

1 HB226
2 209331-1
3 By Representative England
4 RFD: Judiciary
5 First Read: 02-FEB-21
6 PFD: 02/01/2021

SYNOPSIS: Under current law, a person convicted of a criminal offense may only apply for an expungement in very limited circumstances.

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

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

Amendment 621 of the Constitution of Alabama of 1901, now appearing as Section 111.05 of the Official Recompilation of the Constitution of Alabama of 1901, as amended, prohibits a general law whose purpose or effect would be to require a new or increased expenditure of local funds from becoming effective with regard to a local governmental entity without enactment by a 2/3 vote unless: it comes within one of a number of specified exceptions; it is approved by the

1 affected entity; or the Legislature appropriates
2 funds, or provides a local source of revenue, to
3 the entity for the purpose.

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

12
13 A BILL
14 TO BE ENTITLED
15 AN ACT
16

17 Relating to expungement; to amend Sections 15-27-1,
18 15-27-2, 15-27-4, 15-27-5, 15-27-7, 15-27-8, 15-27-9,
19 15-27-10, and 15-27-19, Code of Alabama 1975, to expand the
20 expungement of criminal records; to make nonsubstantive,
21 technical revisions to update the existing code language to
22 current style; and in connection therewith would have as its
23 purpose or effect the requirement of a new or increased
24 expenditure of local funds within the meaning of Amendment 621
25 of the Constitution of Alabama of 1901, now appearing as
26 Section 111.05 of the Official ReCompilation of the
27 Constitution of Alabama of 1901, as 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 three
8 years from the date of successful completion of a program
9 listed in paragraph a.

10 ~~"(4)~~ (7) When the charge was dismissed without
11 prejudice more than two years ago, has not been refiled, and
12 the person has not been convicted of any other felony or
13 misdemeanor crime, any violation, or any traffic violation,
14 excluding minor traffic violations, during the previous two
15 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) (1) 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 "a. All probation or parole requirements have been
9 completed, including payment of all fines, costs, restitution,
10 and other court-ordered amounts, and are evidenced by the
11 applicable court or agency.

12 "b. Three years have passed from the date of
13 conviction.

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

17 "d. The conviction is not a violent offense, as
18 provided in Section 12-25-32.

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

21 "f. The conviction is not an offense involving moral
22 turpitude, as provided in Section 17-3-30.1.

23 "g. The conviction is not a serious traffic offense,
24 as provided in Article 9 of Chapter 5A of Title 32.

25 "(2) Records related to offenses and convictions may
26 be disclosed to a criminal justice agency, a district
27 attorney, or a prosecuting authority for criminal

1 investigation purposes as provided in Section 15-27-7, or any
2 entities or services providing information to banking,
3 insurance, and other financial institutions as required for
4 various requirements as provided in state and federal law.

5 "~~(b)~~ (c) The circuit court shall have exclusive
6 jurisdiction of a petition filed under ~~subsection~~ subsections
7 (a) and (b).

8 "§15-27-2.

9 "(a) A person who has been charged with ~~a~~ any felony
10 ~~offense, except a violent offense as defined in Section~~
11 ~~12-25-32,~~ may file a petition in the criminal division of the
12 circuit court in the county in which the charges were filed,
13 to expunge records relating to the charge in any of the
14 following circumstances:

15 "(1) When the charge is dismissed with prejudice and
16 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, and more than 90 days have passed, and the charge
23 or 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 "~~(3)~~ (6)a. ~~The~~ 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 after one year
5 from successful completion of the program.

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

8 "c. A petition for expungement may be filed five
9 years from the date of successful completion of a program
10 listed in paragraph a.

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

17 "~~(5) Ninety days have passed from the date of~~
18 ~~dismissal with prejudice, no bill, acquittal, or nolle~~
19 ~~prosequi and the charge has not been refiled.~~

20 "~~(6)~~ (8) When the person proves by a preponderance
21 of the evidence that the person is a victim of human
22 trafficking, that the person committed the felony offense
23 during the period the person was being trafficked, and that
24 the person would not have committed the felony offense but for
25 being trafficked. Evidence that a person is a victim of human
26 trafficking may include, but is not limited to, evidence that

1 the person's trafficker was convicted of trafficking the
2 person under Section 13A-6-152 or Section 13A-6-153.

