

1 HB161  
2 202595-1  
3 By Representative Hill  
4 RFD: Judiciary  
5 First Read: 06-FEB-20

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

This bill would provide for the expungement of convictions for misdemeanor criminal offenses, traffic violations, and municipal ordinance violations, including those adjudicated as a youthful offender, under limited circumstances.

This bill would also provide for technical revisions.

A BILL  
TO BE ENTITLED  
AN ACT

1           To amend Sections 15-27-1, 15-27-2, 15-27-3,  
2           15-27-6, 15-27-7, 15-27-8, and 15-27-19, Code of Alabama 1975,  
3           relating to the expungement of criminal records, to provide  
4           for the expungement of convictions for misdemeanor criminal  
5           offenses, traffic violations, and municipal ordinance  
6           violations, including those adjudicated as a youthful  
7           offender, under certain conditions; and to provide for  
8           technical revisions.

9           BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

10           Section 1. Sections 15-27-1, 15-27-2, 15-27-3,  
11           15-27-6, 15-27-7, 15-27-8, and 15-27-19, Code of Alabama 1975,  
12           are amended to read as follows:

13           "§15-27-1.

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

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

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

23           "(3) When the person has been found not guilty of  
24           the charge.

25           "(4) When the charge was dismissed without prejudice  
26           more than two years ago, has not been refiled, and the person  
27           has not been convicted of any other felony or misdemeanor

1 crime, any violation, or any traffic violation, excluding  
2 minor traffic violations, during the previous two years.

3 "(5) When the person proves by a preponderance of  
4 the evidence that the person is a victim of human trafficking,  
5 that the person committed the misdemeanor criminal offense,  
6 violation, traffic violation, or municipal ordinance violation  
7 during the period the person was being trafficked, and that  
8 the person would not have committed the offense or violation  
9 but for being trafficked. Evidence that a person is a victim  
10 of human trafficking may include, but is not limited to,  
11 evidence that the person's trafficker was convicted of  
12 trafficking the person under Section 13A-6-152 or Section  
13 13A-6-153.

14 "(6)a. When the charge was dismissed after  
15 successful completion of a drug court program, mental health  
16 court program, diversion program, veteran's court, or other  
17 court-approved deferred prosecution program.

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

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

25 "(b) A person who has been convicted, or adjudicated  
26 as a youthful offender, of a misdemeanor criminal offense, a  
27 traffic violation, or a municipal ordinance violation may file

1 a petition in the criminal division of the circuit court in  
2 the county in which the charges were filed or the conviction  
3 was entered to expunge records relating to the charge when all  
4 of the following circumstances exist:

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

8 "(2) Three years have passed from the date of  
9 conviction.

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

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

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

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

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

21 "§15-27-2.

22 "(a) A person who has been charged with a felony  
23 offense, except a violent offense as defined in Section  
24 12-25-32, may file a petition in the criminal division of the  
25 circuit court in the county in which the charges were filed,  
26 to expunge records relating to the charge in any of the  
27 following circumstances:

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

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

4           "(3)a. The charge was dismissed after successful  
5 completion of a drug court program, mental health court  
6 program, diversion program, veteran's court, or any  
7 court-approved deferred prosecution program after one year  
8 from successful completion of the program.

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

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

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

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

24           "(6) When the person proves by a preponderance of  
25 the evidence that the person is a victim of human trafficking,  
26 that the person committed the felony offense during the period  
27 the person was being trafficked, and that the person would not

1 have committed the felony offense but for being trafficked.  
2 Evidence that a person is a victim of human trafficking may  
3 include, but is not limited to, evidence that the person's  
4 trafficker was convicted of trafficking the person under  
5 Section 13A-6-152 or Section 13A-6-153.

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

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

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

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

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

25 "(2) Records related to violent offenses as defined  
26 in Section 12-25-32 may be disclosed to a law enforcement

1 agency for criminal investigation purposes as provided in  
2 Section 15-27-7.

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

6 "§15-27-3.

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

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

26 "(c) A petitioner shall serve the district attorney,  
27 the law enforcement agency, and clerk of court of the



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

17 "§15-27-6.

18 "(a) Except as provided in Section 15-27-10, upon  
19 the granting of a petition pursuant to this chapter, the  
20 court, pursuant to Section 15-27-9, shall order the  
21 expungement of all records in the custody of the court and any  
22 records in the custody of any other agency or official,  
23 including law enforcement records, except privileged  
24 presentence or postsentence investigation reports produced by  
25 the Alabama Board of Pardons and Paroles and its officers,  
26 records, documents, databases, and files of the district  
27 attorney and the Office of Prosecution Services. On July 7,

1 2014, and for 18 months thereafter, every agency with records  
2 relating to the arrest, charge, or other matters arising out  
3 of the arrest or charge that is ordered to expunge the records  
4 shall certify to the court within 180 days of the entry of the  
5 expungement order that the required expungement action has  
6 been completed.

