

SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILLS NOS. 588, 603 & 942

98TH GENERAL ASSEMBLY

Reported from the Committee on the Judiciary and Civil and Criminal Jurisprudence, February 25, 2016, with recommendation that the Senate Committee Substitute do pass.

4320S.02C

ADRIANE D. CROUSE, Secretary.

AN ACT

To repeal sections 488.650 and 610.140, RSMo, and to enact in lieu thereof two new sections relating to petitions for the expungement of records.

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

Section A. Sections 488.650 and 610.140, RSMo, are repealed and two new
2 sections enacted in lieu thereof, to be known as sections 488.650 and 610.140, to
3 read as follows:

488.650. There shall be assessed as costs a surcharge in the amount of
2 [one] five hundred dollars on all petitions for expungement filed under the
3 provisions of section 610.140. **The judge may waive the surcharge when the**
4 **petitioner is found by the judge to be indigent and unable to pay the**
5 **costs.** Such surcharge shall be collected and disbursed by the clerk of the court
6 as provided by sections 488.010 to 488.020. Moneys collected from this surcharge
7 shall be payable to the general revenue fund.

610.140. 1. Notwithstanding any other provision of law and subject to the
2 provisions of this section, any person may apply to any court in which such
3 person was **charged or** found guilty of any of the offenses specified in subsection
4 2 of this section for an order to expunge [recordations] **records** of such arrest,
5 plea, trial, or conviction. [A person may apply to have one or more offenses
6 expunged so long as such person lists all the offenses he or she is seeking to have
7 expunged in the same petition and so long as all such offenses are eligible under
8 subsection 2 of this section.]

9 2. [The following offenses are eligible to be expunged when such offenses
10 occurred within the state of Missouri and were prosecuted under the jurisdiction

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

11 of a Missouri municipal associate or circuit court:

12 (1) Any felony or misdemeanor offense of passing a bad check under
13 570.120, fraudulently stopping payment of an instrument under 570.125, or
14 fraudulent use of a credit device or debit device under section 570.130;

15 (2) Any misdemeanor offense of sections 569.065, 569.067, 569.090,
16 subdivision (1) of subsection 1 of section 569.120, sections 569.140, 569.145,
17 572.020, 574.020, or 574.075; or

18 (3) Any class B or C misdemeanor offense of section 574.010.

19 3. The petition shall name as defendants all law enforcement agencies,
20 courts, prosecuting or circuit attorneys, central state repositories of criminal
21 records, or others who the petitioner has reason to believe may possess the
22 records subject to expungement for each of the offenses listed in the petition. The
23 court's order of expungement shall not affect any person or entity not named as
24 a defendant in the action.

25 4. The petition shall be dismissed if it does not include the following
26 information:] **Except as otherwise provided in subsection 3 of this**
27 **section, a person is eligible, during his or her lifetime, to file petitions**
28 **seeking the expungement of records related to one or more infractions,**
29 **not more than two ordinance violations that have an authorized term**
30 **of imprisonment or misdemeanor offenses, and not more than one**
31 **felony offense. If the violations or offenses were charged as counts in**
32 **the same indictment or information or were committed as part of the**
33 **same course of criminal conduct, the person may include all the related**
34 **violations or offenses regardless of the limits of this subsection in a**
35 **petition for expungement, and the petition shall only count as a**
36 **petition for the expungement of the highest level violation or offense**
37 **contained in the petition for purposes of determining future eligibility**
38 **for expungement.**

39 3. Notwithstanding subsection 2 of this section to the contrary,
40 the following offenses and violations shall not be eligible for
41 expungement:

42 (1) Any class A felony offense;

43 (2) Any dangerous felony as that term is defined in section
44 556.061;

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

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

47 **(5) Any felony offense of assault, misdemeanor or felony offense**
48 **of domestic assault, or felony offense of kidnapping;**

49 **(6) Any offense listed, or previously listed, in sections 194.425,**
50 **217.360, 217.385, 221.111, 389.653, 557.035, 565.084, 565.085, 565.086,**
51 **565.182, 565.212, 568.030, 568.032, 568.045, 568.060, 568.175, 569.030,**
52 **569.035, 569.040, 569.050, 569.072, 569.160, 570.025, subdivisions (1), (2),**
53 **(3), and (6) of subsection 1 of section 571.020, sections 571.030, 571.070,**
54 **571.072, 571.150, 574.070, 574.115, 574.120, 574.130, 575.095, 575.153,**
55 **575.155, 575.157, 575.210, 575.220, 575.230, 575.240, 577.078, 577.703,**
56 **577.706, 578.008, 578.305, and 578.310; and**

57 **(7) Any ordinance violation that is the substantial equivalent of**
58 **any offense that is not eligible for expungement under this section.**

