

## SENATE COMMITTEE SUBSTITUTE

FOR

SENATE BILLS NOS. 854 &amp; 1494

AN ACT

To repeal sections 43.500, 43.530, and 565.030, RSMo, and to enact in lieu thereof seven new sections relating to proceedings resulting from criminal conduct.

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

Section A. Sections 43.500, 43.530, and 565.030, RSMo, are repealed and seven new sections enacted in lieu thereof, to be known as sections 43.500, 43.530, 476.411, 565.030, 610.141, 610.143, and 610.144, to read as follows:

43.500. As used in sections 43.500 to 43.651, the following terms mean:

(1) "Administration of criminal justice", performance of any of the following activities: detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. The administration of criminal justice shall include the discretion to disclose closed mobile video recordings. Such discretion shall belong solely to the agency creating the video and shall not waive closure rights or requirements for subsequent requests. The administration of criminal justice shall include the screening of employees or applicants seeking employment with criminal justice agencies, criminal identification activities, and the collection, storage, and dissemination of criminal history information, including fingerprint searches, photographs, and other unique biometric identification;

(2) "Central repository", the division within the Missouri state highway patrol responsible for compiling and disseminating complete and accurate criminal history records and statistics;

(3) "Committee", criminal records and justice information advisory committee;

(4) "Comparable ordinance violation", a violation of an ordinance having all the essential elements of a statutory felony or a class A misdemeanor;

(5) "Criminal history record information", information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges, and any disposition arising therefrom, sentencing, correctional supervision, and release;

(6) "Final disposition", the formal conclusion of a criminal proceeding at whatever stage it occurs in the criminal justice system;

(7) "Missouri charge code", a unique number assigned by the office of state courts administrator to an offense for tracking and grouping offenses. Beginning January 1, 2005, the complete charge code shall consist of digits assigned by the office of state courts administrator, the two-digit national crime information center modifiers and a single digit designating attempt, accessory, or conspiracy. The only exception to the January 1, 2005, date shall be the courts that are not using the statewide court automation case management pursuant to section 476.055; the effective date will be as soon thereafter as economically feasible for all other courts;

(8) "State offense cycle number", a unique number, supplied by or approved by the Missouri state highway patrol, on the state criminal fingerprint card. The offense

cycle number, OCN, is used to link the identity of a person, through unique biometric identification, to one or many offenses for which the person is arrested or charged. The OCN will be used to track an offense incident from the date of arrest to the final disposition when the offender exits from the criminal justice system;

(9) "Unique biometric identification", automated methods of recognizing and identifying an individual based on a physiological characteristic. Biometric identification methods may include but are not limited to facial recognition, fingerprints, palm prints, hand geometry, iris recognition, and retinal scan.

43.530. 1. For each request requiring the payment of a fee received by the central repository, the requesting entity shall pay a fee of not more than nine dollars per request for criminal history record information not based on a fingerprint search. In each year beginning on or after January 1, 2010, the superintendent may increase the fee paid by requesting entities by an amount not to exceed one dollar per year, however, under no circumstance shall the fee paid by requesting entities exceed ~~[fifteen]~~ twenty dollars per request.

2. For each request requiring the payment of a fee received by the central repository, the requesting entity shall pay a fee of not more than twenty dollars per request for criminal history record information based on a fingerprint search, unless the request is required under the provisions of subdivision (6) of section 210.481, section 210.487, or section 571.101, in which case the fee shall be fourteen dollars.

3. Upon establishment of a fingerprinting system within the central repository, the superintendent shall collect the current vendor fee for device usage by

requestors under this section. When initially established, the fee shall not exceed the vendor fee then in place for legacy livescan devices under state contract. Thereafter the superintendent may increase the fee by no more than fifty cents per year. The fee shall be deposited to the Criminal Record System Fund.

4. A request made under subsections 1 and 2 of this section shall be limited to check and search on one individual. Each request shall be accompanied by a check, warrant, voucher, money order, or electronic payment payable to the state of Missouri-criminal record system or payment shall be made in a manner approved by the highway patrol. The highway patrol may establish procedures for receiving requests for criminal history record information for classification and search for fingerprints, from courts and other entities, and for the payment of such requests. There is hereby established by the treasurer of the state of Missouri a fund to be entitled as the "Criminal Record System Fund". Notwithstanding the provisions of section 33.080 to the contrary, if the moneys collected and deposited into this fund are not totally expended annually for the purposes set forth in sections 43.500 to 43.651, the unexpended moneys in such fund shall remain in the fund and the balance shall be kept in the fund to accumulate from year to year.

