

1 HB360
2 205198-2
3 By Representative England
4 RFD: Judiciary
5 First Read: 27-FEB-20

SYNOPSIS: Under existing law, a person charged with a misdemeanor or felony offense, violation, traffic violation, or a municipal ordinance violation may file a petition for expungement under certain conditions, including when the charge is dismissed with prejudice and when the person has been found not guilty of the charge.

This bill would provide that a person may file a petition for expungement when the person has been granted a pardon by the Board of Pardons and Paroles for a nonviolent offense or when the person has been granted a pardon by a mayor for a nonviolent municipal ordinance violation.

A BILL
TO BE ENTITLED
AN ACT

Relating to criminal procedure; to amend Sections 15-27-1 and 15-27-2, Code of Alabama 1975, to authorize the

1 filing of a petition for expungement when the person has been
2 granted a pardon by the Board of Pardons and Paroles or when
3 the person has been granted a pardon by a mayor for a
4 nonviolent municipal ordinance violation.

5 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

6 Section 1. Sections 15-27-1 and 15-27-2, Code of
7 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 dismissed with prejudice.

16 "(2) When the charge has been no billed by a grand
17 jury.

18 "(3) When the person has been found not guilty of
19 the charge.

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

25 "(5) When the person proves by a preponderance of
26 the evidence that the person is a victim of human trafficking,
27 that the person committed the misdemeanor criminal offense,

1 violation, traffic violation, or municipal ordinance violation
2 during the period the person was being trafficked, and that
3 the person would not have committed the offense or violation
4 but for being trafficked. Evidence that a person is a victim
5 of human trafficking may include, but is not limited to,
6 evidence that the person's trafficker was convicted of
7 trafficking the person under Section 13A-6-152 or Section
8 13A-6-153.

9 "(6) When the person has been granted a pardon by
10 the Board of Pardons and Paroles for a nonviolent offense, as
11 defined under Section 12-25-32, or has been granted a pardon
12 by a mayor for a nonviolent municipal ordinance violation.

13 "(b) The circuit court shall have exclusive
14 jurisdiction of a petition filed under ~~subsection (a)~~ this
15 section.

16 "§15-27-2.

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

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

24 "(2) When the charge has been no billed by a grand
25 jury.

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

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

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

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

23 "(7) When the person has been granted a pardon by
24 the Board of Pardons and Paroles for a nonviolent offense, as
25 defined under Section 12-25-32, or has been granted a pardon
26 by a mayor for a nonviolent municipal ordinance violation.

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

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

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

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

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

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

24 "(d) The circuit court shall have exclusive
25 jurisdiction of a petition filed under subsection (a) or
26 subsection (b)."

1 Section 2. 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.