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3 COLEMAN-MADISON SUBSTITUTE FOR SB117
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8 SYNOPSIS: Under current law, a person convicted of a
9 criminal offense may only apply for an expungement
10 in very limited circumstances.

11 This bill would expand the expungement of
12 criminal records to include convictions of certain
13 misdemeanor offenses, traffic violations, municipal
14 ordinances, and felony offenses.

15 This bill would provide for the number of
16 expungements a person may be granted.

17 This bill would also make nonsubstantive,
18 technical revisions to update the existing code
19 language to current style.

20 Amendment 621 of the Constitution of Alabama
21 of 1901, as amended by Amendment 890, now appearing
22 as Section 111.05 of the Official Recompilation of
23 the Constitution of Alabama of 1901, as amended,
24 prohibits a general law whose purpose or effect
25 would be to require a new or increased expenditure
26 of local funds from becoming effective with regard
27 to a local governmental entity without enactment by

1 a 2/3 vote unless: it comes within one of a number
2 of specified exceptions; it is approved by the
3 affected entity; or the Legislature appropriates
4 funds, or provides a local source of revenue, to
5 the entity for the purpose.

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

14
15 A BILL
16 TO BE ENTITLED
17 AN ACT

18
19 Relating to expungement; to amend Sections 15-27-1,
20 15-27-2, 15-27-4, 15-27-5, 15-27-7, 15-27-8, 15-27-9,
21 15-27-10, and 15-27-19, Code of Alabama 1975, to expand the
22 expungement of criminal records to include convictions of
23 certain misdemeanor offenses, traffic violations, municipal
24 ordinances, and felony offenses; to increase the filing fee
25 for petitions for expungement; to add Section 15-27-2.1 to the
26 Code of Alabama 1975, to provide for the number of
27 expungements a person may be granted; to make nonsubstantive,

1 technical revisions to update the existing code language to
2 current style; and in connection therewith would have as its
3 purpose or effect the requirement of a new or increased
4 expenditure of local funds within the meaning of Amendment 621
5 of the Constitution of Alabama of 1901, as amended by
6 Amendment 890, now appearing as Section 111.05 of the Official
7 Recompilation of the Constitution of Alabama of 1901, as
8 amended.

9 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

10 Section 1. This act shall be known and may be cited
11 as the Record Expungement Designed to Enhance Employment and
12 Eliminate Recidivism (REDEEMER) Act.

13 Section 2. Sections 15-27-1, 15-27-2, 15-27-4,
14 15-27-5, 15-27-7, 15-27-8, 15-27-9, 15-27-10, and 15-27-19,
15 Code of Alabama 1975, are amended to read as follows:

16 "§15-27-1.

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

23 "(1) When the charge ~~is~~ has been dismissed with
24 prejudice and more than 90 days have passed.

25 "(2) When the charge has been no billed by a grand
26 jury and more than 90 days have passed.

1 "(3) When the person has been found not guilty of
2 the charge and more than 90 days have passed.

3 "(4) When the charge has been nolle prossed without
4 conditions, more than 90 days have passed, and the charge or
5 charges have not been refiled.

6 "(5) When the indictment has been quashed and the
7 statute of limitations for refiling the charge or charges has
8 expired or the prosecuting agency confirms that the charge or
9 charges will not be refiled.

10 "(6)a. When the charge was dismissed after
11 successful completion of a drug court program, mental health
12 court program, diversion program, veteran's court, or any
13 court-approved deferred prosecution program.

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

16 "c. A petition for expungement may be filed one year
17 from the date of successful completion of a program listed in
18 paragraph a.

19 "~~(4)~~ (7) When the charge was dismissed without
20 prejudice more than ~~two years~~ one year ago, has not been
21 refiled, and the person has not been convicted of any other
22 felony or misdemeanor crime, any violation, or any traffic
23 violation, excluding minor traffic violations, during the
24 previous two years.

