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# Alabama, Restoration of Rights, Expungement & Sealing

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*This document is part of the [NACDL Restoration of Rights Project](https://www.nacdl.org/rightsrestoration/).*

#### I.  Restoration of Civil Rights/Firearms Privileges

##### A.  Voting

A person convicted of “a felony involving moral turpitude, or who is mentally incompetent, shall [not] be qualified to vote until restoration of civil and political rights or removal of disability.” [Ala. Const. art. VIII, § 177](http://law.justia.com/constitution/alabama/CA-245717.html).[1](http://ccresourcecenter.org/?post_type=tt_font_control&p=1589" \l "easy-footnote-bottom-1" \o "Prior to its 1996 amendment, the Alabama constitution disenfranchised persons convicted of specified offenses, all felonies punishable by a term of imprisonment, and all “crimes of moral turpitude.”   Ala. Const. Art. VIII, § 182 (1996).  Section 182’s extension of disenfranchisement to misdemeanor crimes of “moral turpitude,” interpreted at that time to include drug possession and DUI, was held unconstitutional in <em>Hunter v. Underwood</em>, 471 U.S. 222 (1985).)  There is no exhaustive list of disqualifying crimes; however, the Supreme Court of Alabama has from time to time identified felonies that are and are not disqualifying.[2](http://ccresourcecenter.org/?post_type=tt_font_control&p=1589" \l "easy-footnote-bottom-2" \o " According to a 2005 opinion of the Alabama Attorney General, assault, felony drug possession and felony DUI are not regarded as crimes of “moral turpitude.” <em>See</em> Ala. Op. Atty. Gen. No. 2005-092 (March 18, 2005), 2005 WL 1121853 (Ala. A.G.)  This opinion was issued in response to a request from the Board of Pardons and Paroles for a list of disqualifying offenses, and cites a number of cases in which the Supreme Court of Alabama has held that murder, rape, burglary, robbery, income tax evasion, conspiracy to commit fraud, possession of marijuana for resale, theft, transporting stolen vehicles, unauthorized sale of a controlled substance, and bigamy are all crimes involving moral turpitude.  On the other hand, assault, doing business without a license, violation of liquor laws, aiding prisoner to escape, possession of marijuana, and driving under the influence, are not.  Notwithstanding this opinion, Alabama’s Secretary of State continued to take the position that conviction of any felony prohibited voting, and so directed country registrars.  On June 1, 2007, in response to a lawsuit filed by the ACLU challenging this interpretation and application of § 177, the Supreme Court of Alabama held that while state and local election officials had acted contrary to the State Constitution and laws, no further injunctive relief was necessary.  <em>See Chapman v. Gooden</em>, 974 So. 2d 972 (Ala. 2007))

###### *Expedited restoration of voting rights*

A 2003 statute requires the Board of Pardons and Parole to issue a “certificate of eligibility to register to vote” to all persons convicted of disqualifying offenses (except those convicted of serious violent offenses and sex offenses) if they have completed their sentence and paid all fines, restitution and court costs, and have no charges pending against them.  [Ala. Code § 15-22-36.1](http://law.justia.com/codes/alabama/2006/14214/15-22-36.html).  Restoration is automatic upon determination of eligibility.  Persons convicted of murder and sex offenses must still apply to Board for a pardon. *Id.* (See discussion in Part IIA below).  Federal and out-of-state offenders are eligible to apply for restoration of rights. Because of the uncertainty over which convictions are disqualifying, the Board now accepts applications from all convicted persons.

##### B. Office/Jury

Someone who is not a qualified elector is “ineligible to and disqualified from holding” state office. [Ala. Code § 36-2-1](http://law.justia.com/codes/alabama/2015/title-36/chapter-2/section-36-2-1/); *see* [Ala. Code § 15-22-36.1](http://law.justia.com/codes/alabama/2006/14214/15-22-36.html)(a)(1), (3). A person is not “qualified” to sit on a jury if she has “lost the right to vote by conviction for any offense involving moral turpitude.”  [Ala. Code § 12-16-60(a)(4)](http://law.justia.com/codes/alabama/2015/title-12/chapter-16/article-2a/).  If lost, these civil rights may be restored only through a pardon from Board of Pardons and Parole. (Expedited procedure for restoration of voting rights does not apply.)

