

FIRST REGULAR SESSION

SENATE BILL NO. 447

102ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR WASHINGTON.

0257S.01H

KRISTINA MARTIN, Secretary

AN ACT

To repeal sections 610.120 and 610.140, RSMo, and to enact in lieu thereof two new sections relating to criminal records.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 610.120 and 610.140, RSMo, are
2 repealed and two new sections enacted in lieu thereof, to be
3 known as sections 610.120 and 610.140, to read as follows:

610.120. 1. Except as otherwise provided under
2 section 610.124, records required to be closed shall **[not]**
3 be destroyed **within six months of being closed; [they] the**
4 **record of arrest shall be closed and** shall be inaccessible
5 to the general public and to all persons other than the
6 defendant except as provided in this section and chapter
7 43. **[Closed records shall be available to: criminal justice**
8 **agencies for the administration of criminal justice pursuant**
9 **to section 43.500, criminal justice employment, screening**
10 **persons with access to criminal justice facilities,**
11 **procedures, and sensitive information; to law enforcement**
12 **agencies for issuance or renewal of a license, permit,**
13 **certification, or registration of authority from such agency**
14 **including but not limited to watchmen, security personnel,**
15 **and private investigators; those agencies authorized by**
16 **chapter 43 and applicable state law when submitting**
17 **fingerprints to the central repository; the sentencing**
18 **advisory commission created in section 558.019 for the**

EXPLANATION-Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

19 purpose of studying sentencing practices in accordance with
20 chapter 43; to qualified entities for the purpose of
21 screening providers defined in chapter 43; the department of
22 revenue for driver license administration; the department of
23 public safety for the purposes of determining eligibility
24 for crime victims' compensation pursuant to sections 595.010
25 to 595.075, department of health and senior services for the
26 purpose of licensing and regulating facilities and
27 regulating in-home services provider agencies and federal
28 agencies for purposes of criminal justice administration,
29 criminal justice employment, child, elderly, or disabled
30 care, and for such investigative purposes as authorized by
31 law or presidential executive order.]

32 2. [These records shall be made available only for the
33 purposes and to the entities listed in this section. A
34 criminal justice agency receiving a request for criminal
35 history information under its control may require positive
36 identification, to include fingerprints of the subject of
37 the record search, prior to releasing closed record
38 information.] Dissemination of closed and open records from
39 the Missouri criminal records repository shall be in
40 accordance with section 43.509. All records which are
41 closed records shall be removed from the records of the
42 courts, administrative agencies, and law enforcement
43 agencies which are available to the public [and shall be
44 kept in separate records which are to be held confidential
45 and, where possible, pages of the public record shall be
46 retyped or rewritten omitting those portions of the record
47 which deal with the defendant's case]. If [retyping or
48 rewriting] **destruction of the record** is not feasible because
49 of the permanent nature of the record books, such record

50 entries shall be blacked out [and recopied in a confidential
51 book].

610.140. 1. Notwithstanding any other provision of
2 law and subject to the provisions of this section, any
3 person may apply to any court in which such person was
4 charged or found guilty of any offenses, violations, or
5 infractions for an order to expunge records of such arrest,
6 plea, trial, or conviction. Subject to the limitations of
7 subsection 12 of this section, a person may apply to have
8 one or more offenses, violations, or infractions expunged if
9 such offense, violation, or infraction occurred within the
10 state of Missouri and was prosecuted under the jurisdiction
11 of a Missouri municipal, associate circuit, or circuit
12 court, so long as such person lists all the offenses,
13 violations, and infractions he or she is seeking to have
14 expunged in the petition and so long as all such offenses,
15 violations, and infractions are not excluded under
16 subsection 2 of this section. If the offenses, violations,
17 or infractions were charged as counts in the same indictment
18 or information or were committed as part of the same course
19 of criminal conduct, the person may include all the related
20 offenses, violations, and infractions in the petition,
21 regardless of the limits of subsection 12 of this section,
22 and the petition shall only count as a petition for
23 expungement of the highest level violation or offense
24 contained in the petition for the purpose of determining
25 future eligibility for expungement.

