



**SOUTH CAROLINA REVENUE AND FISCAL AFFAIRS OFFICE**  
**STATEMENT OF ESTIMATED FISCAL IMPACT**  
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**Bill Number:** H. 3209 Veto Overridden on June 27, 2018  
**Author:** Pope  
**Subject:** Expungement of Criminal Records  
**Requestor:** House of Representatives  
**RFA Analyst(s):** Gardner  
**Impact Date:** August 21, 2018

**Estimate of Fiscal Impact**

	<b>FY 2018-19</b>	<b>FY 2019-20</b>
<b>State Expenditure</b>		
General Fund	See Below	\$0
Other and Federal	\$0	\$0
Full-Time Equivalent Position(s)	1.00	0.00
<b>State Revenue</b>		
General Fund	\$0	\$0
Other and Federal	Undetermined	\$0
<b>Local Expenditure</b>	\$0	\$0
<b>Local Revenue</b>	Undetermined	\$0

**Fiscal Impact Summary**

The State Law Enforcement Division will hire one additional FTE and purchase equipment to satisfy the requirements of the bill. The recurring salary and fringe for the additional FTE will result in an annual General Fund expenditure increase of \$42,000 in FY 2018-19. In addition, this bill will increase non-recurring General Fund expenditures by \$1,000 in FY 2018-19 for the purchase of new computer equipment.

The Commission on Prosecution Coordination and Judicial Department report that there will be no expenditure impact to the General Fund, Other Funds, or Federal Funds. Although the bill may increase expungement applications, the agencies expect to manage the increase with existing resources and processes.

This bill is not expected to have an expenditure impact on local government as the Commission on Prosecution Coordination expects solicitors' offices to manage any increase in expungement applications with existing resources.

As the number of additional expungement applications and orders cannot be estimated, the revenue impact on local governments is undetermined.

## Explanation of Fiscal Impact

### Veto Overridden on June 27, 2018

#### State Expenditure

**Section 1.** Section 4 of this bill authorizes expungement of a first offense conviction of any offense under Title 44, Chapter 53, Article 3 involving possession of a controlled substance, including offenses for which a person is conditionally discharged. This section of the bill, Section 1, requires solicitors to administer applications for expungement of these criminal offenses.

In addition, this section authorizes expungement of records, if the offense for which a person was convicted is subsequently repealed, and elements of the repealed offense are consistent with an existing similar offense that is currently eligible for expungement. The provisions of this section also apply retroactively to allow expungement as provided by law for offenses listed in Section 17-22-910(A), including first offense simple possession or possession with intent to distribute offenses.

**Section 2.** Previously, a person may have his or her criminal record expunged for a first offense conviction of domestic violence in the third degree, and for a first offense conviction for any crime carrying a penalty of not more than 30 days imprisonment, a fine of not more than \$1,000, or both, unless the crime involved a motor vehicle. This bill allows expungement of these offenses for any conviction, not just the first, including convictions of criminal domestic violence as punished for a first offense before June 4, 2015. The current waiting periods continue to apply.

This section also allows any number of offenses carrying a penalty of not more than 30 days imprisonment, a fine of not more than \$1,000, or both to be treated as one conviction for expungement, if the offenses are closely connected and arose out of the same incident. Further, the section allows expungement of out-of-state convictions for these offenses.

**Section 3.** Previously, a person convicted as a youthful offender may have a first conviction expunged after 5 years from the completion of his or her sentence, including probation and parole. This section adds a new condition for expungement. The additional requirement is that the youthful offender not be convicted of any other offense during the time he or she is serving their sentence, including probation and parole, and the 5 years following completion of his or her sentence, including probation and parole.

This section allows expungement of the youthful offender's record for out-of-state convictions as well as in-state convictions, and it allows any number of offenses to be treated as one conviction for expungement, if the offenses are closely connected and arose out of the same incident.

Previously, expungement of a youthful offender's record is not allowed for certain offenses. This bill adds offenses requiring registration as a sex offender to the list of offenses a youthful offender cannot have expunged.

**Section 4.** This section adds provisions enabling persons convicted of a first offense for possession of a controlled substance to apply for expungement of their criminal records, provided they do not have any pending criminal charges and provided that 3 years from the date of completion of sentence, including probation and parole, have passed. If a person in this case

has had no other convictions during the three-year post-conviction period, the circuit court may order an expungement of his records. No person may have their records expunged pursuant to this section if the person has had a conditional discharge within 5 years prior to the date of arrest for the charge sought to be expunged if the charge sought to be expunged is simple possession of marijuana, or within the 10 years prior to the date of arrest for the charge sought to be expunged if the charge sought to be expunged is for the simple possession of any other controlled substance or the unlawful possession of a prescription drug under Section 40-43-86(EE). A person's record may be expunged under these provisions even when his conviction occurred before the effective date of the bill. Expungement is allowed for both in-state and out-of-state convictions, and any number of offenses may be treated as one conviction for expungement, if the offenses are closely connected and arose out of the same incident.

This section of the bill also requires the South Carolina Law Enforcement Division (SLED) to keep a nonpublic record of the offense and the date of expungement to ensure that no person takes advantage of his expungement rights more than once. This nonpublic record is not subject to the Freedom of Information Act but may be released to authorized law or court officials to ensure no person takes advantage of his expungement rights more than once.

**Section 5.** This section allows any number of non-violent crimes or status offenses, for which a person received a youthful offender sentence, to be treated as one conviction for expungement, if the offenses are closely connected and arose out of the same incident.