25 "~~(5)~~ (8) When the person proves by a preponderance
26 of the evidence that the person is a victim of human
27 trafficking, that the person committed the misdemeanor

1 ~~criminal~~ offense, violation, traffic violation, or municipal
2 ordinance violation during the period the person was being
3 trafficked, and that the person would not have committed the
4 offense or violation but for being trafficked. Evidence that a
5 person is a victim of human trafficking may include, but is
6 not limited to, evidence that the person's trafficker was
7 convicted of trafficking the person under Section 13A-6-152 or
8 Section 13A-6-153.

9 "(b) Subsection (a) notwithstanding, a person who
10 has been convicted of a misdemeanor offense, a violation, a
11 traffic violation, or a municipal ordinance violation may file
12 a petition in the criminal division of the circuit court in
13 the county in which the charges were filed to expunge records
14 relating to the charge and the conviction if all of the
15 following occur:

16 "(1) Except as provided in Section 15-27-4, all
17 probation or parole requirements have been completed,
18 including payment of all fines, costs, restitution, and other
19 court-ordered amounts, and are evidenced by the applicable
20 court or agency.

21 "(2) Three years have passed from the date of
22 conviction.

23 "(3) The person was not operating a commercial
24 vehicle at the time and convicted of any of the offenses
25 enumerated in 49 C.F.R. § 383.51.

26 "(4) The conviction is not a violent offense, as
27 provided in Section 12-25-32.

1 "(5) The conviction is not a sex offense, as
2 provided in Section 15-20A-5.

3 "(6) The conviction is not an offense involving
4 moral turpitude, as provided in Section 17-3-30.1.

5 "(7) The conviction is not a serious traffic
6 offense, as provided in Article 9 of Chapter 5A of Title 32.

7 "(c) Subject to the provisions of 15-27-16, records
8 related to offenses and convictions may be disclosed to a
9 criminal justice agency, a district attorney, or a prosecuting
10 authority for criminal investigation purposes as provided in
11 Section 15-27-7, to a utility and its agents and affiliates,
12 or to any entities or services providing information to
13 banking, insurance, and other financial institutions as
14 required for various requirements as provided in state and
15 federal law.

16 ~~"(b)~~ (d) The circuit court shall have exclusive
17 jurisdiction of a petition filed under ~~subsection~~ subsections
18 (a) and (b).

19 "§15-27-2.

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

26 "(1) When the charge is dismissed with prejudice and
27 more than 90 days have passed.

1 "(2) When the charge has been no billed by a grand
2 jury and more than 90 days have passed.

3 "(3) When the person has been found not guilty of
4 the charge and more than 90 days have passed.

5 "(4) When the charge has been nolle prossed without
6 conditions, and more than 90 days have passed, and the charge
7 or charges have not been refiled.

8 "(5) When the indictment has been quashed and the
9 statute of limitations for refiling the charge or charges has
10 expired or the prosecuting agency confirms that the charge or
11 charges will not be refiled.

12 "~~(3)~~ (6)a. The When the charge was dismissed after
13 successful completion of a drug court program, mental health
14 court program, diversion program, veteran's court, or any
15 court-approved deferred prosecution program ~~after one year~~
16 ~~from successful completion of the program.~~

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

19 "c. A petition for expungement may be filed one year
20 from the date of the successful completion of a program listed
21 in paragraph a.

22 "~~(4)~~ (7) The When the charge was dismissed without
23 prejudice more than five years ago, has not been refiled, and
24 the person has not been convicted of any other felony or
25 misdemeanor crime, any violation, or any traffic violation,
26 excluding minor traffic violations, during the previous five
27 years.

1 ~~"(5) 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 ~~"(6)~~ (8) When the person proves by a preponderance
5 of the evidence that the person is a victim of human
6 trafficking, that the person committed the felony offense
7 during the period the person was being trafficked, and that
8 the person would not have committed the felony offense but for
9 being trafficked. Evidence that a person is a victim of human
10 trafficking may include, but is not limited to, evidence that
11 the person's trafficker was convicted of trafficking the
12 person under Section 13A-6-152 or Section 13A-6-153.

