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Indicates New Matter

COMMITTEE REPORT

May 3, 2017

**H. 3789**

Introduced by Reps. Govan, Yow, Henegan, J.E. Smith, Thigpen, Hart, Clemmons, Whipper and Brown

S. Printed 5/3/17--S.

Read the first time April 4, 2017.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (H. 3789) to amend the Code of Laws of South Carolina, 1976, so as to enact the “South Carolina Youth Challenge Academy and South Carolina Jobs Challenge Program Expungement Act”, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, page 2, by striking lines 40 through 43, Section 17-22-1010, as contained in SECTION 2, and inserting therein the following:

/ Section 17-22-1010. (A) A person who is eligible for expungement of his criminal record pursuant to the provisions of Sections 22-5-910, 22-5-920, 34-11-90(e), and 56-5-750(f) may apply to have his record expunged pursuant to the procedures provided in Article 9 if he graduates and /

Amend the bill further, as and if amended, page 3, by striking lines 13 through 39, and inserting therein the following:

/ (C) If the expungement order is granted by the court, the records must be destroyed or retained by any law enforcement agency or municipal, county, or state agency or department pursuant to the provisions of Section 17‑1‑40.

(D) The effect of the expungement order is to restore the person, in the contemplation of the law, to the status he occupied before the arrest or indictment or information. No person as to whom the order has been entered may be held pursuant to another provision of law to be guilty of perjury or otherwise giving a false statement by reason of his failure to recite or acknowledge the arrest, or indictment or information, or trial in response to an inquiry made of him for any purpose.

(E) After the expungement, the South Carolina Law Enforcement Division is required to keep a nonpublic record of the offense and the date of the expungement to ensure that no person takes advantage of the rights of this section more than once. This nonpublic record is not subject to release pursuant to Section 34‑11‑95, the Freedom of Information Act, or any other provision of law except to those authorized law or court officials who need to know this information in order to prevent the rights afforded by this section from being taken advantage of more than once.

(F) As used in this section, ‘conviction’ includes a guilty plea, a plea of nolo contendere, or the forfeiting of bail.”

SECTION 3. Section 17-22-910(A) of the 9176 Code, as last amended by Act 22 of 2015, is further amended to read:

“(A) Applications for expungement of all criminal records must be administered by the solicitor's office in each circuit in the State as authorized pursuant to:

(1) Section 34‑11‑90(e), first offense misdemeanor fraudulent check;

(2) Section 44‑53‑450(b), conditional discharge;

(3) Section 22‑5‑910, first offense conviction in magistrates court;

(4) Section 22‑5‑920, youthful offender act;

(5) Section 56‑5‑750(f), first offense failure to stop when signaled by a law enforcement vehicle;

(6) Section 17‑22‑150(a), pretrial intervention;

(7) Section 17‑1‑40, criminal records destruction, except as provided in Section 17‑22‑950;

(8) Section 63‑19‑2050, juvenile expungements;

(9) Section 17‑22‑530(A), alcohol education program;

(10) Section 17‑22‑330(A), traffic education program; ~~and~~

(11) Section 17-22-1010, youth challenge academy and jobs challenge program; and

~~(11)~~(12) any other statutory authorization.”

SECTION 4. Section 17‑22‑940(E) of the 1976 Code, as last amended by Act 276 of 2014, is further amended to read:

“(E) In cases when charges are sought to be expunged pursuant to Section 17‑22‑150(a), 17‑22‑530(a), 22‑5‑910, ~~or~~ 44‑53‑450(b), or 17‑22‑1010, the circuit pretrial intervention director, alcohol education program director, traffic education program director, South Carolina Youth Challenge Academy director, or summary court judge shall attest by signature on the application to the eligibility of the charge for expungement before either the solicitor or his designee and then the circuit court judge, or the family court judge in the case of a juvenile, signs the application for expungement.”

SECTION 5. This act takes effect upon approval by the Governor. /

Renumber sections to conform.

Amend title to conform.

BRAD HUTTO for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**Explanation of Fiscal Impact**

**Introduced on February 16, 2017**

**State Expenditure**

Currently, both active and retired members of the South Carolina Army National Guard (SCNG) and other branches of the military administer the South Carolina Youth Challenge Academy Program to help at-risk youth learn basic skills and achieve the education necessary to succeed in life. The intensive residential program, which provides military leadership and discipline for youths ages sixteen to nineteen, consists of eight core components, including academic excellence, life-coping skills, job skills, health and hygiene, responsible citizenship, service to community, leadership/followership, and physical fitness. The state has partnered with the U.S. Department of Labor to offer youth who successfully graduate from the Youth Challenge Academy Program the opportunity to take part in a five and one-half month South Carolina Jobs Challenge Program which provides training for careers in such fields as nursing assistance, welding, and computer technology.