##### C. Firearms

Any person convicted in any jurisdiction of committing a “crime of violence” may not own, possess or exercise control over “a pistol,” meaning a firearm with a barrel of less than 12 inches in length. *See* [Ala. Code. §§ 13A-11-70](http://law.justia.com/codes/alabama/2015/title-13a/chapter-11/article-3/division-2/)(1), [13A-11-72](http://law.justia.com/codes/alabama/2015/title-13a/chapter-11/article-3/division-2/).  Restoration by pardon, unless restoration specifically withheld. *State ex rel. Sokira v. Burr*, 580 So. 2d 1340, 1345 (Ala. 1991).

#### II.  Discretionary Restoration Mechanisms

##### A. Pardon

###### *Authority*

In 1939, the Alabama legislature was granted the pardon power by an amendment to the state constitution. It created the Board of Pardons and Parole to exercise the power, which extends to all offenses save treason and impeachment.  Const. amend. 38 (amending art. V § 124). The Governor retains reprieve and commutation authority in capital cases. The Board’s administration and procedure is governed by [Ala. Code §§ 15-22-20](http://law.justia.com/codes/alabama/2015/title-15/chapter-22/article-2/) through 15-22-40.   Mayors have authority to pardon violations of municipal ordinances. [3](http://ccresourcecenter.org/?post_type=tt_font_control&p=1589" \l "easy-footnote-bottom-3" \o "In August 2009 the Mayor of Birmingham issued a blanket pardon to all those arrested there during civil rights protects of the 1960s.  <em>See</em> <a href="http://blog.al.com/live/2009/08/birminghams_mayor_langford_iss.html">http://blog.al.com/live/2009/08/birminghams_mayor_langford_iss.html</a>)

Composition of Board: The Board is composed of three members who are appointed by the Governor to six-year terms with the advice and consent of the State Senate.  [Ala. Code § 15-22-20(a)-(d)](http://law.justia.com/codes/alabama/2015/title-15/chapter-22/article-2/).  Members are selected by the Governor from a slate nominated by a board consisting of the State Chief Justice as chair, the Lieutenant Governor, the presiding judge of the court of criminal appeals, the Speaker of the House and the President pro tem of the Senate.  [§ 15-22-20](http://law.justia.com/codes/alabama/2015/title-15/chapter-22/article-2/)(b).  The chairperson is designated by the Governor. [§ 15-22-20](http://law.justia.com/codes/alabama/2015/title-15/chapter-22/article-2/)(d).  Members are full-time State officials, take an oath of office, and are subject to impeachment on the same grounds as other State officials.  [§ 15-22-20](http://law.justia.com/codes/alabama/2015/title-15/chapter-22/article-2/)(e).  The Board must make a full annual report to the Governor. [§ 15-22-24](http://law.justia.com/codes/alabama/2015/title-15/chapter-22/article-2/)(b).

###### *Eligibility*

Completion of sentence, or completion of at least three years of permanent parole, unless the pardon is sought on grounds of innocence and the judge or district attorney approve in writing.  Ala. Code [§ 15-22-36](http://law.justia.com/codes/alabama/2015/title-15/chapter-22/article-2/)(c).   Persons convicted of a felony or certain other offenses involving danger to the person must submit to the taking of a DNA sample as a mandatory condition of the pardon. [Ala. Code § 36-18-25](http://law.justia.com/codes/alabama/2015/title-36/chapter-18/article-2/)(f). Board accepts applications from federal offenders and people convicted in other state jurisdictions residing in the state.  *See* [Article 8 of Ala. Board Rules, Regulations and Procedures](http://www.pardons.state.al.us/ALABPP/Main/ALABPP%20MAIN.htm).  *See* *Hogan v. Hartwell*, 7 So. 2d 889 (Ala. 1942) (Board had authority to restore citizenship and political rights of federal offender, as against contention that a pardon by President was essential to restore the lost rights).

