

SENATE COMMITTEE SUBSTITUTE

FOR

HOUSE COMMITTEE SUBSTITUTE

FOR

HOUSE BILLS NOS. 2747 & 2047

AN ACT

To repeal sections 557.035 and 565.030, RSMo, and to enact in lieu thereof seven new sections relating to criminal conduct, with penalty provisions.

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

Section A. Sections 557.035 and 565.030, RSMo, are repealed and seven new sections enacted in lieu thereof, to be known as sections 476.411, 557.035, 565.030, 565.097, 610.141, 610.143, and 610.144, to read as follows:

476.411. Beginning January 1, 2031, and each year thereafter, the office of state courts administrator and the Missouri state highway patrol shall submit a report to the joint committee on the justice system, the house judiciary committee or any successor committee, and the senate judiciary and civil and criminal jurisprudence committee or any successor committee providing statistical information for the prior year, arranged by judicial circuit and county, of:

(1) The number of clean slate eligible offenses as defined under section 610.141 identified by the Missouri state highway patrol under subsection 2 of section 610.141 and transmitted to the courts;

(2) The number of identified clean slate eligible offenses to which a prosecuting attorney filed an objection under subsection 3 of section 610.141; and

(3) The number of orders of expungement issued under section 610.141.

The data shall be aggregated by race, sex, age, circuit, county, and offense type and level if such data is available.

557.035. 1. For all violations of section 565.054 or 565.090, subdivision (1) of subsection 1 of section 569.100, or subdivision (1), (2), (3), (4), (6), (7) or (8) of subsection 1 of section 571.030, which the state believes to be knowingly motivated because of race, color, religion, national origin, sex, sexual orientation or disability of the victim or victims, the state may charge the offense or offenses under this section, and the violation is a class D felony.

2. For all violations of section 565.056; subdivision (1) of subsection 1 of section 569.090; section 565.097; subdivision (1) of subsection 1 of section 569.120; section 569.140; or section 574.050; which the state believes to be knowingly motivated because of race, color, religion, national origin, sex, sexual orientation or disability of the victim or victims, the state may charge the offense or offenses under this section, and the violation is a class E felony.

3. The court shall assess punishment in all of the cases in which the state pleads and proves any of the motivating factors listed in this section.

565.030. 1. Where murder in the first degree is charged but not submitted or where the state waives the death penalty, the submission to the trier and all subsequent proceedings in the case shall proceed as in all other criminal cases.

2. Where murder in the first degree is submitted to the trier without a waiver of the death penalty, the trial shall proceed in two stages before the same trier. At the first stage the trier shall decide only whether the defendant is guilty or not guilty of any submitted offense.

The issue of punishment shall not be submitted to the trier at the first stage. If an offense is charged other than murder in the first degree in a count together with a count of murder in the first degree, the trial judge shall assess punishment on any such offense according to law, after the defendant is found guilty of such offense and after he finds the defendant to be a prior offender pursuant to chapter 558.

3. If murder in the first degree is submitted and the death penalty was not waived but the trier finds the defendant guilty of a lesser homicide, a second stage of the trial shall proceed as in all other criminal cases. The attorneys may then argue as in other criminal cases the issue of punishment, after which the trier shall assess and declare the punishment as in all other criminal cases.

4. If the trier at the first stage of a trial where the death penalty was not waived finds the defendant guilty of murder in the first degree, a second stage of the trial shall proceed at which the only issue shall be the punishment to be assessed and declared. Evidence in aggravation and mitigation of punishment, including but not limited to evidence supporting any of the aggravating or mitigating circumstances listed in subsection 2 or 3 of section 565.032, may be presented subject to the rules of evidence at criminal trials. Such evidence may include, within the discretion of the court, evidence concerning the murder victim and the impact of the offense upon the family of the victim and others. Rebuttal and surrebuttal evidence may be presented. The state shall be the first to proceed. If the trier is a jury it shall be instructed on the law. The attorneys may then argue the issue of punishment to the jury, and the state shall have the right to open and close the argument. The trier shall assess and declare the

punishment at life imprisonment without eligibility for probation, parole, or release except by act of the governor:

(1) If the trier finds by a preponderance of the evidence that the defendant is intellectually disabled; or

