

1 HB28  
2 180261-2  
3 By Representative England  
4 RFD: Judiciary  
5 First Read: 07-FEB-17  
6 PFD: 12/01/2016

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8 SYNOPSIS: Under existing law, a person charged with a  
9 misdemeanor criminal offense, traffic violation, or  
10 municipal ordinance violation and certain felony  
11 offenses may petition the circuit court to have the  
12 criminal record expunged if the charge was  
13 dismissed or if he or she meets other limited  
14 conditions.

15 This bill would provide for the expungement  
16 of convictions for misdemeanor criminal offenses,  
17 traffic violations, or municipal ordinance  
18 violations and certain Class C and Class D felony  
19 convictions, including those adjudicated as a  
20 youthful offender, under limited circumstances.

21 Also under existing law, the filing fee to  
22 expunge a criminal charge is \$300.

23 This bill would provide for a filing fee of  
24 \$500 for the expungement of criminal convictions.

25  
26 A BILL  
27 TO BE ENTITLED

1 AN ACT

2  
3 To amend Sections 15-27-1, 15-27-2, 15-27-3,  
4 15-27-4, 15-27-6, 15-27-7, and 15-27-8, Code of Alabama 1975,  
5 relating to the expungement of criminal records, to provide  
6 for the expungement of convictions for misdemeanor criminal  
7 offenses, traffic violations, or municipal ordinance  
8 violations, including those adjudicated as a youthful  
9 offender, under certain conditions; to provide for the  
10 expungement of certain Class C and Class D felony convictions  
11 under certain conditions; and to provide for a filing fee for  
12 the expungement of criminal convictions.

13 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

14 Section 1. Sections 15-27-1, 15-27-2, 15-27-3,  
15 15-27-4, 15-27-6, 15-27-7, and 15-27-8, Code of Alabama 1975,  
16 are amended to read as follows:

17 "§15-27-1.

18 "(a) A person who has been charged with a  
19 misdemeanor criminal offense, a violation, a traffic  
20 violation, or a municipal ordinance violation may file a  
21 petition in the criminal division of the circuit court in the  
22 county in which the charges were filed, to expunge records  
23 relating to the charge in any of the following circumstances:

24 "(1) When the charge is dismissed with prejudice.

25 "(2) When the charge has been no billed by a grand  
26 jury.

1           "(3) When the person has been found not guilty of  
2 the charge.

3           "(4) When the charge was dismissed without prejudice  
4 more than two years ago, has not been refiled, and the person  
5 has not been convicted of any other felony or misdemeanor  
6 crime, any violation, or any traffic violation, excluding  
7 minor traffic violations, during the previous two years.

8           "(5)a. The charge was dismissed after successful  
9 completion of a drug court program, mental health court  
10 program, diversion program, veteran's court, or other  
11 court-approved deferred prosecution program.

12           "b. Expungement may be a court-ordered condition of  
13 a program listed in paragraph a.

14           "c. Expungement shall be available under this  
15 subdivision immediately if agreed upon by both parties. If no  
16 agreement is reached, a petitioner may file a petition no  
17 earlier than one year after the successful completion of the  
18 program.

19           "(b) A person who has been convicted, or adjudicated  
20 as a youthful offender, of a misdemeanor criminal offense, a  
21 traffic violation, or a municipal ordinance violation may file  
22 a petition in the criminal division of the circuit court in  
23 the county in which the charges were filed or the conviction  
24 was entered to expunge records relating to the charge when all  
25 of the following circumstances exist:

1           "(1) All probation or parole requirements have been  
2 completed, including the full payment of all fines, costs,  
3 restitution, or other court-ordered amounts.

4           "(2) Three years have passed from the date of  
5 conviction.

6           "(3) The person has no prior conviction for a  
7 violent felony offense as defined in Section 12-25-32.

8           "(4) The person is not a convicted sex offender.

9           "(5) The person was not convicted of a domestic  
10 violence offense under Article 7, Chapter 6, Title 13A, Code  
11 of Alabama 1975.

12           "(6) The person was not operating a commercial  
13 vehicle that required the person to possess a commercial  
14 driver's license at the time of the violation that led to the  
15 conviction.

16           "(7) The person was not convicted of any of the  
17 offenses enumerated in 49 C.F.R. § 383.51.

18           ~~(b)~~(c) The circuit court shall have exclusive  
19 jurisdiction of a petition filed under subsection (a) or (b).

