

1 SB113  
2 197444-1  
3 By Senator Ward  
4 RFD: Judiciary  
5 First Read: 19-MAR-19

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8 SYNOPSIS: Under existing law, a person charged with  
9 and convicted for a misdemeanor criminal offense, a  
10 traffic violation, a municipal ordinance violation,  
11 or a nonviolent felony offense, and subsequently  
12 pardoned for the offense, by the Alabama Board of  
13 Pardons and Paroles, may not petition the circuit  
14 court to have the criminal record and the  
15 conviction expunged.

16 This bill would expand the expungement of  
17 criminal records to provide for the expungement of  
18 the criminal record and the conviction of a  
19 pardoned offender, in certain circumstances.

20 This bill would establish that any person  
21 whose record of conviction is expunged would not be  
22 relieved from the effects of the habitual felony  
23 offender law.

24 Amendment 621 of the Constitution of Alabama  
25 of 1901, now appearing as Section 111.05 of the  
26 Official ReCompilation of the Constitution of  
27 Alabama of 1901, as amended, prohibits a general

1 law whose purpose or effect would be to require a  
2 new or increased expenditure of local funds from  
3 becoming effective with regard to a local  
4 governmental entity without enactment by a 2/3 vote  
5 unless: it comes within one of a number of  
6 specified exceptions; it is approved by the  
7 affected entity; or the Legislature appropriates  
8 funds, or provides a local source of revenue, to  
9 the entity for the purpose.

10 The purpose or effect of this bill would be  
11 to require a new or increased expenditure of local  
12 funds within the meaning of the amendment.  
13 However, the bill does not require approval of a  
14 local governmental entity or enactment by a 2/3  
15 vote to become effective because it comes within  
16 one of the specified exceptions contained in the  
17 amendment.

18  
19 A BILL  
20 TO BE ENTITLED  
21 AN ACT  
22

23 Relating to expungement; to amend Sections 15-27-1  
24 and 15-27-2, as last amended by Act 2018-506, 2018 Regular  
25 Session, Code of Alabama 1975; to specify that a circuit court  
26 judge may order the expungement of a criminal record and  
27 conviction of a person subsequently pardoned for a conviction

1 of certain criminal offenses by the Alabama Board of Pardons  
2 and Paroles, in certain circumstances; to provide for the  
3 expungement of the criminal record and the conviction of the  
4 pardoned individual; to provide that any person whose record  
5 of conviction is expunged would not be relieved from effects  
6 of the habitual felony offender law; and in connection  
7 therewith would have as its purpose or effect the requirement  
8 of a new or increased expenditure of local funds within the  
9 meaning of Amendment 621 of the Constitution of Alabama of  
10 1901, now appearing as Section 111.05 of the Official  
11 Recompilation of the Constitution of Alabama of 1901, as  
12 amended.

13 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

14 Section 1. Sections 15-27-1 and 15-27-2, as last  
15 amended by Act 2018-506, 2018 Regular Session, Code of Alabama  
16 1975, 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) When the person proves by a preponderance of  
9 the evidence that the person is a victim of human trafficking,  
10 that the person committed the misdemeanor criminal offense,  
11 violation, traffic violation, or municipal ordinance violation  
12 during the period the person was being trafficked, and that  
13 the person would not have committed the offense or violation  
14 but for being trafficked. Evidence that a person is a victim  
15 of human trafficking may include, but is not limited to,  
16 evidence that the person's trafficker was convicted of  
17 trafficking the person under Section 13A-6-152 or Section  
18 13A-6-153.

19           "(b) (1) A person who has been charged with and  
20 convicted for a misdemeanor criminal offense, a violation, 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, to expunge all  
24 records relating to the charge and the conviction, if all of  
25 the following occur:

26           "a. The person has been subsequently pardoned for  
27 the conviction by the Alabama Board of Pardons and Paroles.

1           "b. All civil and political rights which were  
2 forfeited as a result of the conviction have been restored.

3           "c. Five years have passed from the date of the  
4 conviction.

5           "d. The conviction is not a serious traffic offense,  
6 as defined in Sections 32-5A-190 to 32-5A-195, inclusive.

7           "e. The conviction is not a sex offense, as defined  
8 in Section 15-20A-5.

9           "f. The conviction is not an offense involving moral  
10 turpitude, as defined in Section 17-3-30.1.

11           "(2) Records related to offenses and convictions may  
12 be disclosed to law enforcement agencies and prosecutorial  
13 services for criminal investigation purposes, as provided in  
14 Section 15-27-7.

