

1 SB117
2 210511-3
3 By Senator Coleman-Madison
4 RFD: Judiciary
5 First Read: 02-FEB-21
6 PFD: 01/28/2021

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4 ENGROSSED

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7 A BILL
8 TO BE ENTITLED
9 AN ACT

10
11 Relating to expungement; to amend Sections 15-27-1,
12 15-27-2, 15-27-4, 15-27-5, 15-27-7, 15-27-8, 15-27-9,
13 15-27-10, and 15-27-19, Code of Alabama 1975, to expand the
14 expungement of criminal records to include convictions of
15 certain misdemeanor offenses, traffic violations, municipal
16 ordinances, and felony offenses; to increase the filing fee
17 for petitions for expungement; to add Section 15-27-2.1 to the
18 Code of Alabama 1975, to provide for the number of
19 expungements a person may be granted; to make nonsubstantive,
20 technical revisions to update the existing code language to
21 current style; and in connection therewith would have as its
22 purpose or effect the requirement of a new or increased
23 expenditure of local funds within the meaning of Amendment 621
24 of the Constitution of Alabama of 1901, as amended by
25 Amendment 890, now appearing as Section 111.05 of the Official
26 Recompile of the Constitution of Alabama of 1901, as
27 amended.

1 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

5 Section 2. Sections 15-27-1, 15-27-2, 15-27-4,
6 15-27-5, 15-27-7, 15-27-8, 15-27-9, 15-27-10, and 15-27-19,
7 Code of Alabama 1975, are amended to read as follows:

8 "§15-27-1.

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

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

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

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

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

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

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

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

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

10 ~~"(4)~~ (7) When the charge was dismissed without
11 prejudice more than ~~two years~~ one year ago, has not been
12 refiled, and the person has not been convicted of any other
13 felony or misdemeanor crime, any violation, or any traffic
14 violation, excluding minor traffic violations, during the
15 previous two years.

16 ~~"(5)~~ (8) When the person proves by a preponderance
17 of the evidence that the person is a victim of human
18 trafficking, that the person committed the misdemeanor
19 ~~criminal~~ offense, violation, traffic violation, or municipal
20 ordinance violation during the period the person was being
21 trafficked, and that the person would not have committed the
22 offense or violation but for being trafficked. Evidence that a
23 person is a victim of human trafficking may include, but is
24 not limited to, evidence that the person's trafficker was
25 convicted of trafficking the person under Section 13A-6-152 or
26 Section 13A-6-153.

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

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

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

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

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

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

22 "(6) The conviction is not an offense involving
23 moral turpitude, as provided in Section 17-3-30.1. This
24 subdivision does not apply if the crime the person was
25 convicted of was classified as a felony at the time of the
26 conviction, but has been reclassified as a misdemeanor,
27 pursuant to Act 2015-185, and the person has not been arrested

1 for any offense, excluding minor traffic violations, 15 years
2 prior to the filing of the petition for expungement.

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

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

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

17 "§15-27-2.

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

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

26 "(2) When the charge has been no billed by a grand
27 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, and more than 90 days have passed, and the charge
5 or 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 ~~"(3) (6)a. The~~ 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 ~~after one year~~
14 ~~from successful completion of the program.~~

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

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

20 ~~"(4) (7) The~~ When the charge was dismissed without
21 prejudice more than five years ago, has not been refiled, and
22 the person has not been convicted of any other felony or
23 misdemeanor crime, any violation, or any traffic violation,
24 excluding minor traffic violations, during the previous five
25 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. This
3 subdivision does not apply if the crime the person was
4 convicted of was classified as a felony at the time of the
5 conviction, but has been reclassified as a misdemeanor,
6 pursuant to Act 2015-185, and the person has not been arrested
7 for any offense, excluding minor traffic violations, 15 years
8 prior to the filing of the petition for expungement.

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

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

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

23 "§15-27-4.

24 "(a) In addition to any cost of court or docket fee
25 for filing the petition in circuit court, an administrative
26 filing fee of ~~three~~ five hundred dollars ~~(\$300)~~ (\$500) shall
27 be paid at the time the petition is filed and is a condition

1 precedent to any ruling of the court pursuant to this chapter.
2 The administrative filing fee ~~shall not be waived by the court~~
3 ~~and~~ shall be distributed as follows:

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

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

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

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

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

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

20 "(7) One hundred dollars (\$100) to the State General
21 Fund.

22 "(8) Fifty dollars (\$50) to the Education Trust
23 Fund.

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

25 "(b) (1) When a petitioner is seeking the expungement
26 of multiple charges arising from one arrest, the petitioner

1 shall only be required to pay one filing fee pursuant to
2 subsection (a).

3 "(2) When a petitioner is seeking the expungement of
4 multiple charges arising from multiple arrests, the petitioner
5 shall be required to pay a filing fee for each arrest pursuant
6 to subsection (a).

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

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

23 "§15-27-5.

24 "(a) If the prosecuting authority or victim files an
25 objection to the granting of a petition under this chapter,
26 the court having jurisdiction over the matter shall set a date
27 for a hearing no sooner than 14 days from the filing of the

1 objection. The court shall notify the prosecuting authority
2 and the petitioner of the hearing date. In ~~the discretion of~~
3 ~~the court~~ making its determination, the court shall consider
4 all of the following factors:

5 "(1) Nature and seriousness of the offense
6 committed.

