

FIRST REGULAR SESSION

# SENATE BILL NO. 423

103RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR WASHINGTON.

0853S.01I

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2 repealed and two new sections enacted in lieu thereof, to be  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.

✓