###### *Effect*

A pardon does not wipe out the historical fact of the conviction; it involves forgiveness and not forgetfulness.  *Johnson v. State*, 421 So.2d 1306 (Ala. Crim. App. 1982).  A state pardon does not relieve civil and political disabilities “unless specifically expressed in the pardon.”  [Ala. Code § 15-22-36](http://law.justia.com/codes/alabama/2015/title-15/chapter-22/article-2/)(c).  *See also*[Ala. Code § 17-3-31](http://law.justia.com/codes/alabama/2015/title-17/chapter-3/article-2/).  A person who has forfeited his office as a result of felony conviction is not restored to that office by a pardon.  [Ala. Code § 36-9-2](http://law.justia.com/codes/alabama/2015/title-36/chapter-9/);.*see also* *Hendrix v. Hunt*, 607 So. 2d 1254 (Ala. 1992).  “[A] pardon that restores to an individual all civil rights and political privileges necessarily nullifies all legal punishment for the offense.  In other words, if the conviction incorporates certain civil and political disqualifications, then a pardon that specifically revives all civil and political rights must certainly remove any and all legal incapacities,” including handgun privileges. *State ex rel. Sokira v. Burr*, 580 So.2d 1340, 1345 (Ala. 1991). The Board may grant a full pardon, which restores all rights, or it may grant a pardon with restrictions (e.g., firearms privileges, sex offender registration, habitual offender status).  After the Sokira decision, it became common for the Board of Pardons and Parole to expressly exclude the right to own/possess/control a firearm from the restoration of civil rights. *See* Ala. Op. Atty Gen. No. 1999-060, 1998 WL 34309449, \* 1, 3 (1998).

###### *Process*

Hearing required, vote by majority, decision and reasons public.  Board has no power to grant a pardon or other act of clemency unless the action is taken in an open public meeting, of which 30 days’ notice has been given to the Attorney General, the DA who prosecuted the case and the judge who sentenced the offender, the chief of police and the county sheriff, and the victim.  [Ala. Code §§ 15-22-23](http://law.justia.com/codes/alabama/2015/title-15/chapter-22/article-2/), [15-22-36](http://law.justia.com/codes/alabama/2015/title-15/chapter-22/article-2/); *see also* Article 4 of the Ala. Board Rules, supra.   Application to Board of Pardons and Parole is very simple form filed with local probation office that is “intended to facilitate application by individuals who lack formal education.” [Ala. Admin. Code r. 640-X-6-.01](http://www.alabamaadministrativecode.state.al.us/docs/par/6par.htm).  Investigation by a local probation officer includes current information on the applicant’s home situation, job status, and an updated criminal arrest record, written references and other information as warranted.  *See* Article 8 of Ala. Board Rules, *supra*.  The Board may not act on any application or case until a complete investigation of the prisoner’s social and criminal record has been made by a parole officer and a written report thereof made a part of the prisoner’s file.  [Ala. Code § 15-22-25](http://law.justia.com/codes/alabama/2015/title-15/chapter-22/article-2/) (b).  Once the investigation is complete, a hearing will be set before the Board.  Required notification will be sent to the victim and concerned officials.  At hearing, a decision is made by majority vote to grant or deny the pardon request, and announced.  Process takes about a year from beginning to end.  *See* Article 6 of the Ala. Board Rules.  These same procedures will apply to a request for a Certificate of Eligibility to Register to Vote, except where superseded by [Ala. Code § 15-22-36.1](http://law.justia.com/codes/alabama/2015/title-15/chapter-22/article-2/) (see below, providing for paper review).

Board Orders granting pardons, with or without restoration of civil and political rights, are public records. The statements of reasons filed by each member voting in favor of such grant are public records.  However, pardon files are otherwise confidential.  *Ex parte Alabama Bd. of Pardons and Paroles*, 814 So. 2d 870 (Ala. 2001).  Petitioner is not entitled to inspect his own file or to have a reason for denial.  *Ex parte Alabama Bd. of Pardons and Paroles*, 849 So. 2d 255 (Ala. Crim. App. 2002).

