**A** **BILL**

TO AMEND SECTION 17‑1‑40, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO EXPUNGEMENT OF CERTAIN ARREST AND BOOKING RECORDS UNDER CERTAIN CIRCUMSTANCES, SO AS TO AUTHORIZE A SOLICITOR TO NOTIFY THE STATE LAW ENFORCEMENT DIVISION WHEN A PERSON PLEADS GUILTY TO A LESSER-INCLUDED OFFENSE TO INSURE CERTAIN CRIMINAL DATABASES REFLECT THE APPROPRIATE OFFENSE.

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

SECTION 1. Section 17‑1‑40(B) of the 1976 Code, as last amended by Act 276 of 2014, is further amended to read:

“(B)(1) If a person’s record is expunged pursuant to Article 9, ~~Title 17,~~ Chapter 22, Title 17, because the person was charged with a criminal offense, or was issued a courtesy summons pursuant to Section 22‑3‑330 or another provision of law, and the charge was discharged, proceedings against the person were dismissed, or the person was found not guilty of the charge, then the arrest and booking record, associated bench warrants, mug shots, and fingerprints of the person must be destroyed and no evidence of the record pertaining to the charge or associated bench warrants may be retained by any municipal, county, or state agency. Provided, however, that:

(a) law enforcement and prosecution agencies shall retain the arrest and booking record, associated bench warrants, mug shots, and fingerprints of the person under seal for three years and one hundred twenty days. A law enforcement or prosecution agency may retain the information indefinitely for purposes of ongoing or future investigations and prosecution of the offense, and to defend the agency and the agency’s employees during litigation proceedings. The information must remain under seal. The information is not a public document and is exempt from disclosure~~,~~ except by court order~~.~~;

(b) detention and correctional facilities shall 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 and one hundred twenty days from the date of the expungement order to manage the facilities’ statistical and professional information needs, and to defend the facilities and the facilities’ employees during litigation proceedings~~,~~ except when an action, complaint, or inquiry has been initiated. The information is not a public document and is exempt from disclosure~~,~~ except by court order.

(2) If a person pleads guilty to a lesser‑included offense and the solicitor deems it appropriate, the solicitor shall notify the State Law Enforcement Division (SLED) and SLED shall ensure the person’s record contained in the National Crime Information Center (NCIC) database or other similar database reflects the lesser‑included offense rather than the offense originally charged.

(3) A municipal, county, or state agency, or an employee of a municipal, county, or state agency that intentionally violates this subsection is guilty of contempt of court.

~~(3)~~(4) Nothing in this subsection requires the South Carolina Department of Probation, Parole and Pardon Services to expunge the probation records of persons whose charges were dismissed by conditional discharge pursuant to Section 44‑53‑450.”

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

‑‑‑‑XX‑‑‑‑