20           "§15-27-2.

21           "(a) A person who has been charged with a felony  
22 offense, ~~except a violent offense as defined in Section~~  
23 ~~12-25-32(14),~~ except an offense for which there is no statute  
24 of limitations and in which there has not been an acquittal,  
25 may file a petition in the criminal division of the circuit  
26 court in the county in which the charges were filed, to

1 expunge records relating to the charge in any of the following  
2 circumstances:

3 "(1) When the charge is dismissed with prejudice.

4 "(2) When the charge has been no billed by a grand  
5 jury.

6 "(3) When the person has been found not guilty of  
7 the charge, other than not guilty by reason of mental disease  
8 or defect.

9 "(4)a. The charge was dismissed after successful  
10 completion of a drug court program, mental health court  
11 program, diversion program, veteran's court, or any  
12 court-approved deferred prosecution program ~~after one year~~  
13 ~~from successful completion of the program.~~

14 "b. Expungement may be a court-ordered condition of  
15 a program listed in paragraph a.

16 "c. Expungement shall be available under this  
17 subdivision immediately if agreed upon by both parties. If no  
18 agreement is reached, a petitioner may file a petition no  
19 earlier than one year after the successful completion of the  
20 program.

21 "(5) The charge was dismissed without prejudice more  
22 than five years ago, has not been refiled, and the person has  
23 not been convicted of any other felony or misdemeanor crime,  
24 any violation, or any traffic violation, excluding minor  
25 traffic violations, during the previous five years.

1           "(6) Ninety days have passed from the date of  
2 dismissal with prejudice, no-bill, acquittal, or nolle  
3 prosequi and the charge has not been refiled.

4           "(7) The charge was pardoned by the Board of Pardons  
5 and Paroles and the charge is neither of the following:

6           "a. A violent felony as defined in Section 12-25-32.

7           "b. A sex offense as defined in Section 15-20A-5.

8           "(b) A person who has been convicted, or adjudicated  
9 as a youthful offender, of a Class C or Class D felony may  
10 file a petition in the circuit court in the county in which  
11 the charges were filed or the conviction entered to expunge  
12 all records relating to the conviction when all of the  
13 following circumstances exist:

14           "(1) All probation or parole requirements have been  
15 completed, including the full payment of all fines, costs,  
16 restitution, or other court-ordered amounts.

17           "(2) Five years have passed from the date of  
18 conviction.

19           "(3) The person has no prior conviction for any  
20 felony offense.

21           "(4) The offense is not a violent felony as defined  
22 in Section 12-25-32.

23           "(5) The offense is not a sex offense as defined in  
24 Section 15-20A-5.

25           "(6) The offense is not a domestic violence offense  
26 under Article 7, Chapter 6, Title 13A.

27           "(7) The person is not a convicted sex offender.

1           "(8) The person does not have a criminal charge  
2 pending.

3           "~~(b)~~ (c) The circuit court shall have exclusive  
4 jurisdiction of a petition filed under subsection (a) or (b).

5           "§15-27-3.

6           "(a) A petition filed under this chapter shall  
7 include a sworn statement made by the person seeking  
8 expungement under the penalty of perjury stating that the  
9 person has satisfied the requirements set out in this chapter  
10 and whether he or she has previously applied for an  
11 expungement in any jurisdiction and whether an expungement has  
12 been previously granted.

13           "(b) The petitioner shall include a certified record  
14 of arrest, disposition, or the case action summary from the  
15 appropriate agency for the court record the petitioner seeks  
16 to have expunged as well as a certified official criminal  
17 record obtained from the Alabama Criminal Justice Information  
18 Center. In addition to setting forth grounds for the court to  
19 consider, the petitioner shall specify what criminal charges  
20 from the record are to be considered, further specify the  
21 agency or department that made the arrest and any agency or  
22 department where the petitioner was booked or was incarcerated  
23 or detained pursuant to the arrest or charge sought to be  
24 expunged.

