

1 SB117
2 203627-2
3 By Senator Coleman-Madison
4 RFD: Judiciary
5 First Read: 02-FEB-21
6 PFD: 01/28/2021

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8 SYNOPSIS: Under existing law, a person who has been
9 charged with a felony offense that does not
10 constitute a violent offense may file a petition to
11 have the criminal records of that offense expunged
12 when the charge is dismissed with prejudice; when
13 the charge has been no-billed by a grand jury; when
14 the charge has been dismissed after successful
15 completion of a court-approved deferred prosecution
16 program; when the charge has been dismissed without
17 prejudice and has not been refiled and more than 5
18 years have passed without the person being
19 convicted of any crime; or when the person was a
20 victim of human trafficking at the time of the
21 offense and only committed the offense as a result
22 of being trafficked.

23 Under existing law, when a person has been
24 charged with a felony offense that constitutes a
25 violent offense, the person may only file a
26 petition to have his or her criminal records of

1 that offense expunged if the person has been found
2 not guilty of the offense.

3 This bill would provide that when a person
4 has been charged with any felony offense, the
5 person may file a petition to have the criminal
6 records of that offense expunged when the charge is
7 dismissed with prejudice; when the charge has been
8 no-billed by a grant jury; when the charge has been
9 dismissed after successful completion of a
10 court-approved deferred prosecution program; when
11 the charge has been dismissed without prejudice and
12 has not been refiled and more than 5 years have
13 passed without the person being convicted of any
14 crime; or when the person was a victim of human
15 trafficking at the time of the offense and only
16 committed the offense as a result of being
17 trafficked.

18 Also under existing law, when a person is
19 eligible to file a petition for expungement, in
20 addition to any court costs or docket fees, the
21 person is required to pay an administrative filing
22 fee of three hundred dollars (\$300) that is
23 distributed according to law.

24 This bill would delete the administrative
25 filing fee and prohibit a person from being charged
26 any court cost or docket fee for the filing of a
27 petition for expungement.

1
2 A BILL
3 TO BE ENTITLED
4 AN ACT
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6 Relating to criminal procedure; to amend Sections
7 15-27-2 and 15-27-4, Code of Alabama 1975, to further provide
8 for who may file a petition for expungement; to delete the
9 administrative filing fee associated with the filing of the
10 petition; and to prohibit the charging of any court costs or
11 docket fees associated with the filing of the petition.

12 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

15 "§15-27-2.

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

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

23 "(2) When the charge has been nobilled by a grand
24 jury.

25 "(3)a. The charge was dismissed after successful
26 completion of a drug court program, mental health court
27 program, diversion program, veteran's court, or any

1 court-approved deferred prosecution program after one year
2 from successful completion of the program.

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

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

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

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

22 ~~"(b) Subsection (a) notwithstanding, convictions for~~
23 ~~the following offenses, which are defined as a violent offense~~
24 ~~under subdivision (15) of Section 12-25-32, may be expunged~~
25 ~~upon a showing that the person committed the felony offense~~
26 ~~during the period the person was trafficked, and that the~~

1 ~~person would not have committed the felony offense but for~~
2 ~~being trafficked:~~

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

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

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

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

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

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

22 ~~"§15-27-4.~~

23 ~~"A person seeking relief under this chapter may not~~
24 ~~be charged any cost of court, docket fee, administrative~~
25 ~~filing fee, or any other fee or cost as part of the filing of~~
26 ~~the petition to expunge or as any condition precedent to any~~
27 ~~ruling of the court under this chapter.~~

1 ~~"(a) In addition to any cost of court or docket fee~~
2 ~~for filing the petition in circuit court, an administrative~~
3 ~~filing fee of three hundred dollars (\$300) shall be paid at~~
4 ~~the time the petition is filed and is a condition precedent to~~
5 ~~any ruling of the court pursuant to this chapter. The~~
6 ~~administrative filing fee shall not be waived by the court and~~
7 ~~shall be distributed as follows:~~

8 ~~"(1) Seventy-five dollars (\$75) to the State~~
9 ~~Judicial Administrative Fund.~~

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

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

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

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

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

24 ~~"(b) Notwithstanding subsection (a), a person~~
25 ~~seeking relief under this chapter may apply for indigent~~
26 ~~status by completing an Affidavit of Substantial Hardship and~~
27 ~~Order which shall be submitted with the petition. If the court~~

1 ~~finds the petitioner is indigent, the court may set forth a~~
2 ~~payment plan for the petitioner to satisfy the filing fee over~~
3 ~~a period of time, which shall be paid in full, prior to any~~
4 ~~order granting an expungement.~~

5 ~~"(c) If a petitioner seeks expungement of an arrest~~
6 ~~record and the court in the original case made a clear and~~
7 ~~unequivocal judicial finding on the record that the arrest had~~
8 ~~no foundation of probable cause, the court, in the expungement~~
9 ~~proceeding, shall waive all docket fees and court costs,~~
10 ~~except for the filling fee in subsection (a)."~~

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