26 2. The following offenses, violations, and infractions
27 shall not be eligible for expungement under this section:

- 28 (1) Any class A felony offense;
- 29 (2) Any dangerous felony as that term is defined in
30 section 556.061;

31 (3) Any offense that requires registration as a sex
32 offender;

33 (4) Any felony offense where death is an element of
34 the offense;

35 (5) Any felony offense of assault; misdemeanor or
36 felony offense of domestic assault; or felony offense of
37 kidnapping;

38 (6) Any offense listed, or previously listed, in
39 chapter 566 or section 105.454, 105.478, 115.631, 130.028,
40 188.030, 188.080, 191.677, 194.425, 217.360, 217.385,
41 334.245, 375.991, 389.653, 455.085, 455.538, 557.035,
42 565.084, 565.085, 565.086, 565.095, 565.120, 565.130,
43 565.156, 565.200, 565.214, 566.093, 566.111, 566.115,
44 568.020, 568.030, 568.032, 568.045, 568.060, 568.065,
45 568.080, 568.090, 568.175, 569.030, 569.035, 569.040,
46 569.050, 569.055, 569.060, 569.065, 569.067, 569.072,
47 569.160, 570.025, 570.090, 570.180, 570.223, 570.224,
48 570.310, 571.020, 571.060, 571.063, 571.070, 571.072,
49 571.150, 574.070, 574.105, 574.115, 574.120, 574.130,
50 575.040, 575.095, 575.153, 575.155, 575.157, 575.159,
51 575.195, 575.200, 575.210, 575.220, 575.230, 575.240,
52 575.350, 575.353, 577.078, 577.703, 577.706, 578.008,
53 578.305, 578.310, or 632.520;

54 (7) Any offense eligible for expungement under section
55 577.054 or 610.130;

56 (8) Any intoxication-related traffic or boating
57 offense as defined in section 577.001, or any offense of
58 operating an aircraft with an excessive blood alcohol
59 content or while in an intoxicated condition;

60 (9) Any ordinance violation that is the substantial
61 equivalent of any offense that is not eligible for
62 expungement under this section;

63 (10) Any violation of any state law or county or
64 municipal ordinance regulating the operation of motor
65 vehicles when committed by an individual who has been issued
66 a commercial driver's license or is required to possess a
67 commercial driver's license issued by this state or any
68 other state; and

69 (11) Any offense of section 571.030, except any
70 offense under subdivision (1) of subsection 1 of section
71 571.030 where the person was convicted or found guilty prior
72 to January 1, 2017, or any offense under subdivision (4) of
73 subsection 1 of section 571.030.

74 3. The petition shall name as defendants all law
75 enforcement agencies, courts, prosecuting or circuit
76 attorneys, municipal prosecuting attorneys, central state
77 repositories of criminal records, or others who the
78 petitioner has reason to believe may possess the records
79 subject to expungement for each of the offenses, violations,
80 and infractions listed in the petition. The court's order
81 of expungement shall not affect any person or entity not
82 named as a defendant in the action.

83 4. The petition shall include the following
84 information:

85 (1) The petitioner's:

86 (a) Full name;

87 (b) Sex;

88 (c) Race;

89 (d) Driver's license number, if applicable; and

90 (e) Current address;

91 (2) Each offense, violation, or infraction for which
92 the petitioner is requesting expungement;

93 (3) The approximate date the petitioner was charged
94 for each offense, violation, or infraction; and

95 (4) The name of the county where the petitioner was
96 charged for each offense, violation, or infraction and if
97 any of the offenses, violations, or infractions occurred in
98 a municipality, the name of the municipality for each
99 offense, violation, or infraction; and

100 (5) The case number and name of the court for each
101 offense.

102 5. The clerk of the court shall give notice of the
103 filing of the petition to the office of the prosecuting
104 attorney, circuit attorney, or municipal prosecuting
105 attorney that prosecuted the offenses, violations, or
106 infractions listed in the petition. If the prosecuting
107 attorney, circuit attorney, or municipal prosecuting
108 attorney objects to the petition for expungement, he or she
109 shall do so in writing within thirty days after receipt of
110 service. Unless otherwise agreed upon by the parties, the
111 court shall hold a hearing within sixty days after any
112 written objection is filed, giving reasonable notice of the
113 hearing to the petitioner. If no objection has been filed
114 within thirty days after receipt of service, the court may
115 set a hearing on the matter and shall give reasonable notice
116 of the hearing to each entity named in the petition. At any
117 hearing, the court may accept evidence and hear testimony
118 on, and may consider, the following criteria for each of the
119 offenses, violations, or infractions listed in the petition
120 for expungement:

