

SENATE BILL NO. 692

103RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR MAY.

2655S.01H

KRISTINA MARTIN, Secretary

AN ACT

To repeal section 610.140, RSMo, and to enact in lieu thereof one new section relating to expungement.

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

Section A. Section 610.140, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 610.140, to read as follows:

610.140. 1. For the purposes of this section, the following terms mean:

(1) "Court", any Missouri municipal, associate circuit, or circuit court;

(2) "Crime", any offense, violation, or infraction of Missouri state, county, municipal, or administrative law;

(3) "Prosecutor" or "prosecuting attorney", the prosecuting attorney, circuit attorney, or municipal prosecuting attorney.

2. (1) Notwithstanding any other provision of law and subject to the provisions of this section, any person may apply to any court in which such person was charged or found guilty of any crimes for an order to expunge records of such arrest, plea, trial, or conviction.

(2) Subject to the limitations of subsection 13 of this section, a person may apply to have one or more crimes expunged if each such crime occurred within the state of Missouri and was prosecuted under the jurisdiction of a

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

19 Missouri court, so long as such person lists all the crimes
20 he or she is seeking to have expunged in the petition and so
21 long as all such crimes are not excluded under subsection 3
22 of this section.

23 (3) If the crimes sought to be expunged were committed
24 as part of the same course of criminal conduct, the person
25 may include all such related crimes in the petition,
26 regardless of the limits of subsection 13 of this section,
27 and those related crimes shall only count as the highest
28 level for the purpose of determining current and future
29 eligibility for expungement.

30 3. The following crimes shall not be eligible for
31 expungement under this section:

32 (1) Any class A felony offense;

33 (2) Any dangerous felony as that term is defined in
34 section 556.061;

35 (3) Any offense that requires registration as a sex
36 offender;

37 (4) Any felony offense where death is an element of
38 the offense;

39 (5) Any felony offense of assault; misdemeanor or
40 felony offense of domestic assault; or felony offense of
41 kidnapping;

42 (6) Any offense listed, previously listed, or is a
43 successor to an offense in chapter 566 or section 105.454,
44 105.478, 115.631, 130.028, 188.030, 188.080, 191.677,
45 194.425, 217.385, 334.245, 375.991, 389.653, 455.085,
46 455.538, 557.035, 565.120, 565.130, 565.156, 566.093,
47 566.111, 566.115, 566.116, 568.020, 568.030, 568.032,
48 568.045, 568.060, 568.065, 568.175, 569.040, 569.050,
49 569.055, 569.060, 569.065, 569.067, 569.072, 569.160,
50 570.025, 570.090, 570.180, 570.223, 570.224, 570.310,

51 571.020, 571.060, 571.063, 571.070, 571.072, 571.150,
52 573.200, 573.205, 574.070, 574.105, 574.115, 574.120,
53 574.130, 574.140, 575.040, 575.095, 575.153, 575.155,
54 575.157, 575.159, 575.195, 575.200, 575.210, 575.220,
55 575.230, 575.240, 575.353, 577.078, 577.703, 577.706, or
56 632.520;

57 (7) Any offense eligible for expungement under section
58 610.130;

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

63 (9) Any ordinance violation that is the substantial
64 equivalent of any offense that is not eligible for
65 expungement under this section;

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

72 (11) Any offense of section 571.030, except any
73 offense under subdivision (1) of subsection 1 of section
74 571.030 where the person was convicted or found guilty prior
75 to January 1, 2017, or any offense under subdivision (4) of
76 subsection 1 of section 571.030.

77 4. The petition shall name as defendants all law
78 enforcement agencies, courts, prosecuting or circuit
79 attorneys, central state repositories of criminal records,
80 or others who the petitioner has reason to believe may
81 possess the records subject to expungement for each of the
82 crimes listed in the petition. The court's order of

83 expungement shall not affect any person or entity not named
84 as a defendant in the action.

85 5. The petition shall include the following
86 information:

87 (1) The petitioner's:

88 (a) Full name;

89 (b) Sex;

90 (c) Race;

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

92 (e) Current address;

93 (2) Each crime for which the petitioner is requesting
94 expungement;

95 (3) The approximate date the petitioner was charged
96 for each crime; and

97 (4) The name of the county where the petitioner was
98 charged for each crime and if any of the crimes occurred in
99 a municipality, the name of the municipality for each crime;
100 and

101 (5) The case number and name of the court for each
102 crime.

103 6. The clerk of the court shall give notice of the
104 filing of the petition to the office of the prosecuting
105 attorney that prosecuted the crimes listed in the petition.
106 If the prosecuting attorney objects to the petition for
107 expungement, he or she shall do so in writing within thirty
108 days after receipt of service. Unless otherwise agreed upon
109 by the parties, the court shall hold a hearing within sixty
110 days after any written objection is filed, giving reasonable
111 notice of the hearing to the petitioner. If no objection
112 has been filed within thirty days after receipt of service,
113 the court may set a hearing on the matter and shall give
114 reasonable notice of the hearing to each entity named in the

115 petition. At any hearing, the court may accept evidence and
116 hear testimony on, and may consider, the following criteria
117 for each of the crimes listed in the petition for
118 expungement:

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

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

131 (3) The person has satisfied all obligations relating
132 to any such disposition, including the payment of any fines
133 **[or], but not including, the payment of any** restitution;

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

135 (5) The petitioner's habits and conduct demonstrate
136 that the petitioner is not a threat to the public safety of
137 the state; and

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

140 A pleading by the petitioner that such petitioner meets the
141 requirements of subdivisions (5) and (6) of this subsection
142 shall create a rebuttable presumption that the expungement
143 is warranted so long as the criteria contained in
144 subdivisions (1) to (4) of this subsection are otherwise
145 satisfied. The burden shall shift to the prosecuting

146 attorney or circuit attorney to rebut the presumption. A
147 victim of a crime listed in the petition shall have an
148 opportunity to be heard at any hearing held under this
149 section. A court may find that the continuing impact of the
150 offense upon the victim rebuts the presumption that
151 expungement is warranted.