**Section 6.** In most circumstances, an applicant who requests expungement of an eligible charge must pay an administrative fee of \$250 per individual order to the solicitor's office in the assigned jurisdiction. The bill exempts an applicant from paying this fee if the charge was brought in general sessions court, unless the charge subject to expungement was dismissed, discharged, or nolle prossed as part of a plea arrangement where the defendant pled guilty and was sentenced for other charges. The bill also requires that the solicitor's office establish an account for the collection of private donations intended to defray the cost of expungement fees by up to 50 percent. However, the solicitor's office is not responsible for requesting or soliciting these funds, which may be requested for use by applicants on a first come, first served basis.

The Uniform Expungement of Criminal Records Act (Article 9, Title 17) requires directors of specified pre-trial intervention and educational programs, or a summary court judge, to attest that a participant's charges are eligible for expungement before the person's expungement application proceeds. This section adds traffic education programs to the list of programs requiring the program director's attestation.

Currently, the State Law Enforcement Division (SLED) must verify and document that criminal charges are appropriate for expungement, unless expungement is sought pursuant to certain sections of law. This section of the bill adds to those code sections so that SLED does not have to verify the charges are eligible for expungement when expungement is sought for completion of a traffic education program, a pre-trial intervention program, an alcohol education program, or fulfillment of the terms of conditional discharge.

The section further provides that any minor traffic-related offense that is not related in any way to driving under the influence of alcohol is not a bar to expungement for (1) first offense bad checks; (2) most youthful offender convictions; (3) adjudications of delinquency for a status offense or non-violent crime; (4) first offense failure to stop when signaled by law enforcement;

(5) conviction for a crime with punishment of not more than 30 days, a fine of not more than \$1,000, or both; or (6) first offense domestic violence in the third degree.

In addition, this section of the bill provides additional exceptions to the general requirement that SLED be paid \$25 for each verification that a charge is eligible for expungement. The added exceptions to the \$25 fee are expungements pursuant to completion of a traffic education program or alcohol education program.

**Section 7.** This section of the bill provides that any business who employs a worker who has had his or her records expunged shall not, at any time, be subject to any administrative or legal claim or cause of action related to the worker's expunged offense. It also prohibits employers from using expunged information adversely against an employee and does not allow information related to an expungement to be used in any administrative or legal proceeding related to negligent hiring or retention.

**Section 8.** This section of the bill provides that the act will take effect 6 months after approval by the Governor.

**Commission on Prosecution Coordination.** The commission indicates there will be no expenditure impact to the General Fund, Other Funds, or Federal Funds of the agency. Although the bill may increase expungement applications, solicitors are expected to manage the increase with existing resources and processes.

**State Law Enforcement Division.** SLED estimates it will have to manage several hundred new applications for expungement annually as a result of the bill. In 2016, the Criminal Justice Information System unit, which processes the applications, received an average of 800 expungement requests per employee each month. The unit was able to manage the number of incoming expungement applications without encountering a backlog. To ensure the unit continues processing expungement requests in a timely manner, the agency will hire an additional staff person to process applications. The position will have a salary of \$30,000 and a fringe cost of \$12,000, resulting in a recurring General Fund expenditure impact of \$42,000 beginning in FY 2018-19. In addition, this bill will increase non-recurring General Fund expenditures by \$1,000 in FY 2018-19 to cover the cost of new computer equipment needed to process the additional expungement requests.

**Judicial Department.** Circuit court and family court judges are required to sign certain expungement forms, and petitioners may initiate an action in circuit court for a judicial determination of eligibility when the solicitor, in his discretion, does not consent to the expungement. The department expects to manage any costs associated with the processing of additional expungement forms or the handling of additional actions requiring a judicial determination within current resources.

### **State Revenue**

Previously, applicants for expungement pay the State Law Enforcement Division (SLED) a \$25 fee for verifying and documenting that the applicant's charges are appropriate for expungement. The fee does not apply when expungement is sought for a charge that was dismissed or not prosecuted, or the person was found not guilty. Proviso 62.13 of the FY 2018-19 Appropriations Act authorizes SLED to retain expungement fees to offset the agency's operational and research expenses associated with processing expungement requests.

This bill increases the records that are eligible for expungement, but it also decreases the charges that SLED must verify as eligible for expungement by adding exceptions when an applicant successfully completes certain programs or fulfills the terms of a conditional discharge. The bill further provides that applicants completing a traffic education or alcohol education program are not required to pay SLED the \$25 verification fee.

SLED currently receives around \$40,000 each fiscal year from expungement fees. While the revenue impact is not expected to be significant, the bill's overall effect on the number of expungement applications cannot be estimated. Therefore, the revenue impact on Other Funds is undetermined.

### **Local Expenditure**

As clerks of court file a variety of documents in the ordinary course of business, including expungement orders, 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 any increase in expungement applications with existing resources. Therefore, this bill is not expected to have an expenditure impact on local government, especially since any additional work will be spread among the various clerks' and solicitors' offices.

### **Local Revenue**

Applicants for expungement of criminal records pay a \$250 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 records also pay a \$35 fee to the clerk of court for filing an order of expungement. As the number of additional expungement applications and orders cannot be estimated, the revenue impact on local government is undetermined. SLED's current revenue of about \$40,000 a year for verifying charges as eligible for expungement equates to approximately 1,650 charges reviewed annually.



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