121 (1) At the time the petition is filed, it has been at
122 least three years if the offense is a felony, or at least
123 one year if the offense is a misdemeanor, municipal offense,
124 or infraction, from the date the petitioner completed any
125 authorized disposition imposed under section 557.011 for

126 each offense, violation, or infraction listed in the
127 petition;

128 (2) At the time the petition is filed, the person has
129 not been found guilty of any other misdemeanor or felony,
130 not including violations of the traffic regulations provided
131 under chapters 301, 302, 303, 304, and 307, during the time
132 period specified for the underlying offense, violation, or
133 infraction in subdivision (1) of this subsection;

134 (3) The person has satisfied all obligations relating
135 to any such disposition, including the payment of any fines
136 or restitution;

137 (4) The person does not have charges pending;

138 (5) The petitioner's habits and conduct demonstrate
139 that the petitioner is not a threat to the public safety of
140 the state; and

141 (6) The expungement is consistent with the public
142 welfare and the interests of justice warrant the expungement.

143 A pleading by the petitioner that such petitioner meets the
144 requirements of subdivisions (5) and (6) of this subsection
145 shall create a rebuttable presumption that the expungement
146 is warranted so long as the criteria contained in
147 subdivisions (1) to (4) of this subsection are otherwise
148 satisfied. The burden shall shift to the prosecuting
149 attorney, circuit attorney, or municipal prosecuting
150 attorney to rebut the presumption. A victim of an offense,
151 violation, or infraction listed in the petition shall have
152 an opportunity to be heard at any hearing held under this
153 section, and the court may make a determination based solely
154 on such victim's testimony.

155 6. A petition to expunge records related to an arrest
156 for an eligible offense, violation, or infraction may be

157 made in accordance with the provisions of this section to a
158 court of competent jurisdiction in the county where the
159 petitioner was arrested no earlier than three years from the
160 date of arrest; provided that, during such time, the
161 petitioner has not been charged and the petitioner has not
162 been found guilty of any misdemeanor or felony offense.

163 7. If the court determines that such person meets all
164 the criteria set forth in subsection 5 of this section for
165 each of the offenses, violations, or infractions listed in
166 the petition for expungement, the court shall enter an order
167 of expungement. In all cases under this section, the court
168 shall issue an order of expungement or dismissal within six
169 months of the filing of the petition. A copy of the order
170 of expungement shall be provided to the petitioner and each
171 entity possessing records subject to the order, and, upon
172 receipt of the order, each entity shall **[close]** **destroy** any
173 record, **except the arrest record**, in its possession relating
174 to any offense, violation, or infraction listed in the
175 petition, in the manner established by section 610.120. The
176 records and files maintained in any administrative or court
177 proceeding in a municipal, associate, or circuit court for
178 any offense, infraction, or violation ordered expunged under
179 this section shall be confidential and only available to the
180 parties or by order of the court for good cause shown. The
181 central repository shall request the Federal Bureau of
182 Investigation to expunge the records from its files.

183 8. The order shall not limit any of the petitioner's
184 rights that were restricted as a collateral consequence of
185 such person's criminal record, and such rights shall be
186 restored upon issuance of the order of expungement. For
187 purposes of 18 U.S.C. Section 921(a)(33)(B)(ii), an order or
188 expungement granted pursuant to this section shall be

189 considered a complete removal of all effects of the expunged
190 conviction. Except as otherwise provided under this
191 section, the effect of such order shall be to restore such
192 person to the status he or she occupied prior to such
193 arrests, pleas, trials, or convictions as if such events had
194 never taken place. No person as to whom such order has been
195 entered shall be held thereafter under any provision of law
196 to be guilty of perjury or otherwise giving a false
197 statement by reason of his or her failure to recite or
198 acknowledge such arrests, pleas, trials, convictions, or
199 expungement in response to an inquiry made of him or her and
200 no such inquiry shall be made for information relating to an
201 expungement, except the petitioner shall disclose the
202 expunged offense, violation, or infraction to any court when
203 asked or upon being charged with any subsequent offense,
204 violation, or infraction. The expunged offense, violation,
205 or infraction may be considered a prior offense in
206 determining a sentence to be imposed for any subsequent
207 offense that the person is found guilty of committing.