13 (b) Subsection (a) notwithstanding, ~~convictions for~~
14 ~~a person who has been convicted of any of the following~~
15 ~~offenses, which are defined as a violent offense under~~
16 ~~subdivision (15) of violent offenses, as defined in Section~~
17 12-25-32, may be expunged upon a showing that the person
18 committed the felony offense during the period the person was
19 trafficked, and that the person would not have committed the
20 felony offense but for being trafficked:

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

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

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

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

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

11 "(c) A person who has been convicted of a felony
12 offense may file a petition in the criminal division of the
13 circuit court in the county in which the charges were filed to
14 expunge records relating to the charge and the conviction if
15 all of the following occur:

16 "(1) The person has been granted a certificate of
17 pardon with restoration of civil and political rights for the
18 conviction from the Board of Pardons and Paroles.

19 "(2) All civil and political rights that were
20 forfeited as a result of the conviction have been restored.

21 "(3) One hundred eighty days have passed from the
22 date of the issuance of the certification of pardon.

23 "(4) Except as provided in subsection (b), the
24 conviction is not a violent offense, as provided in Section
25 12-25-32.

26 "(5) The conviction is not a sex offense, as
27 provided in Section 15-20A-5.

1 "(6) The conviction is not an offense involving
2 moral turpitude, as provided in Section 17-3-30.1.

3 "(7) The conviction is not a serious traffic
4 offense, as provided in Article 9 of Chapter 5A of Title 32.

5 "(d) Subject to the provisions of Section 15-27-16,
6 records related to offenses and convictions may be disclosed
7 to a criminal justice agency, a district attorney, or a
8 prosecuting authority for criminal investigation purposes as
9 provided in Section 15-27-7, to a utility and its agents and
10 affiliates, or to any entities or services providing
11 information to banking, insurance, and other financial
12 institutions as required for various requirements as provided
13 in state and federal law.

14 ~~"(d)~~ (e) The circuit court shall have exclusive
15 jurisdiction of a petition filed under ~~subsection (a) or~~
16 ~~subsection (b)~~ subsection (a), (b), or (c).

17 "§15-27-4.

18 "(a) In addition to any cost of court or docket fee
19 for filing the petition in circuit court, an administrative
20 filing fee of ~~three~~ five hundred dollars ~~(\$300)~~ (\$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) Seventy-five dollars (\$75) to the State
26 Judicial Administrative Fund.

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

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

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

9 "(6) Fifty dollars (\$50) 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 "(7) One hundred dollars (\$100) to the State General
16 Fund.

17 "(8) Fifty dollars (\$50) to the Education Trust
18 Fund.

19 "(9) Fifty dollars (\$50) to the Fair Trial Tax Fund.

20 "(b) (1) When a petitioner is seeking the expungement
21 of multiple charges arising from one arrest, the petitioner
22 shall only be required to pay one filing fee pursuant to
23 subsection (a).

24 "(2) When a petitioner is seeking the expungement of
25 multiple charges arising from multiple arrests, the petitioner
26 shall be required to pay a filing fee for each arrest pursuant
27 to subsection (a).

1 "~~(b)~~ (c) Notwithstanding subsection (a), a person
2 seeking relief under this chapter may apply for indigent
3 status by completing an Affidavit of Substantial Hardship and
4 Order which shall be submitted with the petition. If the court
5 finds the petitioner is indigent, the court ~~may set forth a~~
6 ~~payment plan for the petitioner to satisfy~~ shall waive the
7 filing fee ~~over a period of time, which shall be paid in full,~~
8 ~~prior to any order granting an expungement~~ provided in
9 subsection (a).

10 "~~(c)~~ (d) If a petitioner seeks expungement of an
11 arrest or conviction record and the court in the original case
12 made a clear and unequivocal judicial finding on the record
13 that the arrest had no foundation of probable cause, the
14 court, in the expungement proceeding, shall waive all docket
15 fees and court costs, except for the filling fee in subsection
16 (a).

17 "§15-27-5.

18 "(a) If the prosecuting authority or victim files an
19 objection to the granting of a petition under this chapter,
20 the court having jurisdiction over the matter shall set a date
21 for a hearing no sooner than 14 days from the filing of the
22 objection. The court shall notify the prosecuting authority
23 and the petitioner of the hearing date. In ~~the discretion of~~
24 ~~the court~~ making its determination, the court shall consider
25 all of the following factors:

26 "(1) Nature and seriousness of the offense
27 committed.