(2) If the trier does not find beyond a reasonable doubt at least one of the statutory aggravating circumstances set out in subsection 2 of section 565.032; or

(3) If the trier [concludes that there is evidence in mitigation of punishment, including but not limited to evidence supporting the statutory mitigating circumstances listed in subsection 3 of section 565.032, which is sufficient to outweigh the evidence in aggravation of punishment found by the trier] does not determine by unanimous vote that the aggravating circumstance or circumstances previously found outweigh the mitigating circumstance or circumstances including, but not limited to, those mitigating circumstances set out in subsection 3 of section 565.032; or

(4) If the trier decides under all of the circumstances not to assess and declare the punishment at death. If the trier is a jury it shall be so instructed.

If the trier assesses and declares the punishment at death it shall, in its findings or verdict, set out in writing the aggravating circumstance or circumstances listed in subsection 2 of section 565.032 which it found beyond a reasonable doubt. If the trier is a jury it shall be instructed before the case is submitted that if it is unable to decide or agree upon the punishment the court shall assess and declare the punishment at life imprisonment without eligibility for probation, parole, or release except by act of the governor [or death. The court shall follow the same procedure as set out in this section whenever it is

required to determine punishment for murder in the first degree].

5. Upon written agreement of the parties and with leave of the court, the issue of the defendant's intellectual disability may be taken up by the court and decided prior to trial without prejudicing the defendant's right to have the issue submitted to the trier of fact as provided in subsection 4 of this section.

6. As used in this section, the terms "intellectual disability" or "intellectually disabled" refer to a condition involving substantial limitations in general functioning characterized by significantly subaverage intellectual functioning with continual extensive related deficits and limitations in two or more adaptive behaviors such as communication, self-care, home living, social skills, community use, self-direction, health and safety, functional academics, leisure and work, which conditions are manifested and documented before eighteen years of age.

7. The provisions of this section shall only govern offenses committed on or after August 28, 2001.

565.097. 1. A person commits the offense of masked intimidation if the person intentionally harasses, intimidates, or threatens any other person while hiding or concealing their face with a mask, hood, or any other article or device for the purpose of concealing their identity and with the intent to place another person in reasonable fear for their physical safety.

2. A person who commits the offense of masked intimidation shall be guilty of a class E felony for the first offense, a class D felony for the second offense, and a class C felony for a third or subsequent offense.

3. This section shall not apply to any person wearing a mask or otherwise covering one's face for any purpose

other than a purpose specified in subsection 1 of this section, in cases where a person is wearing a:

(1) Mask or face covering on or near the occasion of a holiday, celebration, or other event involving costumes;

(2) Mask, hood, article, or other device for the purpose of ensuring the physical safety of the wearer or because of the nature of the person's occupation, trade, or profession;

(3) Mask, hood, article, or other device for the purpose of protection from the weather elements or while participating in a winter sport;

(4) Mask, hood, article, or other device in an artistic or theatrical production or celebration;

(5) Gas mask or other protective facial covering for the purposes of protection during or related to emergency situations or during emergency management drills;

(6) A mask for the purpose of ensuring one's physical health and safety or the health and safety of others, including but not limited to limiting the spread of airborne illnesses; or

(7) Any garb for religious purposes.

4. Nothing in this section shall be construed to diminish or infringe upon any right protected under the First Amendment to the Constitution of the United States.

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

(1) "Harass", engaging in a knowing and willful pattern of conduct directed at a particular person or particular group of persons that is intended to cause that person or that group of persons to reasonably fear for their safety or suffer substantial emotional distress;

(2) "Intimidate", willfully and substantially interfering, by threats, intimidation, or coercion, with the

exercise or enjoyment by any other person of rights secured by the constitution or laws of the United States, or of rights secured by the constitution or laws of this state, because of that person or person's actual or perceived race, color, religion, national origin, ethnicity, sex, gender, gender identity or expression, sexual orientation, or disability;

(3) "Threaten", communication with the clear intention to cause imminent physical injury to another person.