152 7. A petition to expunge records related to an arrest
153 for an eligible crime may be made in accordance with the
154 provisions of this section to a court of competent
155 jurisdiction in the county where the petitioner was arrested
156 no earlier than eighteen months from the date of arrest;
157 provided that, during such time, the petitioner has not been
158 charged and the petitioner has not been found guilty of any
159 misdemeanor or felony offense.

160 8. If the court determines that such person meets all
161 the criteria set forth in subsection 6 of this section for
162 each of the crimes listed in the petition for expungement,
163 the court shall enter an order of expungement. In all cases
164 under this section, the court shall issue an order of
165 expungement or dismissal within six months of the filing of
166 the petition. A copy of the order of expungement shall be
167 provided to the petitioner and each entity possessing
168 records subject to the order, and, upon receipt of the
169 order, each entity shall close any record in its possession
170 relating to any crime listed in the petition, in the manner
171 established by section 610.120. The records and files
172 maintained in any administrative or court proceeding in a
173 municipal, associate, or circuit court for any crime ordered
174 expunged under this section shall be confidential and only
175 available to the parties or by order of the court for good
176 cause shown. The central repository shall request the

177 Federal Bureau of Investigation to expunge the records from
178 its files.

179 9. The order shall not limit any of the petitioner's
180 rights that were restricted as a collateral consequence of
181 such person's criminal record, and such rights shall be
182 restored upon issuance of the order of expungement. Except
183 as otherwise provided under this section, the effect of such
184 order shall be to fully restore the civil rights of such
185 person to the status he or she occupied prior to such
186 arrests, pleas, trials, or convictions as if such events had
187 never taken place. This includes fully restoring the civil
188 rights of a person to the right to vote, the right to hold
189 public office, and to serve as a juror. For purposes of 18
190 U.S.C. Section 921(a)(33)(B)(ii), an order of expungement
191 granted pursuant to this section shall be considered a
192 complete removal of all effects of the expunged conviction.
193 Except as otherwise provided under this section, the effect
194 of such order shall be to restore such person to the status
195 he or she occupied prior to such arrests, pleas, trials, or
196 convictions as if such events had never taken place. No
197 person as to whom such order has been entered shall be held
198 thereafter under any provision of law to be guilty of
199 perjury or otherwise giving a false statement by reason of
200 his or her failure to recite or acknowledge such arrests,
201 pleas, trials, convictions, or expungement in response to an
202 inquiry made of him or her and no such inquiry shall be made
203 for information relating to an expungement, except the
204 petitioner shall disclose the expunged crime to any court
205 when asked or upon being charged with any subsequent crime.
206 The expunged crime may be considered a prior offense in
207 determining a sentence to be imposed for any subsequent
208 offense that the person is found guilty of committing.

209 10. Notwithstanding the provisions of subsection 9 of
210 this section to the contrary, a person granted an
211 expungement shall disclose any expunged crime when the
212 disclosure of such information is necessary to complete any
213 application for:

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

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

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

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

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

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

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

238 Notwithstanding any provision of law to the contrary, an
239 expunged crime shall not be grounds for automatic

240 disqualification of an applicant, but may be a factor for
241 denying employment, or a professional license, certificate,
242 or permit; except that, a crime expunged under the
243 provisions of this section may be grounds for automatic
244 disqualification if the application is for employment under
245 subdivisions (4) to (6) of this subsection.

246 11. A person who has been granted an expungement of
247 records pertaining to a crime may answer "no" to an
248 employer's inquiry into whether the person has ever been
249 arrested, charged, or convicted of a crime if, after the
250 granting of the expungement, the person has no public record
251 of a crime. The person, however, shall answer such an
252 inquiry affirmatively and disclose his or her criminal
253 convictions, including any offense expunged under this
254 section or similar law, if the employer is required to
255 exclude applicants with certain criminal convictions from
256 employment due to federal or state law, including
257 corresponding rules and regulations.

258 12. If the court determines that the petitioner has
259 not met the criteria for any of the crimes listed in the
260 petition for expungement or the petitioner has knowingly
261 provided false information in the petition, the court shall
262 enter an order dismissing the petition. Any person whose
263 petition for expungement has been dismissed by the court for
264 failure to meet the criteria set forth in subsection 6 of
265 this section may not refile another petition until a year
266 has passed since the date of filing for the previous
267 petition.

268 13. A person may be granted more than one expungement
269 under this section provided that during his or her lifetime,
270 the total number of crimes for which orders of expungement

271 are granted to the person shall not exceed the following
272 limits:

273 (1) Not more than three misdemeanor offenses or
274 ordinance violations that have an authorized term of
275 imprisonment; and

276 (2) Not more than two felony offenses.

277 A person may be granted expungement under this section for
278 any number of infractions. Nothing in this section shall be
279 construed to limit or impair in any way the subsequent use
280 of any record expunged under this section of any arrests or
281 findings of guilt by a law enforcement agency, criminal
282 justice agency, prosecuting attorney or circuit attorney,
283 including its use as a prior crime.

284 14. The court shall make available a form for pro se
285 petitioners seeking expungement, which shall include the
286 following statement: "I declare under penalty of perjury
287 that the statements made herein are true and correct to the
288 best of my knowledge, information, and belief."

289 15. Nothing in this section shall be construed to
290 limit or restrict the availability of expungement to any
291 person under any other law.

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