

## New Alabama Law Allows Expungement of Certain Criminal Records

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A new law in Alabama allows individuals to petition to have certain criminal records expunged upon the payment of \$300 in fees, plus court costs, and following a successful petition to the court in which the relevant charge was filed. This means that, among other things, a prospective employee would not be required to disclose on an employment application criminal record information that has been expunged. Offenses subject to expungement include misdemeanors and nonviolent felonies. The new law, Ala. Code Secs. 15-27-1 to -19, becomes effective July 6, 2014.

### Qualifications

A person who has been charged with a misdemeanor criminal offense, a traffic violation, a municipal ordinance violation or a nonviolent felony offense (i.e., not murder, rape, kidnapping, assault, robbery, burglary, or other offenses identified in the Alabama code) may petition for records relating to the charge to be erased when the charge was dismissed with prejudice or was “no billed” by a grand jury, or the person was found not guilty of the charge.

Further, when a charge has been dismissed without prejudice, expungement may be sought after a period of time (two years in the case of misdemeanor, traffic or municipal offenses or five years for a nonviolent felony) if the charge has not been refiled, and the person has not been convicted of any other felony or misdemeanor crime, any violation, or any traffic violation, excluding minor traffic violations, during the relevant time period.

For nonviolent felonies, if the charge was dismissed after successful completion of a drug court program, mental health court program, diversion program, veteran’s court, or any court-approved deferred prosecution program, removal of records also may be requested one year after the completion of such program.

### Procedures

A petition for expungement must be filed with the circuit court in the location where the charge was filed. The petition must include a sworn statement the petitioner meets the above requirements, among other things.

The district attorney and law enforcement agency are provided copies of the petition and the DA must attempt to notify any victims in the underlying case. The DA and the victims have 45 days to oppose the petition. A hearing will be held if any such objection is filed.

If the petition is granted, all records in the custody of the court and any records held by any other agency or official, including law enforcement records, are to be expunged.

Only privileged investigation reports by the Alabama Board of Pardons and Paroles and the files of the district attorney and the Office of Prosecution Services are exempt from being expunged. These agencies would send their records to the Alabama Criminal Justice Information Center, which archives them in a protected file. The records then can be made available only when a criminal justice agency provides notice of an investigation of the individual. By law, the petitioner has a duty to disclose the “fact of the record and any matter relating thereto” to any government regulatory or licensing agency, any utility or its affiliates or “any bank or other financial institution.” The court and any other agencies are to reply to any inquiry that “no record exists on the matter.” The petitioner has no duty to disclose the related facts on job or credit application and other applications. The proceedings regarding the

charge “shall be deemed never to have occurred.”

If you have any questions about this decision or other workplace developments, please contact Thomas A. Davis, at [DavisT@jacksonlewis.com](mailto:DavisT@jacksonlewis.com), or Yvonne Norris Maddalena, at [Yvonne.Maddalena@jacksonlewis.com](mailto:Yvonne.Maddalena@jacksonlewis.com), in our Birmingham office, (205) 332-3100.

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