610.141. 1. As used in this section, section 476.411, and sections 610.143 and 610.144, unless the context otherwise indicates, the following terms mean:

(1) "Automated expungement", technology-assisted, state-initiated bulk expungement of records in the manner established under this section;

(2) "Automated expungement technology", any information technology equipment, software, systems, or services associated with automated expungement;

(3) "Automated expungement technology implementation date", the date on which moneys are appropriated for an automated system or software designed to identify, review, and process clean slate eligible offense records maintained by the Missouri state highway patrol for expungement or sealing without requiring manual initiation or oversight or July 1, 2029, whichever occurs later;

(4) "Central repository", the Missouri state highway patrol central repository for compiling and disseminating complete and accurate criminal history records;

(5) "Clean slate eligible offense", a misdemeanor or felony not listed under subsection 3 of section 610.140 for which an electronic record exists in the central repository;

(6) "Close" or "closed", to make records inaccessible to the general public and to all individuals other than the

defendant, except as provided under section 610.120 and chapter 43;

(7) "Expunge" or "expunged", to close an electronic record in the manner established under section 610.120, provided that no agency, office, or entity shall be required to proactively segregate, redact, or physically alter physical, paper, audio, or video files for the sole purpose of complying with automated expungement obligations under this section if doing so would be unduly burdensome, as long as such records are made inaccessible to the general public and to all individuals other than the defendant, except as provided under section 610.120, chapter 43, and subdivision (10) of subsection 3 of this section;

(8) "Final disposition", the date the person has completed his or her incarceration, probation, or parole. In the event that the Missouri state highway patrol cannot determine a final disposition based on data contained in the statewide court automation system and the central repository, the Missouri state highway patrol may use the date a person's imposed sentence would end, or, if the Missouri state highway patrol cannot determine an imposed sentence, it may assume a person received a maximum sentence and use the end date of such a sentence as the date of final disposition;

(9) "Petitioner", a person who has petitioned the court to have his or her conviction or convictions expunged or a person whose conviction or convictions have been automatically expunged under this section.

2. (1) Subject to the provisions in subsection 3 of this section, all electronic records and files maintained in the central repository pertaining to clean slate eligible offenses shall be expunged in the manner established under this section without the filing of a petition under section

610.140 in the following cases, subject to the limitations contained in subdivisions (2), (3), and (4) of this subsection:

(a) For misdemeanors, if one year has passed since final disposition and the individual has not been convicted of any felony or misdemeanor criminal offense in Missouri during that time;

(b) For felony offenses, if three years have passed since final disposition and the individual has not been convicted of any felony or misdemeanor criminal offense in Missouri during that time;

(c) For all of an individual's offenses, if the individual has attained sixty-five years of age and has not been convicted of any misdemeanors or felonies in Missouri other than a technical violation of the terms of his or her probation or parole in the ten immediately preceding years;
or

(d) All offenses for which the governor of Missouri has granted a full pardon.

(2) Records pertaining to juvenile adjudications are not eligible for automated expungement.

(3) Records pertaining to any arrest, prosecution, or conviction of an offense under chapters 301, 302, 303, 304, and 307 are not eligible for automated expungement.

(4) No offense shall be eligible for automated expungement if a person has charges pending that have been filed in a Missouri state court for which an individual has not yet been sentenced during the period of review for clean slate eligibility as described in subsection 3 of this section.

(5) (a) An individual may be granted more than one expungement under this section, except that during his or her lifetime the total number of offenses for which

expungement can be granted to the individual under this section or section 610.140 shall not exceed the following limits:

- a. No more than two felony offenses; and
- b. No more than three misdemeanor offenses.

(b) If an individual's electronic record contains more felonies or misdemeanors than can be expunged during the individual's lifetime under paragraph (a) of this subdivision, the individual shall not be eligible for automated expungement under this section.

(c) For purposes of determining lifetime limits on expungement under this section:

a. If the offenses were charged as counts in the same case, all such offenses and violations shall count as only the highest-level offense in that case for purposes of determining lifetime limits on expungement under this section. However, if one or more counts in the same indictment or information or conduct committed were a part of the same course of criminal conduct as an offense listed in subsection 3 of section 610.140, the entire record shall not be expunged under this section;

b. If the offenses were committed by an individual who has attained sixty-five years of age and has not been convicted of any misdemeanors or felonies in the immediate ten preceding years in Missouri, all clean slate eligible offenses shall be expunged; and

c. Only convictions contained within the central repository shall be considered when determining eligibility under this section.

