**A** **BILL**

TO AMEND SECTION 17‑1‑40, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO DESTRUCTION OR EXPUNGEMENT OF CERTAIN ARREST AND BOOKING RECORDS UNDER CERTAIN CIRCUMSTANCES, SO AS TO PROVIDE FOR THE RETENTION OF EVIDENCE GATHERED, INCIDENT REPORTS, AND INVESTIGATIVE FILES PRODUCED AS A RESULT OF A LAW ENFORCEMENT ACTION, TO PROVIDE THAT THESE MATERIALS ARE NOT SUBJECT TO AN EXPUNGEMENT ORDER, AND AUTHORIZE REDACTION OF CERTAIN INFORMATION FOLLOWING A NO CONVICTION DISPOSITION OF THE CRIMINAL CHARGE.

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

SECTION 1. Section 17‑1‑40 of the 1976 Code, as last amended by Act 75 of 2013, is further amended to read:

“Section 17‑1‑40. (A) A person who after being charged with a criminal offense and the charge is discharged, proceedings against the person are dismissed, or the person is found not guilty of the charge, the arrest and booking record, files, mug shots, and fingerprints of the person must be destroyed and no evidence of the record pertaining to the charge may be retained by any municipal, county, or state law enforcement agency. Provided, however, that local and state detention and correctional facilities may retain booking records, identifying documentation and materials, and other institutional reports and files under seal, on all persons who have been processed, detained, or incarcerated, for a period not to exceed three years from the date of the expungement order to manage their statistical and professional information needs and, ~~where~~ when necessary, to defend such facilities during litigation proceedings except when an action, complaint, or inquiry has been initiated. Information retained by a local or state detention or correctional facility as permitted under this section after an expungement order has been issued is not a public document and is exempt from disclosure. ~~Such~~ This information only may be disclosed by judicial order, pursuant to a subpoena filed in a civil action, or as needed during litigation proceedings. A person who otherwise intentionally retains the arrest and booking record, files, mug shots, fingerprints, or any evidence of the record pertaining to a charge discharged or dismissed pursuant to this section is guilty of contempt of court.

(B) Evidence gathered, incident reports, and investigative files produced as a result of a law enforcement action or investigation must be retained, under seal, by the agency for future investigative purposes or any other law enforcement purpose, and are not subject to an order for destruction of arrest records. Provided, however, specific language indicating a subject has been arrested or charged with a crime must be redacted from the incident report following a no conviction disposition of such criminal charge.

(C) A municipal, county, or state agency may not collect a fee for the destruction of records pursuant to the provisions of this section.

(~~C~~D) This section does not apply to a person who is charged with a violation of Title 50, Title 56, an enactment pursuant to the authority of counties and municipalities provided in Titles 4 and 5, or any other state criminal offense if the person is not fingerprinted for the violation.

(~~D~~E) The State Law Enforcement Division is authorized to promulgate regulations that allow for the electronic transmission of information pursuant to this section.”

SECTION 2. This act takes effect upon approval by the Governor.

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