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

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

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

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

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

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

1 "(c) (1) A person who has been convicted of a felony
2 offense may file a petition in the criminal division of the
3 circuit court in the county in which the charges were filed to
4 expunge records relating to the charge and the conviction if
5 all of the following occur:

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

9 "b. All civil and political rights that were
10 forfeited as a result of the conviction have been restored.

11 "c. One hundred eighty days have passed from the
12 date of the issuance of the certification of pardon.

13 "d. Except as provided in subsection (b), the
14 conviction is not a violent offense, as provided in Section
15 12-25-32.

16 "e. The conviction is not a sex offense, as provided
17 in Section 15-20A-5.

18 "f. The conviction is not an offense involving moral
19 turpitude, as provided in Section 17-3-30.1.

20 "g. The conviction is not a serious traffic offense,
21 as provided in Article 9 of Chapter 5A of Title 32.

22 "(2) Records related to offenses and convictions may
23 be disclosed to a criminal justice agency, a district
24 attorney, or a prosecuting authority for criminal
25 investigation purposes as provided in Section 15-27-7 or any
26 entities or services providing information to banking,

1 insurance, and other financial institutions as required for
2 various requirements as provided in state and federal law.

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

6 "§15-27-4.

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

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

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

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

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

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

24 "(6) Fifty dollars (\$50) to the general fund of the
25 county where the arresting law enforcement agency is located
26 if the arrest was made by the sheriff's office to be used for
27 law enforcement purposes, or, if the arrest was made by

1 another law enforcement agency, to the municipality or other
2 entity or state agency funding the law enforcement activity.

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

11 "(c) If a petitioner seeks expungement of an arrest
12 or conviction record and the court in the original case made a
13 clear and unequivocal judicial finding on the record that the
14 arrest had no foundation of probable cause, the court, in the
15 expungement proceeding, shall waive all docket fees and court
16 costs, except for the filling fee in subsection (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 other provisions of this chapter. ~~Such~~ The
6 records may not be used for any non-criminal justice purpose
7 and may only be made available to criminal justice agencies, a
8 district attorney, or a prosecuting authority upon
9 acknowledgement of an investigation or other criminal matter
10 involving the person related to the expungement. Any expunged
11 records that were added to a federal database shall be
12 requested to be removed and not made available within any
13 interstate criminal database.

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

22 "§15-27-8.

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

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

5 "§15-27-9.

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

9 "(1) RECORD. The term shall include, but is not
10 limited to, all of the following:

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

12 "~~(2)~~ b. Booking or arrest photographs of the
13 petitioner.

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

17 "d. Records relating to administrative suspension
18 pursuant to Article 14 of Chapter 5A of Title 32, including
19 driver license suspension records.

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

23 "(2) CRIMINAL JUSTICE AGENCIES. As defined in
24 Section 41-9-590.

25 "§15-27-10.

26 "Nothing in this chapter shall prohibit a criminal
27 justice agency, a law enforcement agency or official, district

1 attorney or a prosecuting authority, the Alabama Department of
2 Forensic Sciences, or the Department of Human Resources from
3 maintaining an investigative file, report, case file, or log
4 which may include any evidence, biological evidence,
5 photographs, exhibits, or information in documentary or
6 electronic form.

7 "§15-27-19.

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

14 Section 3. Although this bill would have as its
15 purpose or effect the requirement of a new or increased
16 expenditure of local funds, the bill is excluded from further
17 requirements and application under Amendment 621, now
18 appearing as Section 111.05 of the Official Recompilation of
19 the Constitution of Alabama of 1901, as amended, because the
20 bill defines a new crime or amends the definition of an
21 existing crime.

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