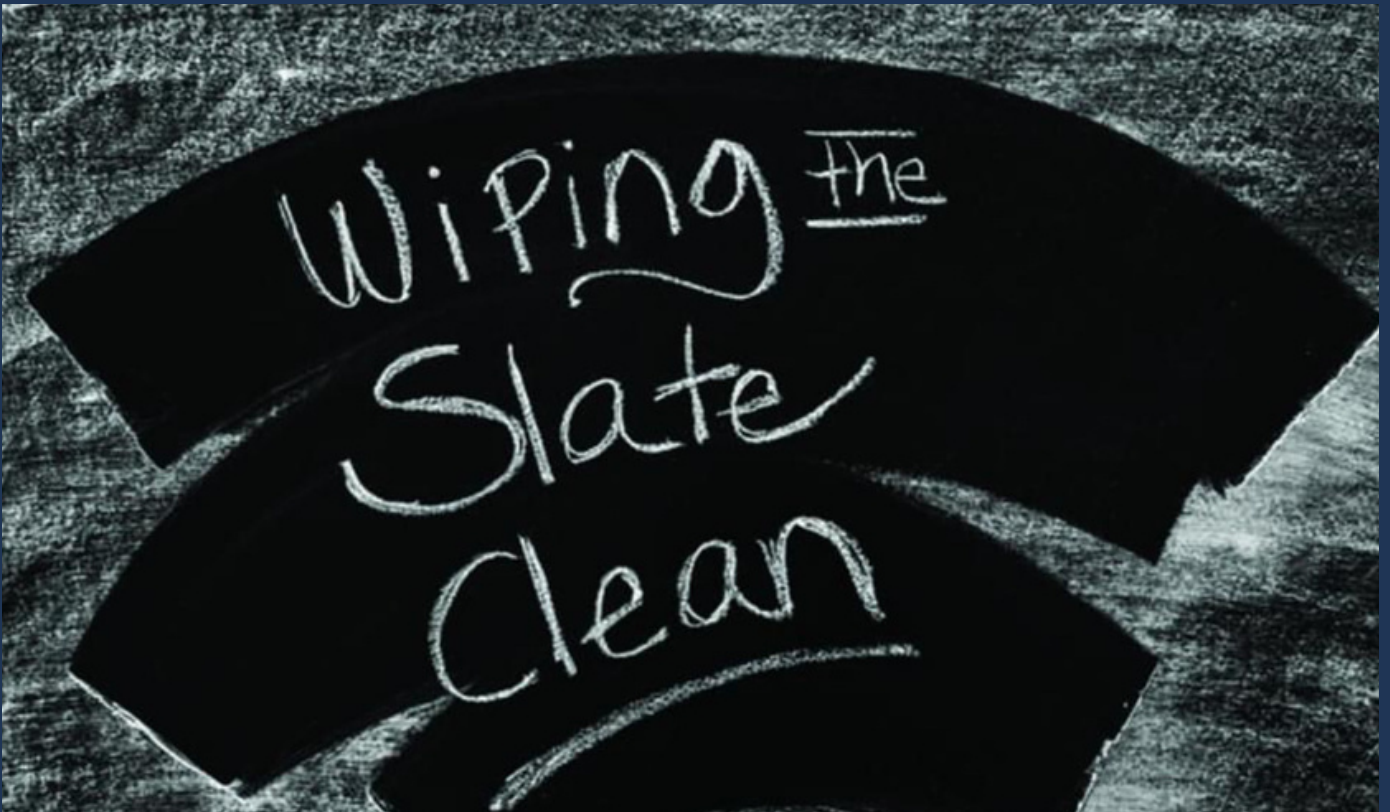


# WIPING THE SLATE CLEAN REDEEMER ACT OF 2021



# EXPUNGEMENT IN ALABAMA

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# EXPUNGEMENT

## BASIC OVERVIEW

Alabama has a number of individuals who may be newly eligible to have their records expunged under the Record Expungement Designed to Enhance Employment and Eliminate Recidivism (REDEEMER) Act that took effect on July 1, 2021. In addition, applicants are now able to apply for a waiver of the associated fee using an Affidavit of Substantial Hardship (ASH).