1 "(2) Circumstances under which the offense occurred.

2 "(3) Date of the offense.

3 "(4) Age of the person when the offense was
4 committed.

5 "(5) Whether the offense was an isolated or repeated
6 incident.

7 "(6) Other conditions which may have contributed to
8 the offense.

9 "(7) An available probation or parole record,
10 report, or recommendation.

11 "(8) Whether the offense was dismissed or nolle
12 prossed as part of a negotiated plea agreement and the
13 petitioner ~~plead~~ pleaded guilty to another related or lesser
14 offense.

15 "(9) Evidence of rehabilitation, including good
16 conduct in prison or jail, in the community, counseling or
17 psychiatric treatment received, acquisition of additional
18 academic or vocational schooling, successful business or
19 employment history, and the recommendation of his or her
20 supervisors or other persons in the community.

21 "(10) Any other matter the court deems relevant,
22 which may include, but is not limited to, a prior expungement
23 of the petitioner's records.

24 "(b) A hearing under subsection (a) shall be
25 conducted in a manner prescribed by the trial judge and shall
26 include oral argument and review of relevant documentation in
27 support of, or in objection to, the granting of the petition.

1 The Alabama Rules of Evidence shall apply to the hearing.
2 Leave of the court shall be obtained for the taking of witness
3 testimony relating to any disputed fact.

4 ~~"(c) There is no right to the expungement of any~~
5 ~~criminal record, and any request for expungement of a criminal~~
6 ~~record may be denied at the sole discretion of the court. The~~
7 court shall grant the petition if it is reasonably satisfied
8 from the evidence that the petitioner has complied with and
9 satisfied the requirements of this chapter. ~~The court shall~~
10 ~~have discretion over the number of cases that may be expunged~~
11 ~~pursuant to this chapter after the first case is expunged. The~~
12 ruling of the court shall be subject to certiorari review and
13 ~~shall~~ may not be reversed absent a showing of an abuse of
14 discretion.

15 "(d) If no objection to a petition is filed by the
16 prosecuting authority or victim, the court having jurisdiction
17 over the matter ~~may~~ shall rule on the merits of the petition
18 without setting the matter for hearing. In such cases, the
19 court shall grant the petition if it is reasonably satisfied
20 from the evidence that the petitioner has complied with and
21 satisfied the requirements of this chapter. ~~The court shall~~
22 ~~have discretion over the number of cases that may be expunged~~
23 ~~pursuant to this chapter after the first case is expunged.~~

24 "§15-27-7.

25 "(a) Upon receipt of the order of expungement, a
26 criminal justice agency in possession of records subject to
27 the order shall immediately forward the records to the Alabama

1 ~~Criminal Justice Information Center~~ State Law Enforcement
2 Agency. The center shall digitally archive the records in a
3 manner prescribed by the Alabama ~~Criminal Justice Information~~
4 ~~Center~~ Commission and designate the records as protected
5 ~~notwithstanding any,~~ except as provided in other provisions of
6 this chapter. ~~Such~~ The records may not be used for any
7 non-criminal justice purpose, except as otherwise provided in
8 this chapter, and may only be made available to criminal
9 justice agencies, a district attorney, or a prosecuting
10 authority upon acknowledgement of an investigation or other
11 criminal matter involving the person related to the
12 expungement. Any expunged records that were added to a federal
13 database shall be requested to be removed and not made
14 available within any interstate criminal database.

15 " (b) Records expunged under this chapter may not be
16 transmitted to the Federal Bureau of Investigation national
17 criminal records repository. Any record subject to be expunged
18 under this chapter and transmitted to the Federal Bureau of
19 Investigation prior to the expungement of ~~such~~ the record
20 shall be requested for withdrawal within the national system
21 by the Alabama ~~Criminal Justice Information Center~~ State Law
22 Enforcement Agency.

23 "§15-27-8.