59 **4. A petition to expunge records related to a finding of guilt for**
60 **an infraction, eligible ordinance violation, or eligible misdemeanor**
61 **offense may be made to the court where the petitioner was found guilty**
62 **no earlier than three years from the date the petitioner completed any**
63 **authorized disposition imposed under section 557.011 for each offense**
64 **listed in the petition, provided that during such time the petitioner has**
65 **not been found guilty of any other misdemeanor or felony offense. A**
66 **person is not eligible for expungement under this section unless all**
67 **obligations related to any such disposition have been satisfied,**
68 **including the payment of any fines or restitution, and the person does**
69 **not have any charges pending.**

70 **5. A petition to expunge records related to a finding of guilt for**
71 **an eligible felony offense may be made to the court where the**
72 **petitioner was found guilty no earlier than five years from the date the**
73 **petitioner completed any authorized disposition imposed under section**
74 **557.011 for each offense listed in the petition, provided that during**
75 **such time the petitioner has not been found guilty of any other**
76 **misdemeanor or felony offense. A person is not eligible to have his or**
77 **her records expunged unless all obligations related to any such**
78 **disposition have been satisfied, including the payment of any fines or**
79 **restitution, and the person does not have any charges pending.**

80 **6. A petition to expunge records related to an arrest for an**
81 **eligible ordinance violation or offense may be made to the court where**
82 **the petitioner was charged no earlier than three years from the date**
83 **each charge in the petition was filed, provided that, during such time,**

84 **the prosecution of each charge has not been pursued and the petitioner**
85 **has not been found guilty of any other misdemeanor or felony offense.**

86 **7. The petition for expungement shall include the following**
87 **information:**

88 (1) The petitioner's:

89 (a) Full name;

90 (b) Sex;

91 (c) Race;

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

93 (e) Current address;

94 (2) Each offense [charged against the petitioner] **or ordinance violation**
95 for which the petitioner is requesting expungement;

96 (3) The **approximate** date the petitioner was [arrested] **charged** for
97 each offense **or violation; and**

98 (4) The name of the county where the petitioner was [arrested] **charged**
99 for each offense **or violation** and if any of the offenses **or violations** occurred
100 in a municipality, the name of the municipality for each offense[;] **or violation.**

101 [(5) The name of the agency that arrested the petitioner for each offense;

102 (6) The case number and name of the court for each offense; and

103 (7) Petitioner's fingerprints on a standard fingerprint card at the time of
104 filing a petition for expungement which will be forwarded to the central
105 repository for the sole purpose of positively identifying the petitioner.

106 5. The court may set a hearing on the matter no sooner than thirty days
107 from the filing of the petition and shall give reasonable notice of the hearing to
108 each entity named in the petition. At the hearing, the court may accept evidence
109 and hear testimony on, and may consider, the following criteria for each of the
110 offenses listed in the petition for expungement:

111 (1) It has been at least twenty years if the offense is a felony, or at least
112 ten years if the offense is a misdemeanor, municipal offense, or infraction, since
113 the person making the application completed:

114 (a) Any sentence of imprisonment; or

115 (b) Any period of probation or parole;

116 (2) The person has not been found guilty of a misdemeanor or felony, not
117 including violations of the traffic regulations provided under chapters 304 and
118 307, during the time period specified for the underlying offense in subdivision (1)
119 of this subsection;

120 (3) The person has paid any amount of restitution ordered by the court;

121 (4) The circumstances and behavior of the petitioner warrant the
122 expungement; and

123 (5) The expungement is consistent with the public welfare.

124 6. If the court determines at the conclusion of the hearing that such
125 person meets all the criteria set forth in subsection 5 of this section for each of
126 the offenses listed in the petition for expungement, the court may enter an order
127 of expungement. A copy of the order shall be provided to each entity named in
128 the petition, and,]

129 **8. The office of the state courts administrator shall prepare and**
130 **make available a form for pro se petitioners seeking expungement,**
131 **which shall include the statement: I declare under penalty of perjury**
132 **that the statements made herein are true and correct to the best of my**
133 **knowledge, information, and belief.**

134 **9. The court shall provide a copy of the petition for expungement**
135 **as notice to the office that prosecuted the violations or offenses listed**
136 **in the petition. If the municipal prosecutor or prosecuting or circuit**
137 **attorney objects to the petition for expungement, he or she shall do so**
138 **in writing within thirty days after receipt of service. Within sixty days**
139 **after any written objection is filed, unless otherwise agreed upon by**
140 **the parties, the court shall hold a hearing upon notice to the petitioner.**
141 **If there is no objection, the court shall enter an order expunging such**
142 **records if, in the determination of the court, all the criteria set forth**
143 **in this section have been met. If the court determines the petitioner**
144 **has not met such criteria or the petitioner knowingly provides false**
145 **information in the petition, the court may enter an order dismissing the**
146 **petition. In all cases, the court shall issue an order under this section**
147 **within six months of the filing of the petition.**

