

1 HB59  
2 108915-5  
3 By Representative England  
4 RFD: Judiciary  
5 First Read: 03-FEB-09  
6 PFD: 01/05/2009

1  
2 ENROLLED, An Act,

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

12 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

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

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

22 (3) When the person has been found not guilty of the  
23 charge.

24 (4) When ~~(b) A person who has been charged with a~~  
25 ~~felony offense and the charge was dismissed without prejudice,~~

1 has not been refiled, and the person has not been convicted of  
2 any other felony or misdemeanor crime, any violation, or any  
3 traffic violation, excluding minor traffic violations, during  
4 the previous two years.

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

11 (1) All probation or parole requirements have been  
12 completed.

13 (2) Three years have passed from the date of  
14 conviction. If the conviction is for domestic violence in the  
15 third degree, five years must have passed from the date of  
16 conviction.

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

24 (4) The person has no conviction for a sexual  
25 offense involving a minor.

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

2           (6) The person was not operating a commercial motor  
3 vehicle which required the person to possess a commercial  
4 driver's license at the time of the violation which led to the  
5 conviction. ~~(6) The person does not hold a valid commercial~~  
6 ~~driver's license.~~

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

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

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

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

17           (3) When the person has been found not guilty of the  
18 charge.

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

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

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

3 Section 4. ~~A person who has been convicted of a~~  
4 ~~Class C felony offense may file a petition in the court in the~~  
5 ~~county or municipality in which the charges were filed or the~~  
6 ~~conviction entered to expunge all records relating to the~~  
7 ~~conviction when all of the following circumstances exist:~~

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

10 (2) ~~Seven years have passed from the date of~~  
11 ~~conviction.~~

12 (3) ~~The person has no conviction for the following~~  
13 ~~offenses: Capital murder, murder, manslaughter, rape in the~~  
14 ~~first degree, sodomy in the first degree, attempted murder,~~  
15 ~~assault in the first degree, assault in the second degree,~~  
16 ~~robbery in the first degree, robbery in the second degree,~~  
17 ~~kidnapping in the first degree, kidnapping in the second~~  
18 ~~degree, sexual torture, sexual abuse in the first degree,~~  
19 ~~enticing a child to enter a vehicle, house, etc. for immoral~~  
20 ~~purposes, aggravated stalking, soliciting a child by computer,~~  
21 ~~transmitting obscene material to a child by computer, domestic~~  
22 ~~violence first degree, domestic violence second degree, child~~  
23 ~~abuse, aggravated child abuse, adult abuse, adult neglect,~~  
24 ~~adult exploitation, chemical endangerment of a child by~~  
25 ~~exposure to an environment in which controlled substances are~~

1 ~~produced or distributed, crime of terrorism, soliciting or~~  
2 ~~providing support for an act of terrorism, dissemination or~~  
3 ~~public display of obscene matter to persons under 17 years of~~  
4 ~~age, possession and possession with intent to disseminate~~  
5 ~~obscene matter to persons under 17 years of age, parent or~~  
6 ~~guardian permitting children to engage in production of~~  
7 ~~obscene matter, production of obscene matter of persons under~~  
8 ~~17 years of age, unlawful distribution of controlled~~  
9 ~~substances, unlawful manufacture of a controlled substance~~  
10 ~~first degree, unlawful manufacture of a controlled substance~~  
11 ~~second degree, trafficking in controlled substance, or~~  
12 ~~conducting a trafficking enterprise.~~

13 ~~(4) The person has no conviction for a sexual or~~  
14 ~~violent offense involving a minor.~~

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

16 ~~(6) The person was not operating a commercial motor~~  
17 ~~vehicle which required the person to possess a commercial~~  
18 ~~driver's license at the time of the violation which led to the~~  
19 ~~conviction.~~

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

22 Section 5. (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

1 person has satisfied the requirements set out in Section 1, 2,  
2 or 3, ~~or 4~~.

3 (b) A petitioner shall serve the prosecuting  
4 authority a copy of the petition and the sworn affidavit. The  
5 prosecuting authority shall notify the victim of the petition  
6 and the victim's right to object. The prosecuting authority  
7 shall have a period of ~~30~~ 45 days to file a written objection  
8 to the granting of the petition or the prosecuting authority  
9 will be deemed to have consented to the granting of the  
10 petition. The prosecuting authority shall serve the petitioner  
11 or the petitioner's counsel a copy of the written objection.

12 Section 6. (a) An administrative assessment fee of  
13 ~~five hundred dollars (\$500)~~ six hundred dollars (\$600) shall  
14 be paid at the time the petition is filed. The administrative  
15 fee shall be distributed as follows:

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

18 (2) ~~One hundred dollars (\$100)~~ Seventy five dollars  
19 (\$75) to the district attorney's office or municipal  
20 attorney's office that is the prosecuting authority in the  
21 case to be expunged.

