

1 SB95
2 209324-1
3 By Senator Smitherman
4 RFD: Judiciary
5 First Read: 02-FEB-21
6 PFD: 01/27/2021

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 also make nonsubstantive,
16 technical revisions to update the existing code
17 language to current style.

18 Amendment 621 of the Constitution of Alabama
19 of 1901, now appearing as Section 111.05 of the
20 Official Recompilation of the Constitution of
21 Alabama of 1901, as amended, prohibits a general
22 law whose purpose or effect would be to require a
23 new or increased expenditure of local funds from
24 becoming effective with regard to a local
25 governmental entity without enactment by a 2/3 vote
26 unless: it comes within one of a number of
27 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 include convictions of
21 certain misdemeanor offenses, traffic violations, municipal
22 ordinances, and felony offenses; to increase the filing fee
23 for petitions for expungement; to make nonsubstantive,
24 technical revisions to update the existing code language to
25 current style; and in connection therewith would have as its
26 purpose or effect the requirement of a new or increased
27 expenditure of local funds within the meaning of Amendment 621

1 of the Constitution of Alabama of 1901, now appearing as
2 Section 111.05 of the Official ReCompilation of the
3 Constitution of Alabama of 1901, as amended.

4 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

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

11 "§15-27-1.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 "c. Ninety days have passed from the date of the
16 issuance of the certification of pardon.

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

1 attorney, or a prosecuting authority for criminal
2 investigation purposes as provided in Section 15-27-7.

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

6 "§15-27-2.

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

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

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

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

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

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

26 ~~"(3)~~ (6)a. The When the charge was dismissed after
27 successful completion of a drug court program, mental health

1 court program, diversion program, veteran's court, or any
2 court-approved deferred prosecution program after one year
3 from successful completion of the program.

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

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

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

15 "~~(6)~~ (8) When the person proves by a preponderance
16 of the evidence that the person is a victim of human
17 trafficking, that the person committed the felony offense
18 during the period the person was being trafficked, and that
19 the person would not have committed the felony offense but for
20 being trafficked. Evidence that a person is a victim of human
21 trafficking may include, but is not limited to, evidence that
22 the person's trafficker was convicted of trafficking the
23 person under Section 13A-6-152 or Section 13A-6-153.

24 "(b) Subsection (a) notwithstanding, ~~convictions for~~
25 a person who has been convicted of any of the following
26 ~~offenses, which are defined as a violent offense under~~
27 ~~subdivision (15) of~~ violent offenses, as defined in Section

1 12-25-32, may be expunged upon a showing that the person
2 committed the felony offense during the period the person was
3 trafficked, and that the person would not have committed the
4 felony offense but for being trafficked:

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

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

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

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

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

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

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

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

6 "c. Ninety days have passed from the date of the
7 issuance of the certification of pardon.

8 "d. Except as provided in subsection (b), the
9 conviction is not a violent offense, as provided in Section
10 12-25-32.

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

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

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

17 "(2) Records related to offenses and convictions may
18 be disclosed to a criminal justice agency, a district
19 attorney, or a prosecuting authority for criminal
20 investigation purposes as provided in Section 15-27-7.

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

24 "§15-27-4.

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

1 be paid at the time the petition is filed and is a condition
2 precedent to any ruling of the court pursuant to this chapter.
3 The administrative filing fee ~~shall~~ may not be waived by the
4 court and shall be distributed as follows:

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

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

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

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

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

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

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

23 "(8) One hundred dollars (\$100) to the Education
24 Trust Fund.

25 "(b) Notwithstanding subsection (a), a person
26 seeking relief under this chapter may apply for indigent
27 status by completing an Affidavit of Substantial Hardship and

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

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

12 "§15-27-5.

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

21 "(1) Nature and seriousness of the offense
22 committed.

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

24 "(3) Date of the offense.

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

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

3 "(6) Other conditions which may have contributed to
4 the offense.

5 "(7) An available probation or parole record,
6 report, or recommendation.

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

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

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

20 "(b) A hearing under subsection (a) shall be
21 conducted in a manner prescribed by the trial judge and shall
22 include oral argument and review of relevant documentation in
23 support of, or in objection to, the granting of the petition.
24 The Alabama Rules of Evidence shall apply to the hearing.
25 Leave of the court shall be obtained for the taking of witness
26 testimony relating to any disputed fact.

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

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

21 "§15-27-7.

22 "(a) Upon receipt of the order of expungement, a
23 criminal justice agency in possession of records subject to
24 the order shall immediately forward the records to the Alabama
25 ~~Criminal Justice Information Center~~ State Law Enforcement
26 Agency. The center shall digitally archive the records in a
27 manner prescribed by the Alabama ~~Criminal~~ Justice Information

1 ~~Center~~ Commission and designate the records as protected
2 notwithstanding any other provisions of this chapter. ~~Such~~ The
3 records may not be used for any non-criminal justice purpose
4 and may only be made available to criminal justice agencies, a
5 district attorney, or a prosecuting authority upon
6 acknowledgement of an investigation or other criminal matter
7 involving the person related to the expungement. Any expunged
8 records that were added to a federal database shall be
9 requested to be removed and not made available within any
10 interstate criminal database.

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

19 "§15-27-8.

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

1 records shall be retained by the Alabama ~~Criminal Justice~~
2 ~~Information Center~~ State Law Enforcement Agency indefinitely.

3 "§15-27-9.

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

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

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

10 "~~(2)~~ b. Booking or arrest photographs of the
11 petitioner.

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

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

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

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

23 "§15-27-10.

24 "Nothing in this chapter shall prohibit a criminal
25 justice agency, a law enforcement agency or official, district
26 attorney or a prosecuting authority, the Alabama Department of
27 Forensic Sciences, or the Department of Human Resources from

1 maintaining an investigative file, report, case file, or log
2 which may include any evidence, biological evidence,
3 photographs, exhibits, or information in documentary or
4 electronic form.

5 "§15-27-19.

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

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

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