**South Carolina General Assembly**

120th Session, 2013-2014

**H. 3036**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. Rutherford and G.R. Smith

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Introduced in the House on January 8, 2013

Currently residing in the House Committee on **Judiciary**

Summary: Expungement of criminal records

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

12/11/2012 House Prefiled

12/11/2012 House Referred to Committee on **Judiciary**

1/8/2013 House Introduced and read first time ([House Journal‑page 59](file:///h:\HJ%20Archive\2013\01-08-13.docx))

1/8/2013 House Referred to Committee on **Judiciary** ([House Journal‑page 59](file:///h:\HJ%20Archive\2013\01-08-13.docx))

**VERSIONS OF THIS BILL**

[12/11/2012](file:///p:\pprever\2013-14\3036_20121211.docx)

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 24‑21‑1010 SO AS TO PERMIT A PERSON WHO APPLIES FOR A PARDON FOR CERTAIN OFFENSES TO REQUEST THAT THE BOARD OF PAROLES AND PARDONS RECOMMEND THE EXPUNGEMENT OF CRIMINAL RECORDS, TO ALLOW RETROACTIVE APPLICATION OF THE STATUTE, TO PROVIDE AN EXCEPTION FOR PERSONS PARDONED FOR A VIOLENT CRIME, TO PROVIDE AN APPLICATION FEE, AND TO PROVIDE A PROCEDURE BY WHICH CRIMINAL RECORDS MAY BE EXPUNGED AND A NONPUBLIC RECORD MAINTAINED.

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

SECTION 1. Article 11, Chapter 21, Title 24 of the 1976 Code is amended by adding:

“Section 24‑21‑1010. (A)(1) A person who is applying for an order of pardon for an offense pursuant to this article may request that the South Carolina Board of Paroles and Pardons recommend the expungement of records related to the offense.

(2) A person who has received an order of pardon for an offense pursuant to this article prior to the effective date of this section may apply to the South Carolina Board of Paroles and Pardons to request that the board recommend the expungement of records related to the offense.

(B) This section does not apply to a person who is applying for an order of pardon or has received an order of pardon for a felony offense defined as a violent crime. For the purposes of this section violent crime is defined as any crime listed in Section 16‑1‑60 but shall not include any drug offenses listed in Chapter 53, Title 44.

(C) The applicant shall pay a recommendation of expungement application fee of one hundred dollars, which must be retained by the South Carolina Department of Probation, Parole and Pardon Services and used to defray the costs associated with the expungement process. The fee is nonrefundable, regardless of whether the offense is later determined to be ineligible for expungement. If the applicant is applying for an order of pardon and a recommendation of expungement at the same time, the applicant shall pay both the order of pardon application fee and the recommendation of expungement application fee.

(D) The South Carolina Department of Probation, Parole and Pardon Services shall implement policies and procedures consistent with this section to ensure that the recommendation of expungement process is properly conducted. Such policies and procedures must include, but are not limited to:

(1) assisting the applicant in completing the recommendation of expungement application;

(2) collecting from the applicant and distributing to the appropriate agencies separate certified checks or money orders for charges prescribed by this section;

(3) notifying the appropriate victim of the application pursuant to Section 16‑3‑1560, and the appropriate prosecuting or law enforcement agency;

(4) coordinating with the South Carolina Law Enforcement Division to confirm that the offense is statutorily appropriate for expungement;

(5) obtaining and verifying the presence of all necessary signatures; and

(6) providing copies of the completed recommendation of expungement to the applicant.

(E) The South Carolina Law Enforcement Division shall verify and document that the offense sought to be expunged is appropriate for expungement. The South Carolina Law Enforcement Division shall receive a twenty‑five dollar certified check or money order from the South Carolina Department of Probation, Parole and Pardon Services on behalf of the applicant made payable to the South Carolina Law Enforcement Division. The South Carolina Law Enforcement Division shall forward the necessary documentation back to the South Carolina Department of Probation, Parole and Pardon Services. Neither the South Carolina Department of Probation, Parole and Pardon Services nor the South Carolina Law Enforcement Division shall allow the applicant to take possession of the application during the recommendation of expungement application process.

(F)(1) The appropriate prosecuting or law enforcement agency may file an objection to the recommendation of expungement with the South Carolina Board of Paroles and Pardons within sixty days of receiving notice of the application. The prosecuting or law enforcement agency’s reason for objecting must be that the:

(a) applicant has other charges pending;

(b) prosecuting or law enforcement agency believes that the evidence in the case needs to be preserved; or

(c) applicant’s charges were dismissed as a part of a plea agreement.

(2) The prosecuting or law enforcement agency must notify the applicant of the objection in writing at the address listed on the application.

(G) The appropriate victim may file an objection to the recommendation of expungement with the Board of Paroles and Pardon within one year of receiving notice of the application.

(H) If an objection is filed by the prosecuting agency, law enforcement agency, or the victim, the objection must be heard by the South Carolina Board of Paroles and Pardons, acting in a three‑member panel or meeting as a full board, and taken into consideration when the board is making a determination as to whether to recommend expungement of the applicant’s records.

(I) If no objection is filed by the prosecuting agency, law enforcement agency, or the victim, an administrative hearing officer, appointed by the Director of the South Carolina Department of Probation, Parole and Pardon Services, may review the application and submit to the South Carolina Board of Paroles and Pardons written findings of fact and recommendations which must be taken into consideration when the board is making a determination as to whether to recommend expungement of the applicant’s records.

(J) If the South Carolina Board of Paroles and Pardons, acting in a three‑member panel or meeting as a full board, recommends expungement of the applicant’s records, ten years have passed since the completion of all terms and conditions of the person’s sentence, including payment of restitution, and the person has had no other convictions other than minor traffic offenses during the ten‑year period, the person may apply to the appropriate solicitors office for expungement pursuant to Article 9, Chapter 22, Title 17.

(K)(1) No person may have the person’s records expunged pursuant to this section more than once.

(2) After the expungement, the South Carolina Department of Probation, Parole and Pardon Services and the South Carolina Law Enforcement Division shall keep a nonpublic record of the offense and the order of expungement to ensure that no person takes advantage of the rights of this section more than once. The 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 the information in order to prevent the rights afforded by this section from being taken advantage of more than once.”

SECTION 2. This act takes effect six months after approval by the Governor.

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