(d) The Missouri state highway patrol shall maintain records to ensure that a person has not exceeded the limitations provided under this subsection. Nothing in this section shall be construed to limit or impair the subsequent

use of any record expunged under this section for the purpose of any law enforcement or prosecutorial investigation or activity, including any arrest or findings of guilt expunged under this section by a law enforcement agency, criminal justice agency, prosecuting attorney, circuit attorney, or municipal prosecuting attorney, including its use as a prior offense in a subsequent criminal or civil investigation or prosecution.

3. (1) Six months after the automated expungement technology implementation date, and on a quarterly basis thereafter, the Missouri state highway patrol shall identify records that have become eligible in the last quarter and transmit, or otherwise make accessible by electronic means, to every prosecuting agency in the state all clean slate eligible offense records within one hundred days of the record becoming eligible for automated expungement.

(2) Prior to six months after the automated expungement technology implementation date, the Missouri state highway patrol shall identify records that would have been eligible for automated expungement under subsection 2 of this section. Within twelve months after the automated expungement technology implementation date, all such records shall be identified and expunged in the manner and according to the time frames provided under this subsection. The order of such records to be expunged shall be determined by the Missouri state highway patrol and the office of state courts administrator.

(3) Delinquent court costs, fines, fees, or other sums ordered by a court, except restitution owed to a victim of a crime, shall not be considered by the court, prosecuting agency, or central repository when determining eligibility of a record for automated expungement under subsection 2 of this section. However, the office of state courts

administrator may seek a setoff of any income tax refund and lottery prize payouts under section 488.5028 for all delinquent court costs, fines, fees, or other sums ordered by a court relating to convictions expunged under subsection 2 of this section.

(4) Each prosecuting agency in this state has no more than sixty days from the day on which the notice described in subdivision (1) of this subsection is transmitted, or otherwise made accessible by electronic means, to object to an automated expungement and transmit such objection to the central repository. The prosecuting agency may object to the automated expungement for any of the following reasons:

(a) After reviewing the prosecuting agency's record, the record does not meet the definition of a clean slate eligible offense;

(b) The person has not paid court-ordered restitution to the victim;

(c) The person has charges pending against them in another case in Missouri; or

(d) The prosecuting agency can furnish documentation that the person has felony or misdemeanor charges pending against him or her in another state or has been convicted of a felony or a misdemeanor in another state during the waiting periods established under subdivision (1) of subsection 2 of this section.

(5) If a prosecuting agency objects for a reason described in subdivision (4) of this subsection, within sixty days of the day on which the notice described in subdivision (1) of this subsection is transmitted, or otherwise made accessible by electronic means, the record shall not be expunged.

(6) If sixty days have passed without an objection from a prosecuting agency for one of the reasons set forth

under this subsection, the Missouri state highway patrol shall transmit, or otherwise make accessible by electronic means, within fifteen days all the records to be expunged to the office of state courts administrator for distribution to the circuit courts.

(7) Within fifteen days of receiving all records to be expunged from the Missouri highway patrol, the office of state courts administrator shall transmit, or otherwise make accessible by electronic means, copies of all records to be expunged to the circuit court.

(8) Within thirty days of receiving a notice to expunge, the circuit court shall enter an order of expungement in the case record associated with the clean slate eligible offense being expunged and shall transmit, or otherwise make accessible by electronic means, copies of all orders for expungement that the court issues under this section to the office of state courts administrator.

(9) Within thirty days of a copy being transmitted to the office of state courts administrator, the office of state courts administrator shall provide notice of the order of expungement to the prosecuting or circuit attorneys, the department of corrections, and the Missouri state highway patrol. The Missouri state highway patrol shall notify law enforcement agencies. Each entity that receives notice pursuant to this section, with the except of the office of state courts administrator and the Missouri state highway patrol, shall consider such records expunged, but are not required to proactively segregate, redact, or alter such record so long as the records are made inaccessible to the general public and to all parties except as provided under section 610.120, chapter 43, and subdivision (10) of this subsection. The office of state courts administrator and

the Missouri state highway patrol shall close records in the manner established under section 610.120.