15           "(3) Any person whose record of conviction is  
16 expunged pursuant to this chapter is not relieved from the  
17 effects of Section 13A-5-9, relating to habitual felony  
18 offenders.

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

22           "§15-27-2.

23           "(a) A person who has been charged with a felony  
24 offense, except a violent offense as defined in Section  
25 12-25-32, may file a petition in the criminal division of the  
26 circuit court in the county in which the charges were filed,

1 to expunge records relating to the charge in any of the  
2 following 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)a. The charge was dismissed after successful  
7 completion of a drug court program, mental health court  
8 program, diversion program, veteran's court, or any  
9 court-approved deferred prosecution program after one year  
10 from successful completion of the program.

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

13 "(4) The charge was dismissed without prejudice more  
14 than five years ago, has not been refiled, and the person has  
15 not been convicted of any other felony or misdemeanor crime,  
16 any violation, or any traffic violation, excluding minor  
17 traffic violations, during the previous five years.

18 "(5) Ninety days have passed from the date of  
19 dismissal with prejudice, no-bill, acquittal, or nolle  
20 prosequi and the charge has not been refiled.

21 "(6) When the person proves by a preponderance of  
22 the evidence that the person is a victim of human trafficking,  
23 that the person committed the felony offense during the period  
24 the person was being trafficked, and that the person would not  
25 have committed the felony offense but for being trafficked.  
26 Evidence that a person is a victim of human trafficking may  
27 include, but is not limited to, evidence that the person's

1 trafficker was convicted of trafficking the person under  
2 Section 13A-6-152 or Section 13A-6-153.

3 "(b) Subsection (a) notwithstanding, convictions for  
4 the following offenses, which are defined as a violent offense  
5 under subdivision (15) of Section 12-25-32, may be expunged  
6 upon a showing that the person committed the felony offense  
7 during the period the person was trafficked, and that the  
8 person would not have committed the felony offense but for  
9 being trafficked:

10 "(1) Promoting prostitution in the first degree  
11 pursuant to Section 13A-12-111.

12 "(2) Domestic violence in the third degree pursuant  
13 to subsection (d) of Section 13A-6-132.

14 "(3) Production of obscene matter involving a person  
15 under the age of 17 years pursuant to Section 13A-12-197.

16 "(c) (1) A person who has been charged with any  
17 felony offense, including a violent offense as defined in  
18 Section 12-25-32, may file a petition in the criminal division  
19 of the circuit court in the county in which the charges were  
20 filed to expunge records relating to the charge if the person  
21 has been found not guilty of the charge.

22 "(2) Records related to violent offenses as defined  
23 in Section 12-25-32 may be disclosed to a law enforcement  
24 agency for criminal investigation purposes as provided in  
25 Section 15-27-7.

26 "(d) (1) A person who has been charged with and  
27 convicted for a nonviolent felony offense may file a petition



1 in the criminal division of the circuit court in the county in  
2 which the charges were filed, to expunge all records relating  
3 to the charge and the conviction, if all of the following  
4 occur:

5 "a. The person has been subsequently pardoned for  
6 the conviction by the Alabama Board of Pardons and Paroles.

7 "b. All civil and political rights which were  
8 forfeited as a result of the conviction have been restored.

9 "c. Fifteen years have passed from the date of the  
10 conviction.

11 "d. The conviction is not a violent felony offense,  
12 as defined in Section 12-25-32.

13 "e. The conviction is not a sex offense, as defined  
14 in Section 15-20A-5.

15 "f. The conviction is not an offense involving moral  
16 turpitude, as defined in Section 17-3-30.1.

17 "(2) Records related to offenses and convictions may  
18 be disclosed to law enforcement agencies and prosecutorial  
19 services for criminal investigation purposes as provided in  
20 Section 15-27-7.

21 "(3) Any person whose record of conviction is  
22 expunged pursuant to this chapter is not relieved from the  
23 effects of Section 13A-5-9, relating to habitual felony  
24 offenders.

25 ~~(d)~~ (e) The circuit court shall have exclusive  
26 jurisdiction of a petition filed under subsection (a) or,  
27 subsection (b), or subsection (c).

1                   Section 2. Although this bill would have as its  
2                   purpose or effect the requirement of a new or increased  
3                   expenditure of local funds, the bill is excluded from further  
4                   requirements and application under Amendment 621, now  
5                   appearing as Section 111.05 of the Official Recompilation of  
6                   the Constitution of Alabama of 1901, as amended, because the  
7                   bill defines a new crime or amends the definition of an  
8                   existing crime.

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