148 **10. At the hearing, the court may accept evidence and hear**
149 **testimony on, and may consider, whether the petitioner meets the**
150 **criteria for expungement under this section. If the petitioner meets the**
151 **criteria, there shall be a presumption that the interests of justice**
152 **warrant the expungement of such records. If the court determines at**
153 **the conclusion of the hearing, wherein there shall be an opportunity for**
154 **any victims to be heard, that the interests of justice warrant the**
155 **expungement of records, the court shall enter an order of expungement.**
156 **A copy of the order shall be provided to the petitioner and each entity**

157 **possessing records subject to the order.** Upon receipt of the order, each
158 entity shall [~~destroy~~] **seal** any record in its possession relating to any offense
159 listed in the petition. If [~~destruction~~] **sealing** of the record is not feasible
160 because of the permanent nature of the record books, such record entries shall be
161 blacked out. Entries of a record ordered expunged shall be removed from all
162 electronic files maintained with the state of Missouri, except for the files of the
163 court. The records and files maintained in any administrative or court proceeding
164 in a municipal, associate, or circuit court for any offense **or violation** ordered
165 expunged under this section shall be confidential and only available to the parties
166 or by order of the court for good cause shown. The central repository shall
167 request the Federal Bureau of Investigation to expunge the records from its files.

168 [7.] **11.** The order shall not limit any of the petitioner's rights that were
169 restricted as a collateral consequence of such person's criminal record, and such
170 rights shall be restored upon issuance of the order of expungement. Except as
171 otherwise provided under this section, the effect of such order shall be to restore
172 such person to the status he or she occupied prior to such arrests, pleas, trials,
173 or convictions as if such events had never taken place. No person as to whom
174 such order has been entered shall be held thereafter under any provision of law
175 to be guilty of perjury or otherwise giving a false statement by reason of his or
176 her failure to recite or acknowledge such arrests, pleas, trials, convictions, or
177 expungement in response to an inquiry made of him or her and no such inquiry
178 shall be made for information relating to an expungement, except the petitioner
179 shall disclose the expunged offense **or violation** to any court when asked or upon
180 being charged with any subsequent offense. [The expunged offense may be
181 considered a prior offense in determining a sentence to be imposed for any
182 subsequent offense that the person is found guilty of committing.] **A person who**
183 **has been granted an expungement of records pertaining to an**
184 **infraction, ordinance violation, or misdemeanor or felony offense may**
185 **answer "no" to an employer's inquiry into whether the person has ever**
186 **been convicted of a crime, except the person shall answer such an**
187 **inquiry and disclose his or her criminal history if seeking employment**
188 **in any federally insured bank or savings institution or credit union or**
189 **an affiliate of such institution or credit union for the purposes of**
190 **compliance with 12 U.S.C. Section 1829 and 12 U.S.C. Section**
191 **1785. Nothing in this section shall be construed to limit or impair in**
192 **any way the subsequent use of any expunged record of any arrests or**

193 **findings of guilt by a law enforcement agency, criminal justice agency,**
194 **or prosecuting or circuit attorney, including its use as a prior offense.**

195 [8.] **12.** Notwithstanding the provisions of subsection [7] **11** of this
196 section to the contrary, a person granted an expungement shall disclose any
197 expunged offense **or violation** when the disclosure of such information is
198 necessary to complete any application for:

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

201 (2) Any license issued under chapter 313; or

202 (3) Paid or unpaid employment with an entity licensed under chapter 313,
203 any state-operated lottery, or any emergency services provider, including any law
204 enforcement agency. Notwithstanding any provision of law to the contrary, an
205 expunged offense **or violation** shall not be grounds for automatic disqualification
206 of an applicant, but may be a factor for denying employment, or a professional
207 license, certificate, or permit.

208 [9. If the court determines that such person has not met the criteria for
209 any of the offenses listed in the petition for expungement, the court shall enter
210 an order dismissing the petition. Any person whose petition for expungement has
211 been dismissed by the court for failure to meet the criteria set forth in subsection
212 5 of this section may not refile another petition until a year has passed since the
213 date of filing for the previous petition.

214 10. A person may be granted more than one expungement under this
215 section provided that no person shall be granted more than one order of
216 expungement from the same court. Nothing contained in this section shall
217 prevent the court from maintaining records to ensure that an individual has only
218 one petition for expungement granted by such court under this section.]

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