Expedited Process to Restore Voting Rights: In October 2003, the Alabama legislature enacted an expedited process for restoring right to vote to be administered by the Board, applicable to all but specified serious violent offenses and sex offenses.  [Ala. Code § 15-22-36.1](http://law.justia.com/codes/alabama/2015/title-15/chapter-22/article-2/).  Eligibility depends upon applicant having completed sentence, including payment of fines, court costs, fees, and victim restitution ordered by the sentencing court; may have no pending felony charges. The Attorney General of Alabama has recently opined that if a person has been convicted of both a disqualifying and a non-disqualifying offense, the person must have satisfied all terms and conditions of the non-disqualifying offense in order to be considered for restitution. Ala. Op. Atty. Gen. No. 2005-092 (March 18, 2005).   If a person is determined to be eligible, the right to vote must be restored.[§ 15-22-36.1](http://law.justia.com/codes/alabama/2015/title-15/chapter-22/article-2/)(b).   Restoration is also available to federal and out-of-state offenders. [§ 15-22-36.1](http://law.justia.com/codes/alabama/2015/title-15/chapter-22/article-2/)(a)(1).

The application process may include investigation by parole officer and report to Board within 45 days.  If no board member objects within five days, issuance of Certificate of Eligibility to Vote is automatic.  [§ 15-22-36.1](http://law.justia.com/codes/alabama/2015/title-15/chapter-22/article-2/)(e).  If any member of Board objects on grounds of eligibility, hearing scheduled.  [§ 15-22-36.1](http://law.justia.com/codes/alabama/2015/title-15/chapter-22/article-2/)(f).  In the event the board determines, by a majority vote, that the criteria have been met, the executive director shall forthwith issue a Certificate of Eligibility to Register to Vote to the applicant.  *Id.*

###### *Frequency of Grants*

Applications for pardon have increased in recent years because pardon is necessary for employment and bonding purposes, and to regain firearms rights.  A substantial number of pardons go to those previously granted restoration of voting rights.

|  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
|  | FY 04 | FY 05 | FY 06 | FY 07 | FY 08 | FY 09 | FY 10 | FY 11 | FY 12 | FY 13 | FY 14 |
| Pardons considered | 222 |  | 500 | 805 | 692 | 617 | 398 | 704 | 964 | 980 | 798 |
| Pardons granted | 158 | 469 | 410 | 689 | 578 | 511 | 312 | 565 | 734 | 753 | 657 |
| Pardons denied | 64 |  | 90 | 116 | 114 | 106 | 86 | 139 | 230 | 227 | 141 |
| Voting rights restored | 2608 (includes 2003) | 1233 | 771 | 1709 | 3017 | 3423 | 673 | 625 | 762 | 843 | 522 |

*Source: [Annual Reports of the Alabama Parole Board.](http://www.pardons.state.al.us/)*

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##### B.  Judicial sealing or expungement

###### *Conviction records*

Alabama law contains no statutory provision for expungement or sealing of adult conviction records.

Despite the absence of statutory expungement authority for adult criminal records, municipal courts in the recent past appear to have regularly exercised a common law expungement authority.  *See* Kristin K. Hensen, Can You Make This Go Away:  Alabama’s Inconsistent Approach to Expunging Criminal Records, 35 Cumb. L. Rev. 385 (2005).  *See also* “All Expunged Cases Should be Made Public,” Mobile Register, July 13, 2005.  Concerning the municipal courts, the Alabama Attorney General has stated in an informal opinion that “(t)here is nothing in the Constitution of Alabama 1901 or the Alabama Code granting municipal courts the power to expunge records.”  [88-00410 Op. Ala. Att’y Gen. (1988)](http://www.ago.state.al.us/oldopinions/8800410.pdf).  Persons seeking expungement have sometimes relied upon statutes authorizing individuals to bring a court challenge to “inaccurate or incomplete” records.  [Ala. Code § 41-9-645](http://law.justia.com/codes/alabama/2015/title-41/chapter-9/article-23/division-2/).  A court may order a record “appropriately purged, modified or supplemented by an explanatory notation” if the record is found to be “inaccurate, incomplete or misleading.” [§ 41-9-646](http://law.justia.com/codes/alabama/2015/title-41/chapter-9/article-23/division-2/).

