

MESSAGE FROM THE GOVERNOR

May 6, 2021

To The Alabama Senate
Alabama State House
Montgomery, Alabama 36130

Ladies and Gentlemen:

Enclosed please find a message from the Governor returning Senate Bill 4 without the Governor's signature and with a proposed Executive Amendment.

Respectfully submitted,

WILLIAM G. PARKER, JR.,
General Counsel.

MESSAGE FROM THE GOVERNOR

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To The Alabama Senate
Alabama State House
Montgomery, Alabama 36130

Ladies and Gentlemen:

I received Senate Bill 4 and believe that the bill should be amended to correct a technical error in Act 2021-286 that, if unresolved, could place Alabama in jeopardy of losing federal highway funding.

For this reason, and as requested by the bill sponsor, I am returning Senate Bill 4 to you, the body in which it originated, without my signature and with the below executive amendment.

EXECUTIVE AMENDMENT TO SENATE BILL 4:

Please amend Senate Bill 4 on page 3, after line 23, by inserting a new Section 2 and renumbering the subsequent sections accordingly:

Section 2. Sections 15-27-1 and 15-27-2, Code of Alabama 1975, as last amended by Act 2021-286, 2021 Regular Session, are amended to read as follows:

"§15-27-1.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"(3) The If the person was convicted of any of the offenses enumerated in 49 C.F.R. § 383.51, the person was not operating a commercial motor vehicle at the time of the offense, or was not holding a commercial driver license or a commercial learner's permit at the time of the offense and convicted of any of the offenses enumerated in 49 C.F.R. § 383.51.

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

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

"(6) The conviction is not an offense involving moral turpitude, as provided in Section 17-3-30.1. This subdivision does not apply if the crime the person was convicted of was classified as a felony at the time of the conviction, but has been reclassified as a misdemeanor, pursuant to Act 2015-185, and the person has not been arrested for any offense, excluding minor traffic violations, 15 years prior to the filing of the petition for expungement.

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

"(c) Subject to the provisions of 15-27-16, records related to offenses and convictions may be disclosed to a criminal justice agency, a district attorney, or a prosecuting authority for criminal investigation purposes as provided in Section 15-27-7, to a utility and its agents and affiliates, to the Department of Human Resources for the purpose of investigation or assessment in order to protect children or vulnerable adults, or to any entities or services providing information to banking, insurance, and other financial institutions as required for various requirements as provided in state and federal law. Further, any criminal charges that are expunged or are pending expungement pursuant to 15-27-1 shall be available for use by any attorneys, officers of the Court, or the Court itself in any civil matters related to the criminal charges expunged or seeking to be expunged regardless of the outcome of the petitioned expungement. At the conclusion of the pending civil matter, all references to the criminal charges expunged or to be expunged shall be redacted in the event the criminal charges are expunged.

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

"§15-27-2.

"(a) A person who has been charged with any felony offense may file a petition in the criminal division of the circuit court in the county in which the charges were filed, to expunge records relating to the charge in any of the following circumstances:

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

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

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

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

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

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

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

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

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

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

"(b) Subsection (a) notwithstanding, a person who has been convicted of any of the following violent offenses, as

defined in Section 12-25-32, may be expunged upon a showing that the person committed the felony offense during the period the person was trafficked, and that the person would not have committed the felony offense but for being trafficked:

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

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

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

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

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

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

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

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

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

"(6) The conviction is not an offense involving moral turpitude, as provided in Section 17-3-30.1. This subdivision does not apply if the crime the person was convicted of was classified as a felony at the time of the conviction, but has been reclassified as a misdemeanor, pursuant to Act 2015-185, and the person has not been arrested for any offense, excluding minor traffic violations, 15 years prior to the filing of the petition for expungement.

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

"(8) If the person was convicted of any of the offenses enumerated in 49 C.F.R. § 383.51, the person was not holding a commercial driver license or a commercial learner's permit at the time of the offense, or was not operating a commercial motor vehicle at the time of the offense.

"(d) Subject to the provisions of Section 15-27-16, records related to offenses and convictions may be disclosed to a criminal justice agency, a district attorney, or a prosecuting authority for criminal investigation purposes as provided in Section 15-27-7, to a utility and its agents and affiliates, to the Department of Human Resources for the purpose of investigation or assessment in order to protect children or vulnerable adults, or to any entities or services providing information to banking, insurance, and other financial institutions as required for various requirements as provided in state and federal law. Further, any criminal charges that are expunged or are pending expungement pursuant to 15-27-2 shall be available for use by any attorneys, officers of the Court, or the Court itself in any civil matters related to the criminal charges expunged or seeking to be expunged regardless of the outcome of the petitioned expungement. At the conclusion of the pending civil matter, all references to the criminal charges expunged or to be expunged shall be redacted in the event the criminal charges are expunged."

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

On page 4, line 8, delete the word "third" and replace in lieu thereof the word "second".

Adoption of the above suggested executive amendment will remove my objection to this bill.

Respectfully submitted,

KAY IVEY,
Governor.