

SECOND REGULAR SESSION

SENATE BILL NO. 1092

91ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR LOUDON.

Read 1st time January 31, 2002, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

4332S.011

AN ACT

To repeal sections 610.120 and 610.122, RSMo, relating to expungement of certain criminal records, and to enact in lieu thereof eight new sections relating to the same subject, with penalty provisions.

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

Section A. Sections 610.120 and 610.122, RSMo, are repealed and eight new sections enacted in lieu thereof, to be known as sections 610.120, 610.122, 610.130, 610.132, 610.134, 610.136, 610.138 and 610.140, to read as follows:

610.120. 1. Records required to be closed **or sealed** shall not be destroyed; they shall be inaccessible to the general public and to all persons other than the defendant except as provided in this section and section 43.507, RSMo. They shall be available to the sentencing advisory commission created in section 558.019, RSMo, for the purpose of studying sentencing practices, and only to courts, law enforcement agencies, child care agencies, department of revenue for driving record purposes, facilities as defined in section 198.006, RSMo, in-home services provider agencies as defined in section 660.250, RSMo, the division of workers' compensation for the purposes of determining eligibility for crime victims' compensation pursuant to sections 595.010 to 595.075, RSMo, and federal agencies for purposes of prosecution, sentencing, parole consideration, criminal justice employment, child care employment, nursing home employment and to federal agencies for such investigative purposes as authorized by law or presidential executive order. These records shall be made available for the above purposes regardless of any previous statutory provision which had closed **or sealed** such records to certain agencies or for certain purposes. All records which are closed **or sealed** records shall be removed

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

from the records of the courts, administrative agencies, and law enforcement agencies which are available to the public and shall be kept in separate records which are to be held confidential and, where possible, pages of the public record shall be retyped or rewritten omitting those portions of the record which deal with the defendant's case. If retyping or rewriting is not feasible because of the permanent nature of the record books, such record entries shall be blacked out and recopied in a confidential book.

2. As used in this section, the term "child care" includes providers and youth services agencies as those terms are defined in section 43.540, RSMo, elementary and secondary school teachers, and elementary and secondary school bus drivers, whether such drivers are employed by a school or an entity which has contracted with the school to provide transportation services.

610.122. Notwithstanding other provisions of law to the contrary, any record of arrest recorded pursuant to section 43.503, RSMo, may be expunged if the court determines that:

(1) The arrest was based on false information and the following conditions exist:

[(1)] (a) There is no probable cause, at the time of the action to expunge, to believe the individual committed the offense;

[(2)] (b) No charges will be pursued as a result of the arrest;

[(3)] (c) The subject of the arrest has no prior or subsequent misdemeanor or felony convictions **or suspended impositions of sentence and there are no pending criminal investigations regarding the arrest;**

[(4)] (d) The subject of the arrest did not receive a suspended imposition of sentence for the offense for which the arrest was made or for any offense related to the arrest; and

[(5)] (e) No civil action is pending relating to the arrest or the records sought to be expunged; **or**

(2) **No criminal charges have been filed against the subject of the arrest within ten years from the date of such arrest.**

610.130. Sections 610.130 to 610.140 may be cited as the "Missouri Rehabilitation and Sealed Records Act".

610.132. For the purposes of sections 610.130 to 610.140, the following terms mean:

(1) **"Sex-related offense", any crime defined in chapter 566, RSMo, section 568.020, RSMo, subdivision (2) of subsection 1 of section 568.045, RSMo, subdivision (2) of subsection 1 of section 568.060, RSMo, section 568.080, RSMo, or section 568.090, RSMo; and**

(2) **"Violent felony", any crime punishable as a class A felony, any intentional act punishable as a class B felony, or any crime in which a deadly weapon, as defined in section 556.061, RSMo, was used or displayed.**

610.134. A person who has pled guilty to or been found guilty of no more than

one felony nor more than two misdemeanors may petition the circuit court to have such person's record, including juvenile records, sealed, if the person:

(1) Has not pled guilty to or been found guilty of a misdemeanor or pled guilty to or been found guilty of a felony for at least ten consecutive years, after being discharged from probation or released from incarceration;

(2) Is not currently on probation or parole;

(3) Has not pled guilty to or been found guilty of a violent felony;

(4) Has not pled guilty to or been found guilty of a sex-related offense;

(5) Has not pled guilty to or been found guilty of any offense of distributing a controlled substance as described in chapter 195, RSMo, and punishable as a class A or B felony;

(6) Has not previously petitioned to have such person's records sealed pursuant to the provisions of sections 610.130 to 610.140;

(7) Has not been convicted, as that term is defined in section 302.700, RSMo, for the operation of a commercial motor vehicle, as defined in section 302.700, RSMo, with a blood alcohol content of at least four-hundredths of one percent; and

(8) Is at least twenty-five years of age.

610.136. If the court finds that a person has met the requirements of section 610.134, the court may in the court's discretion after considering the totality of the circumstances set aside all verdicts or findings of guilty and allow the petitioner to withdraw all pleas of guilty and may dismiss with prejudice all cases against the petitioner, and may order all criminal and juvenile records of the petitioner to be sealed. Notwithstanding any other provision of law to the contrary, such petitioners waive all rights of being employed by any Missouri-licensed gambling operation. If the petitioner is arrested for committing any crime, other than minor traffic offenses, during the pendency of the action filed pursuant to the provisions of sections 610.130 to 610.140, the court shall stay such action until the resolution of any indictment or information filed pursuant to such arrest.

610.138. 1. A person who knowingly fails to seal, or knowingly releases records or information which have been ordered sealed pursuant to sections 610.130 to 610.140, is guilty of a class B misdemeanor.

2. A person who uses records or information for financial gain, knowing that such records or information have been ordered sealed pursuant to sections 610.130 to 610.140, is guilty of a class D felony.

610.140. 1. The sealing of any record pursuant to the provisions of sections 610.130 to 610.140 shall not reflect on the validity of the arrest or conviction and shall not be construed to indicate a lack of probable cause for the arrest.

2. The petitioner shall not bring any action subsequent to the sealing against any law enforcement officer or law enforcement agency relating to the arrest or conviction described in the sealed records.

3. Neither the public nor law enforcement agencies shall have access to records sealed pursuant to sections 610.130 to 610.140.

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