(10) (a) The Missouri state highway patrol shall retain a nonpublic record of the order expunging a conviction or other notification regarding a conviction that was automatically expunged under this section and of the record of the arrest, fingerprints, conviction, and sentence of the person in the case to which the order or other notification applies. The nonpublic record shall be made available only to the entities listed in subsection 1 of section 610.120 upon request and only for the following purposes:

a. To show that a person who has filed a petition to expunge a conviction has previously had a conviction expunged under this section;

b. The court's consideration in determining the sentence to be imposed upon conviction for a subsequent offense that is punishable as a felony or by imprisonment for more than one year;

c. Consideration by the governor if a person whose conviction has been expunged applies for a pardon for another offense;

d. Consideration by the department of corrections or a law enforcement agency if a person whose conviction has been expunged applies for employment with the department of corrections or a law enforcement agency;

e. Consideration by the department of health and senior services for the purpose of licensing and regulating facilities and regulating in-home services provider agencies and federal agencies for purposes of criminal justice administration, criminal justice employment, child, elderly, or disabled care;

f. Consideration by a court, law enforcement agency, prosecuting attorney, or the attorney general in determining whether a person required to register under sections 589.400 to 589.425 has committed an offense that requires registration under sections 589.400 to 589.425, or in prosecuting a person for committing an offense requiring registration under sections 589.400 to 589.425;

g. Consideration by a court, law enforcement agency, prosecuting attorney, or the attorney general for use in making determinations regarding charges, plea offers, and sentencing, as applicable;

h. Consideration by any entity responsible for issuing commercial driver's licenses for the purpose of meeting state and federal requirements to obtain commercial driver's licenses; or

i. Consideration by the department of revenue, to the greatest extent possible, for the purpose of identifying disqualifying offenses for drivers of commercial motor vehicles.

(b) A copy of the nonpublic record created under paragraph (a) of this subdivision may be provided upon request to the person whose conviction is expunged under this section upon payment of a fee determined and charged by the Missouri state highway patrol.

(c) The nonpublic record maintained under paragraph (a) of this subdivision is exempt from disclosure under this chapter.

(d) An entity shall not be liable for damages or subject to criminal penalties for reporting a public record of conviction that has been expunged by court order or operation of law prior to six months after the automated expungement technology implementation date if that record was available as a public record on the date of the report.

(e) The Missouri state highway patrol shall provide a consumer reporting agency with information sufficient to accurately identify and delete records associated with the clean slate eligible offense being expunged.

4. Any court sentencing an individual for a clean slate eligible offense shall provide the individual a document outlining the state's clean slate expungement program at the time of sentencing.

5. Any probation or parole office releasing an individual from supervision for a clean slate eligible offense shall provide the individual a document outlining the state's clean slate expungement program at the time of release.

6. The provisions of this section shall apply retroactively to any arrest, charge, trial, or conviction for which there is an electronic record regardless of the date that the arrest was made, the charge or charges were brought, the trial occurred, or the conviction was entered.

7. Nothing in this section precludes an individual from filing a petition for expungement of records under section 610.140 if an individual is eligible for automated expungement under this section but such automated expungement has not yet occurred or cannot occur.

8. Notwithstanding any provision of law to the contrary, the sole remedy for relief for failure to expunge under this section shall be the filing of an expungement petition under section 610.140.

9. If it is determined that a conviction was improperly or erroneously expunged under this section because the conviction was not eligible to be expunged under this section, the court shall, on its own motion, reinstate the conviction.

10. (1) Upon the entry of an order under section 610.140, or upon the automated expungement of a conviction under this section, the petitioner, for purposes of the law, is considered not to have been previously convicted, except as provided under this subsection and subsection 10 of section 610.140.

(2) The petitioner shall not be entitled to the remission of any fine, costs, or other moneys paid as a consequence of a conviction that is expunged.

(3) This section shall not affect the right of the petitioner to rely upon the conviction to bar subsequent proceedings for the same offense.

(4) This section shall not affect the right of a victim of an offense to bring or defend a civil action for damages.

(5) This section shall not create a right to commence an action for damages for incarceration under the sentence that the petitioner served before the conviction is expunged under this section.