25           "(c) A petitioner shall serve the district attorney,  
26 the law enforcement agency, and clerk of court of the  
27 jurisdiction for which the records are sought to be expunged,



1 a copy of the petition, and the sworn affidavit. Upon  
2 notification of the petitioner, the district attorney shall  
3 make reasonable efforts to notify the victim of the petitioner  
4 filing the petition if the case for which the petition was  
5 filed qualifies under Section 15-27-1(b) or Section  
6 15-27-2(b). The district attorney shall review the petition  
7 and may make reasonable efforts to notify the victim if the  
8 petition has been filed seeking an expungement under  
9 circumstances enumerated in paragraph a. of subdivision (4) of  
10 Section 15-27-2 involving a victim that is not a governmental  
11 entity. The district attorney and the victim shall have a  
12 period of 45 days to file a written objection to the granting  
13 of the petition or the district attorney shall be deemed to  
14 have waived the right to object. The district attorney shall  
15 serve the petitioner or the petitioner's counsel a copy of the  
16 written objection.

17 "§15-27-4.

18 "(a) ~~In~~ For the expungement of records under  
19 Sections 15-27-1(a) and 15-27-2(a), except for cases in which  
20 there was an acquittal, in addition to any cost of court or  
21 docket fee for filing the petition in circuit court, an  
22 administrative filing fee of three hundred dollars (\$300)  
23 shall be paid at the time the petition is filed and is a  
24 condition precedent to any ruling of the court pursuant to  
25 this chapter. The administrative filing fee shall not be  
26 waived by the court and shall be distributed as follows:

1           "(1) Seventy-five dollars (\$75) to the State  
2           Judicial Administrative Fund.

3           "(2) Twenty-five dollars (\$25) to the Alabama  
4           Department of Forensic Sciences.

5           "(3) Fifty dollars (\$50) to the district attorney's  
6           office.

7           "(4) Fifty dollars (\$50) to the clerk's office of  
8           the circuit court having jurisdiction over the matter, for the  
9           use and benefit of the circuit court clerk.

10          "(5) Fifty dollars (\$50) to the Public Safety Fund.

11          "(6) Fifty dollars (\$50) to the general fund of the  
12          county where the arresting law enforcement agency is located  
13          if the arrest was made by the sheriff's office to be used for  
14          law enforcement purposes, or, if the arrest was made by  
15          another law enforcement agency, to the municipality or other  
16          entity or state agency funding the law enforcement activity.

17          "(b) For the expungement of records under Section  
18          15-27-1(b) or 15-27-2(b), in addition to any cost of court or  
19          docket fee for filing the petition in circuit court, an  
20          administrative filing fee of five hundred dollars (\$500) shall  
21          be paid at the time the petition is filed and is a condition  
22          precedent to any ruling of the court pursuant to this chapter.  
23          The administrative filing fee shall not be waived by the court  
24          and shall be distributed as follows:

25          "(1) One hundred dollars (\$100) to the State  
26          Judicial Administrative Fund.

1           "(2) Forty-five dollars (\$45) to the Alabama  
2 Department of Forensic Sciences.

3           "(3) One hundred fifteen dollars (\$115) to the  
4 district attorney's office.

5           "(4) Eighty dollars (\$80) to the clerk's office of  
6 the circuit court having jurisdiction over the matter, for the  
7 use and benefit of the circuit court clerk.

8           "(5) Eighty dollars (\$80) to the Public Safety Fund.

9           "(6) Eighty dollars (\$80) to the general fund of the  
10 county where the arresting law enforcement agency is located  
11 if the arrest was made by the sheriff's office to be used for  
12 law enforcement purposes, or, if the arrest was made by  
13 another law enforcement agency, to the municipality or other  
14 entity or state agency funding the law enforcement activity.

15           ~~"(b)~~ (c) Notwithstanding subsection (a) or (b), a  
16 person seeking relief under this chapter may apply for  
17 indigent status by completing an Affidavit of Substantial  
18 Hardship and Order which shall be submitted with the petition.  
19 If the court finds the petitioner is indigent, the court may  
20 set forth a payment plan for the petitioner to satisfy the  
21 filing fee over a period of time, which shall be paid in full,  
22 prior to any order granting an expungement.

23           ~~"(e)~~ (d) If a petitioner seeks expungement of an  
24 arrest record and the court in the original case made a clear  
25 and unequivocal judicial finding on the record that the arrest  
26 had no foundation of probable cause, the court, in the

1 expungement proceeding, shall waive all docket fees and court  
2 costs, except for the filling fee in subsection (a).

3 "§15-27-6.

