filed, or the court that  
26 dismissed the charges, to expunge all records relating to the  
27 charge in any of the following circumstances:

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

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

4 (3) When the person has been found not guilty of the  
5 charge.

6 (4) When the charge was dismissed without prejudice,  
7 has not been refiled, and the person has not been convicted of  
8 any other felony or misdemeanor crime, any violation, or any  
9 traffic violation, excluding minor traffic violations, during  
10 the previous two years.

11 Section 2. A person who has been charged with a  
12 felony offense may file a petition in the circuit or district  
13 court in the county in which the charges were filed, or the  
14 court that dismissed the charges, to expunge all records  
15 relating to the charge in any of the following circumstances:

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

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

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

21 (4) The charge was dismissed after successful  
22 completion of a drug court program, mental health court  
23 program, diversion program, or any court-approved deferred  
24 prosecution program.

25 (5) The charge was dismissed without prejudice, has  
26 not been refiled, and the person has not been convicted of any  
27 other felony or misdemeanor crime, any violation, or any

1 traffic violation, excluding minor traffic violations, during  
2 the previous five years.

3 Section 3. A petition filed under this act shall  
4 include a sworn statement made by the person seeking  
5 expungement under the penalty of perjury stating that the  
6 person has satisfied the requirements set out in Section 1 or  
7 2.

8 Section 4. (a) An administrative assessment fee of  
9 three hundred dollars (\$300) shall be paid at the time the  
10 petition is filed. The administrative fee shall be distributed  
11 as follows:

12 (1) Seventy five dollars (\$75) to the Fair Trial Tax  
13 Fund.

14 (2) Seventy five dollars (\$75) to the State General  
15 Fund.

16 (3) Thirty seven dollars and fifty cents (\$37.50) to  
17 the district attorney's office that is the prosecuting  
18 authority in the case to be expunged.

19 (4) Twenty five dollars (\$25) to the circuit clerk's  
20 office in the county where the circuit or district court is  
21 located, for the use and benefit of the circuit clerk.

22 (5) Twelve dollars and fifty cents (\$12.50) to the  
23 Alabama Crime Victim's Compensation Commission.

24 (6) Twenty five dollars (\$25) to the Alabama  
25 Department of Public Safety.

26 (7) Fifty dollars (\$50) to the Administrative Office  
27 of Courts.

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 5. The court having jurisdiction over the  
8 matter may rule on the merits of a petition filed under this  
9 act without setting the matter for hearing. The court shall  
10 grant the petition if it is reasonably satisfied from the  
11 evidence that the petitioner has complied with and satisfied  
12 the requirements of Section 1 or 2. The court shall have  
13 discretion over the number of cases that may be expunged  
14 pursuant to this act after the first case is expunged.

15 Section 6. (a) Upon the granting of a petition  
16 pursuant to Section 1 or 2, the court shall order the  
17 destruction of all records in the custody of the court and any  
18 records in the custody of any other agency or official,  
19 including law enforcement records. On the effective date of  
20 this act and for 18 months thereafter, every agency with  
21 records relating to the arrest, charge, or other matters  
22 arising out of the arrest or charge that is ordered to destroy  
23 the records shall certify to the court within 180 days of the  
24 entry of the expungement order that the required expungement  
25 action has been completed.

26 (b) Eighteen months after the effective date of this  
27 act, every agency with records relating to the arrest, charge,

1 or other matters arising out of the arrest or charge that is  
2 ordered to destroy the records shall certify to the court  
3 within 60 days of the entry of the expungement order that the  
4 required expungement action has been completed.

5 (c) After the expungement of records pursuant to  
6 subsection (a), the proceedings regarding the charge shall be  
7 deemed never to have occurred. The court and other agencies  
8 shall reply to any inquiry that no record exists on the  
9 matter. The petitioner whose record was expunged shall not  
10 have to disclose the fact of the record or any matter relating  
11 thereto on an application for employment, credit, or other  
12 type of application.

13 Section 7. For purposes of this act, the term record  
14 includes, but is not limited to, all of the following:

15 (1) Arrest records.

16 (2) Booking or arrest photographs of the petitioner.

17 (3) Index references such as SJICS or any other  
18 governmental index references for public records search.

19 (4) Other data, whether in documentary or electronic  
20 form, relating to the arrest, charge, or other matters arising  
21 out of the arrest or charge.

22 Section 8. Nothing in this act shall prohibit a law  
23 enforcement agency or official, prosecuting authority, the  
24 Department of Forensic Sciences, or the Department of Human  
25 Resources from maintaining an investigative file or log, which  
26 may include evidence, biological evidence photographs,  
27 exhibits, or information in documentary or electronic form.

1                   Section 9. Although this bill would have as its  
2 purpose or effect the requirement of a new or increased  
3 expenditure of local funds, the bill is excluded from further  
4 requirements and application under Amendment 621, now  
5 appearing as Section 111.05 of the Official Recompilation of  
6 the Constitution of Alabama of 1901, as amended, because the  
7 bill defines a new crime or amends the definition of an  
8 existing crime.

9                   Section 10. This act shall become effective on the  
10 first day of the third month following its passage and  
11 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..... 14-FEB-13

Read for the second time and placed on the calen-  
dar 2 amendments..... 05-MAR-13

Read for the third time and passed as amended .... 16-APR-13

Yeas 21  
Nays 7

Patrick Harris  
Secretary