###### *Nonconviction records*

Effective July 6, 2014, courts may expunge nonconviction records of non-violent felony and misdemeanor charges, including felony cases where charges were dismissed after successful completion of a drug court program, mental health court program, diversion program or veteran’s court program.  *See*[Ala. Code § 15-27-1](http://law.justia.com/codes/alabama/2015/title-15/chapter-27/) (misdemeanors); [§ 15-27-2](http://law.justia.com/codes/alabama/2015/title-15/chapter-27/) (non-violent felonies). Expungement may be sought 90 days after acquittal or charges dismissed with prejudice, and five years after dismissal without prejudice “if 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 previous five years.”  [15-27-2](http://law.justia.com/codes/alabama/2015/title-15/chapter-27/)(a)(5). There is an administrative fee of $300, and if the prosecutor or victim object a hearing shall be held at which the court will consider certain factors relating to the crime.  [§ 15-27-5](http://law.justia.com/codes/alabama/2015/title-15/chapter-27/).  Where there is no objection, “the court shall grant the petition if it is reasonably satisfied from the evidence that the petitioner has complied with and satisfied the requirements of this chapter.”  Id.   In addition, “[t]he court shall have discretion over the number of cases that may be expunged pursuant to this chapter after the first case is expunged.” *Id.*

Effect of expungement:

*“After the expungement of records pursuant to subsection (a), the proceedings regarding the charge shall be deemed never to have occurred. Except as provided in this chapter, the court and other agencies shall reply to any inquiry that no record exists on the matter. The petitioner whose record was expunged shall not have to disclose the fact of the record or any matter relating thereto on an application for employment, credit, or other type of application. However, the petitioner whose record was expunged shall have the duty to disclose the fact of the record and any matter relating thereto to any government regulatory or licensing agency, any utility and its agents and affiliates, or any bank or other financial institution. In these circumstances, the government regulatory or licensing agency, utility and its agents and affiliates, or the bank or other financial institution shall have the right to inspect the expunged records after filing notice with the court.”*

[§ 15-27-6](http://law.justia.com/codes/alabama/2015/title-15/chapter-27/)(b). Expungement does not restore firearms rights,[§ 15-27-15](http://law.justia.com/codes/alabama/2015/title-15/chapter-27/), or relieve sex offender registration, which is only available from a court. *See* [§ 15-20A-24](http://law.justia.com/codes/alabama/2015/title-15/chapter-27/).

*See also* [Ala. Code § 41-9-625](http://law.justia.com/codes/alabama/2015/title-15/chapter-27/) (state repository required to delete arrest records from rap sheets within 30 days of release from custody if the person is not charged or is cleared of the charges).

###### *Juvenile delinquency adjudications*

May be sealed two years after final discharge or court order not pertaining to custody or supervision, if the individual has not been convicted of a felony or misdemeanor involving sexual offenses, drugs, weapons, or violence, or threats of violence, and has no pending criminal proceedings.[Ala. Code § 12-15-136](http://law.justia.com/codes/alabama/2015/title-12/chapter-15/article-1/)(a).  Any adjudication of delinquency or conviction of a felony or misdemeanor involving sexual offenses, drugs, weapons, or violence, or threats of violence, subsequent to sealing shall have the effect of nullifying the sealing order.   [§ 12-15-136](http://law.justia.com/codes/alabama/2015/title-12/chapter-15/article-1/)(e).  Five years after the juvenile reaches the age of majority, s/he can petition the court to have the records destroyed. [§ 12-15-137](http://law.justia.com/codes/alabama/2015/title-12/chapter-15/article-1/)(a).

###### *Administrative certificate*

See Part I for “certificate of eligibility to register to vote” that must be issued any person convicted of a non-violent offense who has completed his sentence and paid all fines, restitution and court costs, and has no charges pending against him.  [Ala. Code § 15-22-36.1](http://law.justia.com/codes/alabama/2015/title-15/chapter-22/article-2/).

#### III.   Nondiscrimination in occupational licensing and employment

Alabama has no general law regulating consideration of conviction.  It does apply a direct relationship test in connection with some licenses.  *See, e.g.*, [Ala. Code § 34-1A-5](http://law.justia.com/codes/alabama/2015/title-34/chapter-1a/) (d)(2)a. (“An applicant [for an alarm system installer license] shall not be refused a license solely because of a prior criminal conviction, unless the criminal conviction directly relates to the occupation or profession for which the license is sought.”);  [Ala. Code § 27-17A-18](http://law.justia.com/codes/alabama/2015/title-27/chapter-17a/article-2/)(f)(3) (“The applicant [for a pre-need sales agent for funeral services] must not have any felony or misdemeanor convictions that relate to any activity regulated by this chapter”).