22 (3) ~~Seventy-five dollars (\$75)~~ One hundred dollars  
23 (\$100) to the clerk's office of the circuit, district, or  
24 municipal court for the court having jurisdiction over the

1     matter, for the use and benefit of the Circuit, District, or  
2     Municipal Ct Clerk.

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

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

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

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

- 21            (1) Nature and seriousness of the offense committed.  
22            (2) Circumstances under which the offense occurred.  
23            (3) Date of the offense.  
24            (4) Age of the person when the offense was  
25    committed.



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

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

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

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

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

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

1 subject to certiorari review and shall not be reversed absent  
2 a showing 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, 2, or 3, ~~or 4~~. The court shall  
10 have discretion over the number of cases that may be expunged  
11 pursuant to this act after the first case is expunged.

12 Section 8. (a) Upon the granting of a petition  
13 pursuant to Section 1 or 3, the court shall order the  
14 destruction of all records in the custody of the court and any  
15 records in the custody of any other agency or official,  
16 including law enforcement records. On the effective date of  
17 this act and for 18 months thereafter, every ~~Every~~ agency with  
18 records relating to the arrest, charge, or other matters  
19 arising out of the arrest or charge that is ordered to destroy  
20 the records shall certify to the court within ~~60~~ 180 days of  
21 the entry of the expungement order that the required  
22 expungement action has been completed.

23 After the first 18 months of the effective date of  
24 this act, every agency with records relating to the arrest,  
25 charge, or other matters arising out of the arrest or charge

1 that is ordered to destroy the records shall certify to the  
2 court within 60 days of the entry of the expungement order  
3 that the required expungement action has been completed.

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

12 Section 9. (a) Upon the granting of a petition  
13 pursuant to Section 2 ~~or 4~~, the court shall order that all  
14 records in the custody of the court and any records in the  
15 custody of any other agency or official, including law  
16 enforcement records, be sealed and removed from public  
17 disclosure. On the effective date of this act and for 18  
18 months thereafter, every ~~Every~~ agency with records relating to  
19 the arrest, charge, or other matters arising out of the arrest  
20 or charge that is ordered to seal records shall certify to the  
21 court within ~~60~~ 180 days of the entry of the expungement order  
22 that the required expungement action has been completed.

23 After the first 18 months of the effective date of  
24 this act, every agency with records relating to the arrest,  
25 charge, or other matters arising out of the arrest or charge

1     that is ordered to seal records shall certify to the court  
2     within 60 days of the entry of the expungement order that the  
3     required expungement action has been completed.

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

12            (c) Inspection of the expunged records may be  
13    permitted by the court only upon an application by the person  
14    who is the subject of the records and only to those persons  
15    directed to receive the information in the application except  
16    for those circumstances provided for in this section. The  
17    prosecuting authority may inspect the expunged records for any  
18    legitimate law enforcement or prosecutorial purpose, without  
19    requirement of notice or judicial process. A defendant may  
20    move the court having jurisdiction over that defendant's case  
21    to allow inspection by the defendant of the records of a  
22    witness against the defendant to determine if that witness has  
23    had any records expunged or to require the prosecuting  
24    authority to provide all expunged records of its witnesses to  
25    the defendant. Information contained in the expunged records

1 cannot be used by the prosecuting authority or the defendant  
2 in future proceedings without approval of the court having  
3 jurisdiction over the matter and only after the court has  
4 sufficiently notified the person who is the subject of the  
5 records and conducted a hearing on the matter prior to the  
6 hearing or trial in which the records are sought to be used.  
7 The admission of those records in any proceeding shall be  
8 subject to the Alabama Rules of Evidence.

9 Section 10. For purposes of this act, the term  
10 "record" includes, but is not limited to, all of the  
11 following:

- 12 (1) Arrest records.
- 13 (2) Booking or arrest photographs of the petitioner.
- 14 (3) Index references such as SJICS or any other  
15 governmental index references for public records search.
- 16 (4) Other data, whether in documentary or electronic  
17 form, relating to the arrest, charge, or other matters arising  
18 out of the arrest or charge or relating to the conviction or  
19 other matters arising out of the conviction.

20 Section 11. Nothing in this act shall prohibit a law  
21 enforcement agency or official or a prosecuting authority or  
22 The Alabama Department of Forensic Sciences from maintaining  
23 an investigative file, which may include evidence, biological  
24 evidence photographs, exhibits, or information in documentary  
25 or electronic form.

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

7           Section 13. 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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Speaker of the House of Representatives

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President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in  
and was passed by the House 16-APR-09, as amended.

Greg Pappas  
Clerk

Senate	<hr/> 07-MAY-09 <hr/>	Amended and Passed
House	<hr/> 07-MAY-09 <hr/>	Concurred in Senate Amendment