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

8 "(3) Date of the offense.

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

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

13 "(6) Other conditions which may have contributed to
14 the offense.

15 "(7) An available probation or parole record,
16 report, or recommendation.

17 "(8) Whether the offense was dismissed or nolle
18 prossed as part of a negotiated plea agreement and the
19 petitioner ~~plead~~ pleaded guilty to another related or lesser
20 offense.

21 "(9) Evidence of rehabilitation, including good
22 conduct in prison or jail, in the community, counseling or
23 psychiatric treatment received, acquisition of additional
24 academic or vocational schooling, successful business or
25 employment history, and the recommendation of his or her
26 supervisors or other persons in the community.

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

4 "(b) A hearing under subsection (a) shall be
5 conducted in a manner prescribed by the trial judge and shall
6 include oral argument and review of relevant documentation in
7 support of, or in objection to, the granting of the petition.
8 The Alabama Rules of Evidence shall apply to the hearing.
9 Leave of the court shall be obtained for the taking of witness
10 testimony relating to any disputed fact.

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

22 "(d) If no objection to a petition is filed by the
23 prosecuting authority or victim, the court having jurisdiction
24 over the matter ~~may~~ shall rule on the merits of the petition
25 without setting the matter for hearing. In such cases, the
26 court shall grant the petition if it is reasonably satisfied
27 from the evidence that the petitioner has complied with and

1 satisfied the requirements of this chapter. ~~The court shall~~
2 ~~have discretion over the number of cases that may be expunged~~
3 ~~pursuant to this chapter after the first case is expunged.~~

4 "§15-27-7.

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

22 "(b) Records expunged under this chapter may not be
23 transmitted to the Federal Bureau of Investigation national
24 criminal records repository. Any record subject to be expunged
25 under this chapter and transmitted to the Federal Bureau of
26 Investigation prior to the expungement of ~~such~~ the record
27 shall be requested for withdrawal within the national system

1 by the Alabama ~~Criminal Justice Information Center~~ State Law
2 Enforcement Agency.

3 "§15-27-8.

4 "Once the records are expunged pursuant to this
5 chapter, the records shall be forwarded to the Alabama
6 ~~Criminal Justice Information Center~~ State Law Enforcement
7 Agency in a manner prescribed by the Alabama ~~Criminal~~ Justice
8 Information ~~Center~~ Commission for purposes of archiving, and
9 the records shall be stored in a manner prescribed by the
10 Alabama ~~Criminal~~ Justice Information ~~Center~~ Commission. The
11 records shall be retained by the Alabama ~~Criminal Justice~~
12 ~~Information Center~~ State Law Enforcement Agency indefinitely.

13 "§15-27-9.

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

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

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

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

22 "~~(2)~~ b. Booking or arrest photographs of the
23 petitioner.

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

1 "d. Records relating to administrative suspension
2 pursuant to Article 14 of Chapter 5A of Title 32, including
3 driver license suspension records.

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

7 "§15-27-10.

8 "Nothing in this chapter shall prohibit a criminal
9 justice agency, a law enforcement agency or official, district
10 attorney or a prosecuting authority, the Alabama Department of
11 Forensic Sciences, or the Department of Human Resources from
12 maintaining an investigative file, report, case file, or log
13 which may include any evidence, biological evidence,
14 photographs, exhibits, or information in documentary or
15 electronic form.

16 "§15-27-19.

17 "The Alabama ~~Criminal~~ Justice Information ~~Center~~
18 Commission shall adopt rules for the submission of data from
19 criminal justice agencies necessary to complete the criminal
20 history record within the state criminal history repository.
21 Data within the repository shall include all records allowed
22 by federal regulation of state repositories."

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

25 §15-27-2.1.

26 (a) (1) A person may be granted unlimited
27 expungements pursuant to subdivisions (a) (1) through (a) (5)

1 and (a) (7) and (a) (8) of Section 15-27-1, subdivisions (a) (1)
2 through (a) (5) and (a) (7) and (a) (8) of Section 15-27-2, and
3 subsection (b) of Section 15-27-2.

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

6 (3) A person may only be granted two expungements
7 pursuant to subdivision (a) (6) of Section 15-27-1, subsection
8 (b) of Section 15-27-1, and subdivision (a) (6) of Section
9 15-27-2.

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

13 (c) The Administrative Office of Courts, in
14 consultation with the Alabama State Law Enforcement Agency,
15 shall adopt procedures relating to prior expungements for the
16 purposes of the limitations in this section.

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

20 Section 5. Although this bill would have as its
21 purpose or effect the requirement of a new or increased
22 expenditure of local funds, the bill is excluded from further
23 requirements and application under Amendment 621, as amended
24 by Amendment 890, now appearing as Section 111.05 of the
25 Official Recompilation of the Constitution of Alabama of 1901,
26 as amended, because the bill defines a new crime or amends the
27 definition of an existing crime.

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

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Senate

Read for the first time and referred to the Senate
committee on Judiciary..... 02-FEB-21

Read for the second time and placed on the calen-
dar 1 amendment..... 03-FEB-21

Read for the third time and passed as amended 03-MAR-21

Yeas 31
Nays 0

Patrick Harris,
Secretary.