

FIRST REGULAR SESSION

SENATE BILL NO. 1

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR CURLS.

Pre-filed December 1, 2018, and ordered printed.

ADRIANE D. CROUSE, Secretary.

0564S.02I

AN ACT

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

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Section A. Section 610.140, RSMo, is repealed and one new section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

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

19 2. The following offenses, violations, and infractions shall not be eligible

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

20 for expungement under this section:

- 21 (1) Any class A felony offense;
- 22 (2) Any dangerous felony as that term is defined in section 556.061;
- 23 (3) Any offense that requires registration as a sex offender;
- 24 (4) Any felony offense where death is an element of the offense;
- 25 (5) Any felony offense of assault; misdemeanor or felony offense of
26 domestic assault; or felony offense of kidnapping;
- 27 (6) Any offense listed, or previously listed, in chapter 566 or section
28 105.454, 105.478, 115.631, 130.028, 188.030, 188.080, 191.677, 194.425, 217.360,
29 217.385, 334.245, 375.991, 389.653, 455.085, 455.538, 557.035, 565.084, 565.085,
30 565.086, 565.095, 565.120, 565.130, 565.156, 565.200, 565.214, 566.093, 566.111,
31 566.115, 568.020, 568.030, 568.032, 568.045, 568.060, 568.065, 568.080, 568.090,
32 568.175, 569.030, 569.035, 569.040, 569.050, 569.055, 569.060, 569.065, 569.067,
33 569.072, [569.100,] 569.160, 570.025, [570.030, 570.090, 570.100, 570.130,
34 570.180,] 570.223, 570.224, [570.310,] 571.020, 571.060, 571.063, 571.070,
35 571.072, 571.150, [574.070,] 574.105, 574.115, 574.120, 574.130, 575.040, 575.095,
36 575.153, 575.155, 575.157, 575.159, 575.195, 575.200, 575.210, 575.220, 575.230,
37 575.240, 575.350, 575.353, 577.078, 577.703, 577.706, 578.008, 578.305, 578.310,
38 or 632.520;
- 39 (7) Any offense eligible for expungement under section 577.054 or 610.130;
- 40 (8) Any intoxication-related traffic or boating offense as defined in section
41 577.001, or any offense of operating an aircraft with an excessive blood alcohol
42 content or while in an intoxicated condition;
- 43 (9) Any ordinance violation that is the substantial equivalent of any
44 offense that is not eligible for expungement under this section;
- 45 (10) Any violation of any state law or county or municipal ordinance
46 regulating the operation of motor vehicles when committed by an individual who
47 has been issued a commercial driver's license or is required to possess a
48 commercial driver's license issued by this state or any other state; and
- 49 (11) Any offense of section 571.030, except any offense under subdivision
50 (1) of subsection 1 of section 571.030 where the person was convicted or found
51 guilty prior to January 1, 2017.

52 3. The petition shall name as defendants all law enforcement agencies,
53 courts, prosecuting or circuit attorneys, municipal prosecuting attorneys, central
54 state repositories of criminal records, or others who the petitioner has reason to
55 believe may possess the records subject to expungement for each of the offenses,

56 violations, and infractions listed in the petition. The court's order of
57 expungement shall not affect any person or entity not named as a defendant in
58 the action.

59 4. The petition shall include the following information:

60 (1) The petitioner's:

61 (a) Full name;

62 (b) Sex;

63 (c) Race;

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

65 (e) Current address;

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

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

70 (4) The name of the county where the petitioner was charged for each
71 offense, violation, or infraction and if any of the offenses, violations, or infractions
72 occurred in a municipality, the name of the municipality for each offense,
73 violation, or infraction; and

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

75 5. The clerk of the court shall give notice of the filing of the petition to the
76 office of the prosecuting attorney, circuit attorney, or municipal prosecuting
77 attorney that prosecuted the offenses, violations, or infractions listed in the
78 petition. If the prosecuting attorney, circuit attorney, or municipal prosecuting
79 attorney objects to the petition for expungement, he or she shall do so in writing
80 within thirty days after receipt of service. Unless otherwise agreed upon by the
81 parties, the court shall hold a hearing within sixty days after any written
82 objection is filed, giving reasonable notice of the hearing to the petitioner. If no
83 objection has been filed within thirty days after receipt of service, the court may
84 set a hearing on the matter and shall give reasonable notice of the hearing to
85 each entity named in the petition. At any hearing, the court may accept evidence
86 and hear testimony on, and may consider, the following criteria for each of the
87 offenses, violations, or infractions listed in the petition for expungement:

88 (1) At the time the petition is filed, it has been at least seven years if the
89 offense is a felony, or at least three years if the offense is a misdemeanor,
90 municipal offense, or infraction, from the date the petitioner completed any
91 authorized disposition imposed under section 557.011 for each offense, violation,

92 or infraction listed in the petition;

93 (2) The person has not been found guilty of any other misdemeanor or
94 felony, not including violations of the traffic regulations provided under chapters
95 304 and 307, during the time period specified for the underlying offense,
96 violation, or infraction in subdivision (1) of this subsection;

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

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

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

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

104 A pleading by the petitioner that such petitioner meets the requirements of
105 subdivisions (5) and (6) of this subsection shall create a rebuttable presumption
106 that the expungement is warranted so long as the criteria contained in
107 subdivisions (1) to (4) of this subsection are otherwise satisfied. The burden shall
108 shift to the prosecuting attorney, circuit attorney, or municipal prosecuting
109 attorney to rebut the presumption. A victim of an offense, violation, or infraction
110 listed in the petition shall have an opportunity to be heard at any hearing held
111 under this section, and the court may make a determination based solely on such
112 victim's testimony.