(6) This section shall not relieve any obligation to pay restitution owed to the victim of an offense nor shall such section affect the jurisdiction of the convicting court or the authority of any court order with regard to enforcing an order for restitution.

(7) A conviction, including any records relating to the conviction and any records concerning a collateral action, that has been expunged under this section shall not be used as evidence in an action for negligent hiring, admission, or licensure against any person.

(8) A conviction that is expunged under this section or section 610.140 may be considered a prior conviction by a court, law enforcement agency, prosecuting attorney, or the attorney general, as applicable, for purposes of charging a

crime as a second or subsequent offense or for sentencing under section 558.016.

11. The office of state courts administrator shall collaborate with the Missouri state highway patrol to establish and implement data-sharing procedures regarding the information required under this section.

12. Any person eligible for expungement under this section who has filed a petition for expungement under section 610.140 shall be granted an expungement, subject to subsection 3 of this section.

610.143. 1. Records of arrests, indictments pending trial, and convictions of crimes shall no longer be reported if at any time after a conviction it is learned that a full pardon or expungement has been granted for that conviction, or at any time after an arrest or indictment it is learned that a conviction did not result.

2. In addition to such other remedies as are provided in this section, if the attorney general has reason to believe that any person has violated or is violating this section, the attorney general:

(1) May bring an action to enjoin such violation in any appropriate United States district court or in any other court of competent jurisdiction;

(2) May bring an action on behalf of the residents of the state to recover:

(a) Damages for which the person is liable to such residents under Sections 616 and 617 of 15 U.S.C. Section 1681s as a result of the violation;

(b) In the case of a violation described in any of Paragraphs (1) through (3) of Section 623(c) of 15 U.S.C. Section 1681s, damages for which the person would, but for Section 623(c), be liable to such residents as a result of the violation; or

(c) Damages of not more than one thousand dollars for each willful or negligent violation; and

(3) In the case of any successful action under subdivision (1) or (2) of this subsection, shall be awarded the costs of the action and reasonable attorney fees as determined by the court.

3. Injunctive relief shall be available to any consumer aggrieved by a violation or a threatened violation of this section regardless of whether the consumer seeks any other remedy under this section.

4. An employer, volunteer organization, or landlord who employs, qualifies, or otherwise engages an individual whose criminal history record has been expunged shall be immune from liability for any claim arising out of the misconduct of the individual if the misconduct relates to the portion of the criminal history record that has been expunged.

5. A person granted an expungement shall disclose any expunged offense if the disclosure of such information is necessary to complete any application for employment with any:

(1) Federally insured bank or savings institution or credit union or an affiliate of such institution or credit union for the purpose of compliance with 12 U.S.C. Section 1829 and 12 U.S.C. Section 1785; or

(2) Entity engaged in the business of insurance or any insurer for the purpose of complying with 18 U.S.C. Section 1033, 18 U.S.C. Section 1034, or other similar law that requires an employer engaged in the business of insurance to exclude applicants with certain criminal convictions from employment.

610.144. 1. (1) There is hereby created in the state treasury the "Missouri Expungement Fund", which shall

consist of moneys appropriated to it by the general assembly and gifts, donations, grants, and bequests. The state treasurer shall be custodian of the fund. In accordance with sections 30.170 and 30.180, the state treasurer may approve disbursements. The fund shall be a dedicated fund and, upon appropriation, moneys in this fund shall be used solely as provided in subsection 2 of this section.

(2) The state treasurer shall invest moneys in the fund in the same manner as other funds are invested. Any interest and moneys earned on such investments shall be credited to the fund.

2. The office of state courts administrator, the department of public safety, and the information technology services division within the office of administration shall expend moneys from the fund, upon appropriation, on the statewide court automation case management system and the Missouri criminal history record information system established under sections 43.500 to 43.530 for one or more of the following purposes:

(1) Expenses that may be incurred to develop, establish, maintain, or operate any information technology equipment, software, systems, or services associated with the expungement or closing of records under Missouri law, including the development and implementation of any technology-assisted, state-initiated bulk expungement or sealing of records under Missouri law; or

(2) The cost of necessary personnel or contractors.