~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

April 1, 2015

**S. 133**

Introduced by Senators Davis and Kimpson

S. Printed 4/1/15--S.

Read the first time January 13, 2015.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (S. 133) to amend Section 63‑19‑2050 of the 1976 Code, relating to record destruction of juvenile records, to provide for the automatic expungement of juvenile records, 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, by striking all after the enacting words, and inserting:

/ SECTION 1. Section 17-22-910 of the 1976 Code is amended to read:

“Section 17-22-910. 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 ~~20‑7‑8525~~ 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) any other statutory authorization.”

SECTION 2. Section 63-19-2050 of the 1976 Code is amended to read:

“Section 63-19-2050. (A)(1) A person who has been taken into custody for, charged with, or adjudicated delinquent for having committed a status offense or a nonviolent ~~offense~~ crime, as defined in Section 16-1-70, may petition the court for an order ~~destroying~~ expunging all official records relating to:

~~(1)~~(a) being taken into custody;

~~(2)~~(b) the charges filed against the ~~child~~ person;

~~(3)~~(c) the adjudication; and

~~(4)~~(d) the disposition.

(2) ~~The granting of the order is in the court’s discretion. However, a~~ A person may not petition the court if ~~he~~ the person has a prior adjudication for an offense that would carry a maximum term of imprisonment of five years or more if committed by an adult.

(B) A prosecution or law enforcement agency may file an objection to the expungement. If an objection is filed, the expungement must be heard by the court. The prosecution or law enforcement agency’s reason for objecting must be that the person has other charges pending or the charges are not eligible for expungement. The prosecution or law enforcement agency shall notify the person of the objection. The notice must be given in writing at the most current address on file with the court, or through the person’s counsel of record.

(C)(1) If the person has been taken into custody for, charged with, or adjudicated delinquent for having committed a status offense, the court shall grant the expungement order. If the person has been taken into custody for, charged with, or adjudicated delinquent for having committed multiple status offenses, the court may grant an expungement order for the multiple status offenses.

(2) If the person has been taken into custody for, charged with, or adjudicated delinquent for having committed a nonviolent crime, as defined in Section 16-1-70, the court may grant the expungement order.

(3) ~~In addition, the~~ The court ~~must~~ shall not grant the expungement order unless ~~it~~ the court finds that the person ~~who is seeking to have the records destroyed~~ is at least ~~eighteen~~ seventeen years of age, has successfully completed any dispositional sentence imposed, ~~and~~ has not been subsequently ~~charged with~~ adjudicated for or convicted of any criminal offense, and does not have any criminal charges pending in family court or general sessions court. If the person was found not guilty in an adjudicatory hearing in the family court, the court shall grant the expungement order regardless of the person’s age and the person must not be charged a fee for the expungement. ~~(B)~~ An adjudication for a violent crime, as defined in Section 16‑1‑60, must not be expunged.

~~(C)~~(D) If the expungement order is granted by the court, ~~no evidence of~~ the records ~~may~~ must be destroyed or retained by any law enforcement agency or ~~by any~~ municipal, county, state agency, or department pursuant to the provisions of Section 17-1-40.

(E) The effect of the expungement order is to restore the person in the contemplation of the law to the status the person occupied before being taken into custody. No person to whom the expungement order has been entered may be held thereafter under any provision of ~~any~~ law to be guilty of perjury or otherwise giving false statement by reason of failing to recite or acknowledge the charge or adjudication in response to an inquiry made of the person for any purpose.

~~(D)~~(F) For purposes of this section, an adjudication is considered a previous adjudication only if ~~it~~ the adjudication occurred prior to the date the subsequent offense was committed.

(G) The court, at the time of adjudication, shall notify the person of the person’s ability to have the person’s record expunged, the conditions that must be met, as well as the process for receiving an expungement in the particular jurisdication pursuant to this section.”

SECTION 3. This act takes effect upon approval by the Governor. /

Renumber sections to conform.

Amend title to conform.

THOMAS D. CORBIN for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**Fiscal Impact Summary**

This bill will have no impact on the general fund, federal funds, or other funds.

**Explanation of Fiscal Impact**

**State Expenditure**

This bill provides for automatic expungement of juvenile records for certain non-violent crimes, for the circumstances under which automatic expungement may occur, and for an expungement process for certain juvenile records. The expungement process primarily occurs within solicitors’ offices. Therefore, it is anticipated by the Judicial Department that this bill would have no impact on the general fund, federal funds, or other funds.

Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

**A** **BILL**

TO AMEND SECTION 63‑19‑2050 OF THE 1976 CODE, RELATING TO RECORD DESTRUCTION OF JUVENILE RECORDS, TO PROVIDE FOR THE AUTOMATIC EXPUNGEMENT OF JUVENILE RECORDS FOR NON‑VIOLENT CRIMES THAT OCCUR BEFORE THE AGE OF SIXTEEN YEARS OLD, TO PROVIDE FOR THE CIRCUMSTANCES UNDER WHICH THE AUTOMATIC EXPUNGEMENT MAY OCCUR, AND TO PROVIDE FOR AN EXPUNGEMENT PROCESS FOR JUVENILE RECORDS RELATED TO CERTAIN CRIMES THAT OCCUR AT THE AGE OF SIXTEEN OR SEVENTEEN YEARS OLD.

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

SECTION 1. Section 63‑19‑2050 of the 1976 Code is amended to read:

“Section 63‑19‑2050. (A) A person who has been taken into custody for, charged with, or adjudicated delinquent for having committed a status offense or a nonviolent ~~offense~~ crime as defined in Section 16‑1‑70, at the age of sixteen or seventeen, may petition the court for an order destroying all official records relating to:

(1) being taken into custody;

(2) the charges filed against the child;

(3) the adjudication; and

(4) disposition.

The granting of the order is in the court’s discretion. However, a person may not petition the court if he has a prior adjudication for an offense that would carry a maximum term of imprisonment of five years or more if committed by an adult. In addition, the court must not grant the order unless it finds that the person who is seeking to have the records destroyed is at least eighteen years of age, has successfully completed any dispositional sentence imposed, and has not been subsequently charged with any criminal offense.

(B)(1) Subject to the provisions in item (2), a person who has been taken into custody for, charged with, or adjudicated delinquent for having committed a status offense or a nonviolent crime as defined in Section 16‑1‑70 before the age of sixteen shall have all official records automatically expunged relating to:

(a) being taken into custody;

(b) the charges filed against the child;

(c) the adjudication; and

(d) the disposition.

(2) For the automatic expungement to occur, the person whose records are to be expunged must be at least eighteen, has successfully completed any dispositional sentence imposed, and has not been subsequently charged with any criminal offense.

~~(B)~~ (C) An adjudication for a violent crime, as defined in Section 16‑1‑60, must not be expunged.

~~(C)~~ (D) ~~If the expungement order is granted by the court~~, Upon expungement, no evidence of the records may be retained by any law enforcement agency or by any municipal, county, state agency, or department. The effect of the order is to restore the person in the contemplation of the law to the status the person occupied before being taken into custody. No person to whom the order has been entered may be held thereafter under any provision of any law to be guilty of perjury or otherwise giving false statement by reason of failing to recite or acknowledge the charge or adjudication in response to an inquiry made of the person for any purpose.

~~(D)~~ (E) For purposes of this section, an adjudication is considered a previous adjudication only if it occurred prior to the date the subsequent offense was committed.”

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

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