### DETERMINING ELIGIBILITY

- **Ensure the charge or conviction the individual would like to expunge is in a category the REDEEMER Act covers**
  - Although the REDEEMER Act allows some felony charges to be expunged felony convictions are never eligible unless the person has received a pardon.
- **Expungements in Alabama are no longer only for charges. Some misdemeanor convictions are now eligible, as well**
- **For specifics on what is covered, see the document *ALABAMA EXPUNGEMENT LAW AFTER THE REDEEMER ACT OF 2021* and the *CHARGES AND CONVICTIONS ELIGIBLE FOR EXPUNGEMENT* chart under the "Forms and Documents" section of this handout**
- **Get details about all charges your client seeks to expunge, including:**
  - Specific charge(s) including degree and the date received
  - How the charge was resolved (i.e., pled guilty, dismissed with or without prejudice, etc.)
  - If the client pled guilty or were convicted, have they paid all the restitution, fines, and fees?
  - Were they required to complete any type of diversion program? If so, was it completed and when was it completed?
- **Pull information on charges from Alacourt to confirm correct information on charges, convictions, and dispositions**
- **Once eligibility has been confirmed, the next step in the process is the Document Stage where the following will be completed:**
  - The Expungement Petition
  - The Affidavit of Substantial Hardship (ASH) form
  - Provide the client with information about the additional documents they need to collect and where they may find them

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# DOCUMENTS

## NEEDED TO FILE

### 1) ALEA Certified Criminal History Record obtained by...

- Completing the request form, notarized and signed by two witnesses
- Section C of the Expungement Kit located at:

<https://www.alea.gov/sites/default/files/expungement-forms/Expungement-Kit.pdf>

- An official set of the petitioner's fingerprints that may be obtained from ALEA Headquarters in Montgomery, or through their local law enforcement agency
- A copy of the petitioner's photo ID
- \$25.00 (\$5.00 for each additional copy payable to **ALEA Records and Identification Division** by money order or cashier's check)

### 2) One of the following...

- A certified record of arrest from the appropriate law enforcement agency for the court record
- A certified record of disposition from the appropriate court for the court record
- A certified record of the case action summary from the appropriate court for the record

### 3) Affidavit of Substantial Hardship (ASH) if the petitioner is seeking to waive the filing fee

### 4) Petition for Expungement, REDEEMER Act updated version:

<https://eforms.alacourt.gov/media/fdvfwMRI/petition-for-expungement-of-records.pdf>

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# ALABAMA EXPUNGEMENT LAW

## AFTER THE REDEEMER ACT OF 2021

The **Record Expungement Designed to Enhance Employment and Eliminate Recidivism (REDEEMER) Act**, expands eligibility for individuals who were not convicted, and also provides opportunity for expunging some non-violent misdemeanor convictions and violations once three years have passed since the conviction date and all parole and probation requirements and court-ordered payments are complete (this section governing convictions excludes sex offenses, serious traffic offenses, moral turpitude offenses—with one exception noted later—as well as offenses related to operating commercial vehicles listed in 49 C.F.R. § 383.51). The Act also changes the level of discretion courts possess in expunging records; increases the filing fee from \$300 to \$500, which is now waivable upon a finding of indigency pursuant to an Affidavit of Substantial Hardship (ASH); and limits the number of expungements that may be granted for certain categories of charges and convictions.

### SCOPE OF THE REDEEMER ACT'S INCREASE IN ELIGIBILITY

#### A. WITHOUT A CONVICTION

The Act added a 90-day waiting period before a person becomes eligible for expungement who has been charged with a misdemeanor offense that has been dismissed with prejudice, no billed by a grand jury, or found not guilty. For people who have a misdemeanor charge that was dismissed without prejudice, the time period before they are eligible for expungement has been lowered from two years to one. It also added three additional circumstances in which a misdemeanor charge may be expunged:

- (1) When the charge has been nolle prossed without conditions, more than 90 days have passed, and the charge or charges have not been refiled.
- (2) When the indictment has been quashed and the statute of limitations for refiling the charge or charges has expired or the prosecuting agency confirms that the charge or charges will not be refiled.
- (3) a. When 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...
  - b. A petition for expungement may be filed one year from the date of successful completion of a program listed in paragraph a.

