**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 17‑1‑43 SO AS TO PROVIDE FOR THE DESTRUCTION OF ARREST RECORDS OF PERSONS ARRESTED AS A RESULT OF MISTAKEN IDENTITY NOT LATER THAN ONE HUNDRED EIGHTY DAYS AFTER AN INVESTIGATION BY A LAW ENFORCEMENT OR PROSECUTION AGENCY REVEALS THAT THE PERSON WAS ARRESTED AS A RESULT OF MISTAKEN IDENTITY AND TO PROVIDE THAT THE LAW ENFORCEMENT OR PROSECUTION AGENCY MAY NOT CHARGE OR COLLECT A FEE FOR THE DESTRUCTION OF ARREST RECORDS UNDER THESE CIRCUMSTANCES; AND BY ADDING SECTION 17‑1‑70 SO AS TO ALLOW PERSONS CHARGED WITH SPECIFIC OFFENSES TO PETITION TO HAVE THEIR CHARGES DISMISSED IF THEY HAVE NOT BEEN ADJUDICATED OR OTHERWISE DISMISSED AFTER A PERIOD OF TIME AND OTHER DELINEATED CONDITIONS ARE MET, AND TO PROVIDE PROCEDURES FOR THE DESTRUCTION OF THE RECORDS.

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

SECTION 1. Chapter 1, Title 17 of the 1976 Code is amended by adding:

“Section 17‑1‑43. (A) Notwithstanding the provisions of Section 17‑1‑40, not later than one hundred eighty days after an investigation by a law enforcement or prosecution agency reveals that a person was arrested as a result of mistaken identity and no charges have been filed against the person nor will be filed due to the mistaken identity, the law enforcement or prosecution agency with appropriate jurisdiction shall destroy the arrest records of that person made as a result of mistaken identity. The law enforcement or prosecution agency, as appropriate, shall establish a review process for verifying that a person’s arrest records relating to mistaken identity in which no charges were filed have been destroyed as provided in this section. Neither the law enforcement or prosecution agency may charge or collect a fee for the destruction of arrest records pursuant to the provisions of this section.

(B) 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, administrative hearings, 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.”

SECTION 2. Chapter 1, Title 17 of the 1976 Code is amended by adding:

“Section 17‑1‑70. (A) A person charged with an offense listed in subsection (B) may petition the solicitor in the county in which the alleged offense occurred for dismissal of the alleged offense that has not been adjudicated by trial or guilty plea, or otherwise disposed of or dismissed, after five years from the date he was charged with the offense. If the petitioner has no other pending charges unrelated to the subject charge and no criminal convictions subsequent to the alleged offense, the solicitor must approve the dismissal of the offense charged and must do so within thirty days of receipt of the petition for dismissal.

(B) The following offenses are eligible for dismissal pursuant to the provisions of subsection (A):

(1) simple assault or assault and battery in the third degree pursuant to Section 16‑3‑600(E);

(2) public intoxication or disorderly conduct pursuant to Section 16‑17‑530;

(3) breach of trust with fraudulent intent pursuant to Section 16‑13‑230(1);

(4) open container in a motor vehicle pursuant to Section 61‑4‑110;

(5) trespassing pursuant to Section 16‑11‑600;

(6) misdemeanor drawing or uttering a fraudulent check pursuant to Sections 34‑11‑60 and 34‑11‑90;

(7) misdemeanor shoplifting pursuant to Section 16‑13‑110(B)(1);

(8) driving under suspension pursuant to Section 56‑1‑460(A)(1);

(9) simple possession of a controlled substance pursuant to Article 3, Chapter 53, Title 44; or

(10) a similar local or state offense for which, in the discretion of the solicitor, the elements are substantially similar as for any of the above listed offenses.

(C) Upon dismissal of the offense pursuant to the requirements of this section, the solicitor in the county in which the alleged offense occurred shall notify the State Law Enforcement Division (SLED) and SLED shall remove the pending charge from the petitioner’s criminal record within ten days of notification of dismissal. Additionally, any arrest and booking records, 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. 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.”

SECTION 3. This act takes effect upon approval of the Governor and applies retroactively to offenses charged before the effective date of this act.

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