4 "(a) Except as provided in Section 15-27-10, upon  
5 the granting of a petition pursuant to this chapter, the  
6 court, pursuant to Section 15-27-9, shall order the  
7 expungement of all records in the custody of the court and any  
8 records in the custody of any other agency or official,  
9 including law enforcement records, except privileged  
10 presentence or postsentence investigation reports produced by  
11 the Alabama Board of Pardons and Paroles and its officers,  
12 records, documents, databases, and files of the district  
13 attorney and the Office of Prosecution Services. On July 7,  
14 2014, and for 18 months thereafter, every agency with records  
15 relating to the arrest, charge, or other matters arising out  
16 of the arrest or charge that is ordered to expunge the records  
17 shall certify to the court within 180 days of the entry of the  
18 expungement order that the required expungement action has  
19 been completed.

20 "(b) After the expungement of records pursuant to  
21 subsection (a), the proceedings regarding the charge shall be  
22 deemed never to have occurred. Except as provided in this  
23 chapter, the court and other agencies shall reply to any  
24 inquiry that no record exists on the matter. The petitioner  
25 whose record was expunged shall not have to disclose the fact  
26 of the record or any matter relating thereto on an application  
27 for employment, credit, or other type of application. However,

1 the petitioner whose record was expunged shall have the duty  
2 to disclose the fact of the record and any matter relating  
3 thereto to any government regulatory or licensing agency, any  
4 utility and its agents and affiliates, or any bank or other  
5 financial institution. In these circumstances, the government  
6 regulatory or licensing agency, utility and its agents and  
7 affiliates, or the bank or other financial institution shall  
8 have the right to inspect the expunged records after filing  
9 notice with the court.

10 "(c) A petitioner shall have the right to obtain  
11 documentation that an expungement was granted upon filing a  
12 notice with the court requesting documentation and  
13 establishing proof of identity. The documentation shall be  
14 limited to the case number, petitioner's name, a listing of  
15 the charges, if requested by the petitioner, and a written  
16 certification that the case was expunged that is signed by the  
17 circuit clerk or presiding judge.

18 "§15-27-7.

19 "(a) Upon receipt of the order of expungement, a  
20 criminal justice agency in possession of records subject to  
21 the order shall immediately forward the records to the Alabama  
22 Criminal Justice Information Center. The center shall  
23 digitally archive the records in a manner prescribed by the  
24 Alabama ~~Criminal~~ Justice Information ~~Center~~ Commission and  
25 designate the records as protected notwithstanding any other  
26 provisions of this chapter. Such records may not be used for  
27 any non-criminal justice purpose and may only be made

1 available to criminal justice agencies upon acknowledgement of  
2 an investigation or other criminal matter involving the person  
3 related to the expungement, or used in criminal proceedings  
4 upon an order of the court for the limited purpose of  
5 impeachment after a showing of contradictory testimony by the  
6 petitioner. Any expunged records that were added to a federal  
7 database shall be requested to be removed and not made  
8 available within any interstate criminal database.

9 "(b) Records expunged under this chapter may not be  
10 transmitted to the Federal Bureau of Investigation national  
11 criminal records repository. Any record subject to be expunged  
12 under this chapter and transmitted to the Federal Bureau of  
13 Investigation prior to the expungement of such record shall be  
14 requested for withdrawal within the national system by the  
15 Alabama Criminal Justice Information Center.

16 "§15-27-8.

17 "Once the records are expunged pursuant to this  
18 chapter, the records, except for records held electronically  
19 in the Criminal Justice Information System (CJIS), shall be  
20 forwarded to the Alabama Criminal Justice Information Center  
21 in a manner prescribed by the Alabama ~~Criminal~~ Justice  
22 Information ~~Center~~ Commission for purposes of archiving, and  
23 the records shall be stored in a manner prescribed by the  
24 Alabama ~~Criminal~~ Justice Information ~~Center~~ Commission. The  
25 records shall be retained by the Alabama Criminal Justice  
26 Information Center indefinitely. The Alabama Justice  
27 Information Commission shall prepare and present a written

1 report to the Legislature on a yearly basis to describe the  
2 type and number of records stored and the conditions of the  
3 storage. Records held electronically in CJIS shall be sealed  
4 from view and only available by a court order obtained  
5 pursuant to this chapter."

6           Section 2. Records that have been expunged pursuant  
7 to Chapter 27, Title 15, Code of Alabama 1975, shall be  
8 released for use in a civil suit filed by a person for whom  
9 expungement was granted that is related to, or arising from,  
10 the arrest or conviction that was the subject of the  
11 expungement.

12           Section 3. This act shall become effective on the  
13 first day of the third month following its passage and  
14 approval by the Governor, or its otherwise becoming law.