The revisions to § 15-27-2 expand its eligibility to a person who has been charged with any felony offense, removing the restriction on felonies defined as "violent."

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# ALABAMA EXPUNGEMENT LAW

## AFTER THE REDEEMER ACT OF 2021

People seeking to expunge a felony offense may do so 90 days after a charge is dismissed with prejudice, no billed by a grand jury, or nolle prossed without conditions and the charge(s) have not been refiled. Additionally, a felony charge can be expunged 90 days after a finding of not guilty, or when the indictment has been quashed and either the statute of limitations has expired or the prosecuting agency confirms the charge will not be refiled. For charges dismissed without prejudice more than five years ago, clients must not have been convicted of any other crime or violation save for minor traffic violations during that time, at which point they become eligible for expungement. Finally, a Petition for Expungement may be filed one year after the successful completion of a drug court program, mental health court program, diversion program, veteran's court, or any court-approved deferred prosecution program.

### WITH A CONVICTION

Subsection (b) of the revised § 15-27-1 extends the scope of the law to certain people with convictions for misdemeanor offenses and violations (including traffic violations and municipal ordinance violations). Eligibility is subject to seven restrictions.

1. All probation or parole requirements have been completed as are any court-ordered payments, including restitution.
2. Three years must have passed since the conviction date.
3. The person was not operating a commercial vehicle, and the offense is not one listed in 49 C.F.R. § 383.51.
4. The offense is not classified as violent under § 12-25-32.
5. It was not a sex offense under § 15-20A-5.
6. It is not a "moral turpitude" offense under § 17-3-30.1 (with one exception: if the crime was a felony at the time of conviction but has been reclassified as a misdemeanor pursuant to Act 2015-185, and the person has not been arrested for any offense - excluding minor traffic violations - for fifteen years prior to filing for expungement).
7. It cannot be a serious traffic offense under Article 9 of Chapter 5A of Title 32. Felony convictions may only be expunged if the person has been granted a pardon more than 180 days ago, had all of their previously -forfeited rights restored, and was not convicted for a violent offense, sex offense, serious traffic offense, or moral trupitude offense (with the same exception for reclassified felonies as above).

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# ALABAMA EXPUNGEMENT LAW

## AFTER THE REEDEMER ACT OF 2021

### OTHER CHANGES IN THE LAW

#### FILING FEE

The administrative filing fee under the revised § 15-27-1 has been raised from \$300 to \$500. The fee applies to each arrest, when a petitioner is seeking the expungement of multiple charges, but is applied only once for multiple charges arising out of a single arrest. However, the new law removes the language that the fee is not waivable, and an Affidavit of Substantial Hardship (ASH) that demonstrates indigency will not allow for the fee to be waived (rather than merely paid in installments). The original law waived fees for petitioners when the court in the original case found the arrest to have no foundation of probable cause; the revised law extends this provision to convictions.

#### NUMERICAL LIMITS

Limits are placed on the number of expungements a person can receive for certain kinds of charges in the newly added § 15-27-2.1. A person may only be granted two expungements under § 15-27-1(b) for violations or misdemeanors that resulted in conviction, or for violations, misdemeanors, or felonies in which the charge was dismissed pursuant to § 15-27-1(a)(6) or § 15-27-2(a)(6) after successful completion of a drug court program, mental health court program, diversion program, veteran's court, or any court-approved deferred prosecution program. For all other matters that may be expunged, contain in §§ 15-27-1 a(1) - a(5), a(7) - a(8), an unlimited number of expungements may be granted.