7 "(b) After the expungement of records pursuant to  
8 subsection (a), the proceedings regarding the charge shall be  
9 deemed never to have occurred. Except as provided in this  
10 chapter, the court and other agencies shall reply to any  
11 inquiry that no record exists on the matter. The petitioner  
12 whose record was expunged shall not have to disclose the fact  
13 of the record or any matter relating thereto on an application  
14 for employment, credit, or other type of application. However,  
15 the petitioner whose record was expunged shall have the duty  
16 to disclose the fact of the record and any matter relating  
17 thereto to any government regulatory or licensing agency, any  
18 utility and its agents and affiliates, or any bank or other  
19 financial institution. In these circumstances, the government  
20 regulatory or licensing agency, utility and its agents and  
21 affiliates, or the bank or other financial institution shall  
22 have the right to inspect the expunged records after filing  
23 notice with the court.

24 "(c) A petitioner may obtain documentation that an  
25 expungement was granted upon filing a notice with the court  
26 requesting documentation and establishing proof of identity.  
27 The documentation shall be limited to the case number,

1 petitioner's name, a listing of the charges, if requested by  
2 the petitioner, and a written certification that the case was  
3 expunged that is signed by the circuit clerk or presiding  
4 judge.

5 "§15-27-7.

6 "(a) Upon receipt of the order of expungement, a  
7 criminal justice agency in possession of records subject to  
8 the order shall immediately forward the records to the Alabama  
9 ~~Criminal Justice Information Center~~ State Law Enforcement  
10 Agency. The center shall digitally archive the records in a  
11 manner prescribed by the Alabama ~~Criminal Justice Information~~  
12 ~~Center~~ Commission and designate the records as protected  
13 notwithstanding any other provisions of this chapter. ~~Such~~ The  
14 records may not be used for any non-criminal justice purpose  
15 and may only be made available to criminal justice agencies  
16 upon acknowledgement of an investigation or other criminal  
17 matter involving the person related to the expungement, or  
18 used in criminal proceedings upon an order of the court for  
19 the limited purpose of impeachment after a showing of  
20 contradictory testimony by the petitioner. Any expunged  
21 records that were added to a federal database shall be  
22 requested to be removed and not made available within any  
23 interstate criminal database.

24 "(b) Records expunged under this chapter may not be  
25 transmitted to the Federal Bureau of Investigation national  
26 criminal records repository. Any record subject to be expunged  
27 under this chapter and transmitted to the Federal Bureau of

1 Investigation prior to the expungement of such record shall be  
2 requested for withdrawal within the national system by the  
3 Alabama ~~Criminal Justice Information Center~~ State Law  
4 Enforcement Agency.

5 "§15-27-8.

6 "Once the records are expunged pursuant to this  
7 chapter, the records shall be forwarded to the Alabama  
8 ~~Criminal Justice Information Center~~ State Law Enforcement  
9 Agency in a manner prescribed by the Alabama ~~Criminal~~ Justice  
10 Information ~~Center~~ Commission for purposes of archiving, and  
11 the records shall be stored in a manner prescribed by the  
12 Alabama ~~Criminal~~ Justice Information ~~Center~~ Commission. The  
13 records shall be retained by the Alabama ~~Criminal Justice~~  
14 ~~Information Center~~ State Law Enforcement Agency indefinitely.  
15 The Alabama Justice Information Commission shall prepare and  
16 present a written report to the Legislature on a yearly basis  
17 to describe the type and number of records stored and the  
18 conditions of the storage. Records held electronically by the  
19 Alabama State Law Enforcement Agency shall be sealed from view  
20 and only available by a court order obtained pursuant to this  
21 chapter.

22 "§15-27-19.

23 "The Alabama ~~Criminal~~ Justice Information ~~Center~~  
24 Commission shall adopt rules for the submission of data from  
25 criminal justice agencies necessary to complete the criminal  
26 history record within the state criminal history repository.

1 Data within the repository shall include all records allowed  
2 by federal regulation of state repositories."

3 Section 2. This act shall become effective on the  
4 first day of the third month following its passage and  
5 approval by the Governor, or its otherwise becoming law.