This bill creates the South Carolina Youth Challenge Academy and South Carolina Jobs Challenge Program Expungement Act. If passed, the act will enable successful graduates of the Youth Challenge Academy and the Jobs Challenge Program to apply for expungement of their criminal record immediately upon graduation. If the person has had no other conviction (including a guilty plea, a plea of nolo contendere, or the forfeiting of bail) during the approximately one-year period required to complete both programs, the circuit court may issue an order expunging the records including any associated bench warrant. No person may have his records expunged under these provisions more than once. Once an expungement under these provisions has been granted, the State Law Enforcement Division (SLED) must keep a nonpublic record of the offense and the date of the expungement to ensure that no person takes advantage of expungement pursuant to this act more than once. The nonpublic record is not subject to release under the Freedom of Information Act but may be released to those authorized law or court officials who need to know the information in order to prevent a person from taking advantage of the expungement afforded by the act more than once. The South Carolina Youth Challenge Academy program director, or summary court judge must attest by signature on the expungement application as to the eligibility of the charge for expungement, before the solicitor or his designee and then to the circuit court judge, or family court judge in the case of a juvenile, signs the application.

**Judicial Department.**  This bill allows those eligible for expungement of a criminal record who graduate and complete the South Carolina Youth Challenge Academy and South Carolina Jobs Challenge Program to apply to have their records expunged under certain circumstances. Circuit court and family court judges may be required to sign expungement forms of those eligible for expungement under the bill. However, these judges currently sign certain expungement forms, therefore there will be no expenditure impact on the general fund.

**South Carolina Law Enforcement Division.** The implementation of this bill will have no expenditure impact to the general fund, other funds, or federal funds, as the agency expects to manage any additional responsibilities within current resources.

**South Carolina National Guard.** The implementation of this bill will have no expenditure impact to the general fund, other funds, or federal funds, as the National Guard expects to manage any additional responsibilities within current resources.

**Commission on Prosecution Coordination.** This bill allows those eligible for expungement of a criminal record who graduate and complete the South Carolina Youth Challenge Academy and South Carolina Jobs Challenge Program to apply to have their records expunged under certain circumstances. As the commission anticipates there being only a slight increase in expungement requests each year as a result of the Guard program, the commission expects solicitors to manage any expenditure impact within current resources.

**State Revenue**

Applicants for expungement pay the State Law Enforcement Division (SLED) a $25.00 fee for verifying and documenting that the applicant’s criminal charges are appropriate for expungement. Currently, approximately 100 youth successfully complete and graduate from the Academy and Jobs Challenge Program each year. If 100 applied for expungement of their criminal record, SLED would receive approximately $2,500 annually. Therefore, the revenue impact on other funds is expected to be minimal.

**Local Expenditure**

Clerks of court file a variety of documents in the ordinary course of business, including expungement orders, and the number of expungement orders filed is not expected to increase significantly because of this bill. Consequently, the Revenue and Fiscal Affairs Office does not anticipate clerks of court will incur additional expenditures. Further, as noted above, the Commission on Prosecution Coordination expects solicitors’ offices to manage the increase in expungement requests with existing resources. Therefore, this bill is not expected to have an expenditure impact on local government.

**Local Revenue**

Applicants for expungement of criminal records pay a $250.00 administration fee to the solicitor’s office, which the solicitor’s office retains and uses to defray costs of the expungement process. Applicants for expungement of criminal records also pay a $35.00 fee to the clerk of court for filing an order of expungement. As the numbers of additional expungement applications and orders are not expected to increase significantly, the revenue impact on local government should be minimal. If 100 program graduates applied for and received an order of expungement, solicitors would receive $25,000 a year and clerks of court would collect $3,500 annually.

Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, SO AS TO ENACT THE “SOUTH CAROLINA YOUTH CHALLENGE ACADEMY AND SOUTH CAROLINA JOBS CHALLENGE PROGRAM EXPUNGEMENT ACT”; BY ADDING ARTICLE 10 TO CHAPTER 22, TITLE 17 SO AS TO PROVIDE THAT PERSONS ELIGIBLE FOR EXPUNGEMENT OF A CRIMINAL RECORD PURSUANT TO SECTION 17‑22‑910 WHO SUCCESSFULLY GRADUATE AND COMPLETE THE SOUTH CAROLINA YOUTH CHALLENGE ACADEMY AND SOUTH CAROLINA JOBS CHALLENGE PROGRAM ADMINISTERED BY THE SOUTH CAROLINA ARMY NATIONAL GUARD MAY APPLY TO HAVE THEIR RECORD EXPUNGED UPON SUCCESSFUL GRADUATION AND COMPLETION OF THE PROGRAMS UNDER CERTAIN DELINEATED CIRCUMSTANCES; AND TO AMEND SECTION 17‑22‑940, AS AMENDED, RELATING TO THE EXPUNGEMENT PROCESS, SO AS TO INCLUDE A REFERENCE TO THE DIRECTOR OF THE SOUTH CAROLINA YOUTH CHALLENGE ACADEMY ATTESTING TO THE ELIGIBILITY OF THE CHARGE FOR EXPUNGEMENT ON AN EXPUNGEMENT APPLICATION.

Whereas, the South Carolina General Assembly recognizes the efforts of the South Carolina National Guard in administering the South Carolina Youth Challenge Academy program designed to help at‑risk youth learn basic skills and achieve the education necessary to succeed in life; and

Whereas, offering two classes a year, the program provides a unique educational environment and serves the state’s youth looking for a second chance to succeed; and

Whereas, the program is led by current and retired members of the South Carolina Army National Guard and other branches of the military providing military leadership and discipline to students in the program with the eight core components of the intensive residential program being academic excellence, life‑coping skills, job skills, health and hygiene, responsible citizenship, service to community, leadership/followership, and physical fitness; and

Whereas, in partnership with the federal Department of Labor, the State is pleased to offer youth who successfully graduate from the program an opportunity to take part in a five and one‑half month South Carolina Jobs Challenge Program which provides training for careers in such fields as nursing assistance, welding, and computer technology; and

Whereas, this approximate yearlong commitment by youths ages sixteen to nineteen towards building a better future warrants allowing those youths that may have a criminal record otherwise eligible for expungement to apply to have their record expunged upon the successful graduation and completion of the South Carolina Youth Challenge Academy and the South Carolina Jobs Challenge Program administered by the South Carolina Army National Guard. Now, therefore,

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. This act may be cited as the “South Carolina Youth Challenge Academy and South Carolina Jobs Challenge Program Expungement Act”.

SECTION 2. Chapter 22, Title 17 of the 1976 Code is amended by adding:

“Article 10

South Carolina Youth Challenge Academy

and South Carolina Jobs Challenge Program Expungement

Section 17‑22‑1010. (A) A person who is eligible for expungement of his criminal record pursuant to the provisions of Section 17‑22‑910 may apply to have his record expunged pursuant to the procedures provided in Article 9 if he graduates and successfully completes the South Carolina Youth Challenge Academy and the South Carolina Jobs Challenge Program administered by the South Carolina Army National Guard. Notwithstanding another provision of law, such person may apply for expungement immediately upon graduation and successful completion of the South Carolina Youth Challenge Academy and the South Carolina Jobs Challenge Program.

(B) If the person has had no other conviction during the approximately one‑year period as provided in subsection (A), the circuit court may issue an order expunging the records including any associated bench warrant. No person may have his records expunged under this section more than once.

(C) After the expungement, the South Carolina Law Enforcement Division is required to keep a nonpublic record of the offense and the date of the expungement to ensure that no person takes advantage of the rights of this section more than once. This nonpublic record is not subject to release pursuant to Section 34‑11‑95, the Freedom of Information Act, or any other provision of law except to those authorized law or court officials who need to know this information in order to prevent the rights afforded by this section from being taken advantage of more than once.

(D) As used in this section, ‘conviction’ includes a guilty plea, a plea of nolo contendere, or the forfeiting of bail.”

SECTION 3. Section 17‑22‑940(E) of the 1976 Code, as last amended by Act 276 of 2014, is further amended to read:

“(E) In cases when charges are sought to be expunged pursuant to Section 17‑22‑150(a), 17‑22‑530(a), 22‑5‑910, ~~or~~ 44‑53‑450(b), or 17‑22‑1010, the circuit pretrial intervention director, alcohol education program director, traffic education program director, South Carolina Youth Challenge Academy director, or summary court judge shall attest by signature on the application to the eligibility of the charge for expungement before either the solicitor or his designee and then the circuit court judge, or the family court judge in the case of a juvenile, signs the application for expungement.”

SECTION 4. This act takes effect upon approval by the Governor.

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