#### AVAILABILITY OF RECORDS AFTER EXPUNGEMENT

The newly added § 15-27-21 allows a certified record of an expungement to be admitted in a criminal trial. Other revisions to the code similarly limit the effect of expungement. The updates to § 15-27-7 allow the expunged records to be made available in the course of investigations or criminal matters involving the petitioner to district attorneys "or a prosecuting authority," in addition to the old law's provision that they may be accessed by criminal agencies. The section also now includes that the records may be made available to the Department of Human Resources for investigations or assessments made "in order to protect children or vulnerable adults." Additionally, expungement may not be used for reports that are "indicated" under § 26-14-8, which defines the term as meaning "when credible evidence and professional judgment substantiates that an alleged perpetrator is responsible for child abuse or neglect."

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# ALABAMA EXPUNGEMENT LAW

## AFTER THE REEDEMER ACT OF 2021

### COURT DISCRETION

Finally, some amount of the court's discretion is removed under the revisions to § 15-27-5. For instance, instead of considering the section's list of factors and making a determination in its discretion, the court is now directed that it must consider all listed factors, and the "discretion" language is removed. The court is also now directed, rather than permitted, to rule on the merits of a petition to which the prosecuting authority and victim have not objected, without setting the matter for a hearing. A line allowing the court discretion over the number of cases that may be expunged after the first one is also removed, in favor of the language specifying how many may be granted.

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# CHARGES AND CONVICTION

## ELIGIBLE FOR EXPUNGEMENT

### MISDEMEANOR CHARGES

Authority	How charge was resolved	Restrictions
15-27-1(a)(1)	Dismissed with prejudice	90 days have passed
15-27-1(a)(2)	No billed by grand jury	90 days have passed
15-27-1(a)(3)	Found not guilty	90 days have passed
15-27-1(a)(4)	Nolle prossed without conditions	90 days have passed and charges not refiled
15-27-1(a)(5)	Indictment quashed	Statute of limitations has run out OR prosecuting agency has confirmed charge(s) will not be refiled
15-27-1(a)(6)	Successful completion of veteran's court, drug court, mental health court, diversion program, or other court-approved deferred prosecution program	One year has passed since completion; only two expungements of this kind may be granted
15-27-1(a)(7)	Dismissed without prejudice	One year has passed

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# CHARGES AND CONVICTION

## ELIGIBLE FOR EXPUNGEMENT

### FELONY CHARGES

(now covers charges for felonies classified as violent)

Authority	How charge was resolved	Restrictions
15-27-2(a)(1)	Dismissed with prejudice	90 days have passed
15-27-2(a)(2)	No billed by grand jury	90 days have passed
15-27-2(a)(3)	Finding of not guilty	90 days have passed
15-27-2(a)(4)	Nolle prossed without conditions and not refiled	90 days have passed
15-27-2(a)(5)	Indictment quashed	Statute of limitations has run out OR prosecuting agency has confirmed charge(s) will not be refiled
15-27-2(a)(6)	Successful completion of veteran's court, drug court, mental health court, diversion program, or other court-approved deferred prosecution program	One year has passed since completion
15-27-2(a)(7)	Dismissed without prejudice	5 years have passed and during the previous 5 years the person has not been convicted of any offense (except for minor traffic violations)

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# CHARGES AND CONVICTION

## ELIGIBLE FOR EXPUNGEMENT

### MISDEMEANOR CONVICTIONS

(limited to two expungements for all eligible convictions)

Authority	Type of offense	Eligibility
15-27-1(b)(3)	Operating commercial vehicle at time of offense or offense listed in 49 CFR § 383.51	Not eligible
15-27-1(b)(4)	Classified as violent offense under 12-25-32	Not eligible
15-27-1(b)(5)	Classified as sex offense under 15-20A-5	Not eligible
15-27-1(b)(6)	Classified as moral turpitude offense under 17-3-30.1	Not eligible (exception: if it was a felony at the time of offense but was reclassified under Act 2015-185 and the person has not been arrested for any offense save minor traffic violations in the 15 years preceding their application for expungement)
15-27-1(b)(7)	Classified as serious traffic offense under Title 32 Article 9 Chapter 5A	Not eligible
15-27-1(b)(1-2)	Other misdemeanor convictions or convictions for traffic or municipal ordinance violations	Three years have passed since date of conviction and all probation/parole requirements are complete as are any required programs; if ordered, restitution has been paid

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