113 6. A petition to expunge records related to an arrest for an eligible
114 offense, violation, or infraction may be made in accordance with the provisions of
115 this section to a court of competent jurisdiction in the county where the petitioner
116 was arrested no earlier than three years from the date of arrest; provided that,
117 during such time, the petitioner has not been charged and the petitioner has not
118 been found guilty of any misdemeanor or felony offense.

119 7. If the court determines that such person meets all the criteria set forth
120 in subsection 5 of this section for each of the offenses, violations, or infractions
121 listed in the petition for expungement, the court shall enter an order of
122 expungement. In all cases under this section, the court shall issue an order of
123 expungement or dismissal within six months of the filing of the petition. A copy
124 of the order of expungement shall be provided to the petitioner and each entity
125 possessing records subject to the order, and, upon receipt of the order, each entity
126 shall close any record in its possession relating to any offense, violation, or
127 infraction listed in the petition, in the manner established by section

128 610.120. The records and files maintained in any administrative or court
129 proceeding in a municipal, associate, or circuit court for any offense, infraction,
130 or violation ordered expunged under this section shall be confidential and only
131 available to the parties or by order of the court for good cause shown. The central
132 repository shall request the Federal Bureau of Investigation to expunge the
133 records from its files.

134 8. The order shall not limit any of the petitioner's rights that were
135 restricted as a collateral consequence of such person's criminal record, and such
136 rights shall be restored upon issuance of the order of expungement. Except as
137 otherwise provided under this section, the effect of such order shall be to restore
138 such person to the status he or she occupied prior to such arrests, pleas, trials,
139 or convictions as if such events had never taken place. No person as to whom
140 such order has been entered shall be held thereafter under any provision of law
141 to be guilty of perjury or otherwise giving a false statement by reason of his or
142 her failure to recite or acknowledge such arrests, pleas, trials, convictions, or
143 expungement in response to an inquiry made of him or her and no such inquiry
144 shall be made for information relating to an expungement, except the petitioner
145 shall disclose the expunged offense, violation, or infraction to any court when
146 asked or upon being charged with any subsequent offense, violation, or
147 infraction. The expunged offense, violation, or infraction may be considered a
148 prior offense in determining a sentence to be imposed for any subsequent offense
149 that the person is found guilty of committing.

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

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

156 (2) Any license issued under chapter 313 or permit issued under chapter
157 571;

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

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

164 (5) Employment with any entity engaged in the business of insurance or
165 any insurer for the purpose of complying with 18 U.S.C. Section 1033, 18 U.S.C.
166 Section 1034, or other similar law which requires an employer engaged in the
167 business of insurance to exclude applicants with certain criminal convictions from
168 employment; or

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

172 An employer shall notify an applicant of the requirements under subdivisions (4)
173 to (6) of this subsection. Notwithstanding any provision of law to the contrary,
174 an expunged offense, violation, or infraction shall not be grounds for automatic
175 disqualification of an applicant, but may be a factor for denying employment, or
176 a professional license, certificate, or permit; except that, an offense, violation, or
177 infraction expunged under the provisions of this section may be grounds for
178 automatic disqualification if the application is for employment under subdivisions
179 (4) to (6) of this subsection.

180 10. A person who has been granted an expungement of records pertaining
181 to a misdemeanor or felony offense, an ordinance violation, or an infraction may
182 answer "no" to an employer's inquiry into whether the person has ever been
183 convicted of a crime if, after the granting of the expungement, the person has no
184 public record of a misdemeanor or felony offense, an ordinance violation, or an
185 infraction. The person, however, shall answer such an inquiry affirmatively and
186 disclose his or her criminal convictions, including any offense or violation
187 expunged under this section or similar law, if the employer is required to exclude
188 applicants with certain criminal convictions from employment due to federal or
189 state law, including corresponding rules and regulations.

190 11. If the court determines that the petitioner has not met the criteria for
191 any of the offenses, violations, or infractions listed in the petition for
192 expungement or the petitioner has knowingly provided false information in the
193 petition, the court shall enter an order dismissing the petition. Any person whose
194 petition for expungement has been dismissed by the court for failure to meet the
195 criteria set forth in subsection 5 of this section may not refile another petition
196 until a year has passed since the date of filing for the previous petition.

197 12. A person may be granted more than one expungement under this
198 section provided that during his or her lifetime, the total number of offenses,
199 violations, or infractions for which orders of expungement are granted to the

200 person shall not exceed the following limits:

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

203 (2) Not more than one felony offense.

204 A person may be granted expungement under this section for any number of
205 infractions. Nothing in this section shall prevent the court from maintaining
206 records to ensure that an individual has not exceeded the limitations of this
207 subsection. Nothing in this section shall be construed to limit or impair in any
208 way the subsequent use of any record expunged under this section of any arrests
209 or findings of guilt by a law enforcement agency, criminal justice agency,
210 prosecuting attorney, circuit attorney, or municipal prosecuting attorney,
211 including its use as a prior offense, violation, or infraction.

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

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

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