24 "Once the records are expunged pursuant to this
25 chapter, the records shall be forwarded to the Alabama
26 ~~Criminal Justice Information Center~~ State Law Enforcement
27 Agency in a manner prescribed by the Alabama ~~Criminal Justice~~

1 Information ~~Center~~ Commission for purposes of archiving, and
2 the records shall be stored in a manner prescribed by the
3 Alabama ~~Criminal~~ Justice Information ~~Center~~ Commission. The
4 records shall be retained by the Alabama ~~Criminal Justice~~
5 ~~Information Center~~ State Law Enforcement Agency indefinitely.

6 "§15-27-9.

7 "For purposes of this chapter, the ~~term record~~
8 ~~includes, but is not limited to, all of the~~ following terms
9 shall have the following meanings:

10 "(1) CRIMINAL JUSTICE AGENCIES. As defined in
11 Section 41-9-590.

12 "(2) RECORD. The term shall include, but is not
13 limited to, all of the following:

14 "~~(1)~~ a. Arrest and conviction records.

15 "~~(2)~~ b. Booking or arrest photographs of the
16 petitioner.

17 "~~(3)~~ c. Index references such as the State Judicial
18 Information System or any other governmental index references
19 for public records search.

20 "d. Records relating to administrative suspension
21 pursuant to Article 14 of Chapter 5A of Title 32, including
22 driver license suspension records.

23 "~~(4)~~ e. Other data, whether in documentary or
24 electronic form, relating to the arrest ~~or,~~ charge, or
25 conviction.

26 "§15-27-10.

1 "Nothing in this chapter shall prohibit a criminal
2 justice agency, a law enforcement agency or official, district
3 attorney or a prosecuting authority, the Alabama Department of
4 Forensic Sciences, or the Department of Human Resources from
5 maintaining an investigative file, report, case file, or log
6 which may include any evidence, biological evidence,
7 photographs, exhibits, or information in documentary or
8 electronic form.

9 "§15-27-19.

10 "The Alabama ~~Criminal~~ Justice Information ~~Center~~
11 Commission shall adopt rules for the submission of data from
12 criminal justice agencies necessary to complete the criminal
13 history record within the state criminal history repository.
14 Data within the repository shall include all records allowed
15 by federal regulation of state repositories."

16 Section 3. Section 15-27-2.1 is added to the Code of
17 Alabama 1975, to read as follows:

18 §15-27-2.1.

19 (a) (1) A person may be granted unlimited
20 expungements pursuant to subdivisions (a) (1) through (a) (5)
21 and (a) (7) and (a) (8) of Section 15-27-1, subdivisions (a) (1)
22 through (a) (5) and (a) (7) and (a) (8) of Section 15-27-2, and
23 subsection (b) of Section 15-27-2.

24 (2) A person may only be granted one expungement
25 pursuant to subsection (c) of Section 15-27-2.

26 (3) A person may only be granted two expungements
27 pursuant to subdivision (a) (6) of Section 15-27-1, subsection

1 (b) of Section 15-27-1, and subdivision (a)(6) of Section
2 15-27-2.

3 (b) For the purposes of subsection (a), one
4 expungement shall include all charges or convictions stemming
5 from the same arrest or incident.

6 (c) The Administrative Office of Courts, in
7 consultation with the Alabama State Law Enforcement Agency,
8 shall adopt procedures relating to prior expungements for the
9 purposes of the limitations in this section.

10 Section 4. This act may not be interpreted to
11 supersede, modify, or otherwise affect the application of
12 Section 15-17-20, Code of Alabama 1975.

13 Section 5. Although this bill would have as its
14 purpose or effect the requirement of a new or increased
15 expenditure of local funds, the bill is excluded from further
16 requirements and application under Amendment 621, as amended
17 by Amendment 890, now appearing as Section 111.05 of the
18 Official Recompilation of the Constitution of Alabama of 1901,
19 as amended, because the bill defines a new crime or amends the
20 definition of an existing crime.

21 Section 6. This act shall become effective on the
22 first day of the third month following its passage and
23 approval by the Governor, or its otherwise becoming law.