208 9. Notwithstanding the provisions of subsection 8 of
209 this section to the contrary, a person granted an
210 expungement shall disclose any expunged offense, violation,
211 or infraction when the disclosure of such information is
212 necessary to complete any application for:

213 (1) A license, certificate, or permit issued by this
214 state to practice such individual's profession;

215 (2) Any license issued under chapter 313 or permit
216 issued under chapter 571;

217 (3) Paid or unpaid employment with an entity licensed
218 under chapter 313, any state-operated lottery, or any
219 emergency services provider, including any law enforcement
220 agency;

221 (4) Employment with any federally insured bank or
222 savings institution or credit union or an affiliate of such
223 institution or credit union for the purposes of compliance
224 with 12 U.S.C. Section 1829 and 12 U.S.C. Section 1785;

225 (5) Employment with any entity engaged in the business
226 of insurance or any insurer for the purpose of complying
227 with 18 U.S.C. Section 1033, 18 U.S.C. Section 1034, or
228 other similar law which requires an employer engaged in the
229 business of insurance to exclude applicants with certain
230 criminal convictions from employment; or

231 (6) Employment with any employer that is required to
232 exclude applicants with certain criminal convictions from
233 employment due to federal or state law, including
234 corresponding rules and regulations.

235 An employer shall notify an applicant of the requirements
236 under subdivisions (4) to (6) of this subsection.

237 Notwithstanding any provision of law to the contrary, an
238 expunged offense, violation, or infraction shall not be
239 grounds for automatic disqualification of an applicant, but
240 may be a factor for denying employment, or a professional
241 license, certificate, or permit; except that, an offense,
242 violation, or infraction expunged under the provisions of
243 this section may be grounds for automatic disqualification
244 if the application is for employment under subdivisions (4)
245 to (6) of this subsection.

246 10. A person who has been granted an expungement of
247 records pertaining to a misdemeanor or felony offense, an
248 ordinance violation, or an infraction may answer "no" to an
249 employer's inquiry into whether the person has ever been
250 convicted of a crime if, after the granting of the
251 expungement, the person has no public record of a

252 misdemeanor or felony offense, an ordinance violation, or an
253 infraction. The person, however, shall answer such an
254 inquiry affirmatively and disclose his or her criminal
255 convictions, including any offense or violation expunged
256 under this section or similar law, if the employer is
257 required to exclude applicants with certain criminal
258 convictions from employment due to federal or state law,
259 including corresponding rules and regulations.

260 11. If the court determines that the petitioner has
261 not met the criteria for any of the offenses, violations, or
262 infractions listed in the petition for expungement or the
263 petitioner has knowingly provided false information in the
264 petition, the court shall enter an order dismissing the
265 petition. Any person whose petition for expungement has
266 been dismissed by the court for failure to meet the criteria
267 set forth in subsection 5 of this section may not refile
268 another petition until a year has passed since the date of
269 filing for the previous petition.

270 12. A person may be granted more than one expungement
271 under this section provided that during his or her lifetime,
272 the total number of offenses, violations, or infractions for
273 which orders of expungement are granted to the person shall
274 not exceed the following limits:

275 (1) Not more than two misdemeanor offenses or
276 ordinance violations that have an authorized term of
277 imprisonment; and

278 (2) Not more than one felony offense.

279 A person may be granted expungement under this section for
280 any number of infractions. Nothing in this section shall
281 prevent the court from maintaining records to ensure that an
282 individual has not exceeded the limitations of this

283 subsection. Nothing in this section shall be construed to
284 limit or impair in any way the subsequent use of any record
285 expunged under this section of any arrests or findings of
286 guilt by a law enforcement agency, criminal justice agency,
287 prosecuting attorney, circuit attorney, or municipal
288 prosecuting attorney, including its use as a prior offense,
289 violation, or infraction.

290 13. The court shall make available a form for pro se
291 petitioners seeking expungement, which shall include the
292 following statement: "I declare under penalty of perjury
293 that the statements made herein are true and correct to the
294 best of my knowledge, information, and belief."

295 14. Nothing in this section shall be construed to
296 limit or restrict the availability of expungement to any
297 person under any other law.

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