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.

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.

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

(1) "Court record information", any information stored in a statewide court automation system relating to a specific criminal offense in this state;

(2) "Criminal history record information", data relating to the arrest, prosecution, court action, detention, and other related information collected, stored, and disseminated by the central repository for each criminal offense in this state;

(3) "Eligible Offense", for an offense to be eligible, it must:

(a) Be a qualifying offense, as defined in this section;

(b) Be a final conviction;

(c) Be the only charge of conviction in a case or part of a case that contains only convictions for qualifying offenses;

(d) Have been one year since final disposition of the eligible offense for a misdemeanor and three years for a felony;

(e) Be an offender with no conviction for a misdemeanor or felony within one calendar year of the final

disposition of the expungable offense if the offense is a misdemeanor and three years if the expungable offense is a felony, not including violations of the traffic regulations provided under chapters 301, 302, 303, 304, and 307;

(f) Be an offender with no outstanding arrest or pending charges for a misdemeanor or felony at the time of analysis for expungement, not including violations of the traffic regulations provided under chapters 301, 302, 303, 304, and 307; and

(g) Not be for an class A felony;

(4) "Expungement", closure of the record pursuant to section 610.120;

(5) "Qualifying offense", a conviction for:

(a) Possession of a controlled substance under section 195.202, as it existed prior to January 1, 2017;

(b) Unlawful use of drug paraphernalia under section 195.233, as it existed prior to January 1, 2017;

(c) Possession or control of a controlled substance under section 579.015; or

(d) Unlawful possession of drug paraphernalia under section 579.074.

(6) "Restoration of rights", a full restoration of the civil rights of such person to the status occupied prior to the conviction as if such events had never taken place. This includes the right to vote, the right to hold public office, and to serve as a juror. No person with a state initiated expungement shall be held thereafter under any provision of law to be guilty of perjury or otherwise giving a false statement by reason of his or her failure to recite or acknowledge such convictions or expungement in response to an inquiry and no such inquiry shall be made for information relating to an expungement, except the petitioner shall disclose the expunged crime to any entity

with authorization to access closed records under section 610.120. The expunged crime may be considered a prior offense in determining a sentence to be imposed for any subsequent offense that the person is found guilty of committing. "Restoration of rights" shall not include rights related to the uses for the conviction detailed in section 610.120.

2. All eligible offenses shall automatically be expunged as a matter of law upon eligibility. The result of the expungement shall be a closure of the record and restoration of rights, as defined in this section.

3. The central repository shall, on a rolling basis, but not less than once per week, automatically screen criminal history record information contained in the statewide criminal history database for eligible offenses. All eligible offenses shall be automatically expunged pursuant to this section. The central repository shall base automated expungement record designations only on the data available in its system. Once expunged, an offense record status shall reflect the expungement in the criminal history system by way of the Missouri Uniform Law Enforcement System. If additional information is learned by the central repository relating to eligibility, the analysis may be rerun as necessary and the record status updated.

4. The supreme court of Missouri shall, on a rolling basis, but not less than once per week, automatically screen court record information for eligible offenses. All case materials relating to eligible offenses shall be automatically expunged pursuant to this section. Expunged court record information shall be closed pursuant to section 610.120 and available to the parties.

5. For purposes of compliance with this section, any agency releasing investigative reports under chapter 610

shall treat said information as a closed record where it relates only to an expunged offense under this section. It shall be an affirmative defense that an agency conducted a Missouri Uniform Law Enforcement System query of the relevant criminal history record and adhered to the record status designation therein.

6. During the sentencing phase of any criminal case for a qualifying offense under this section, the sentencing court, upon its own motion or motion of any party, may designate a conviction ineligible for state initiated expungement under this section if the record shows, by a preponderance of the evidence, that:

(1) The petitioner's habits and conduct demonstrate that the petitioner is a threat to the public safety of the state;

(2) The state-initiated expungement is not consistent with the public welfare; or

(3) The interests of justice do not warrant the expungement.

Any party may request a hearing on such a motion and present evidence. Upon a finding to exclude a conviction from state initiated expungement, the court shall designate the conviction type as not eligible for state initiated expungement in the statewide court automation system and when transmitting the sentencing information to the central repository.

7. An offender shall be limited to three misdemeanor and two felony expungements under this section and section 610.140 combined. Where a criminal case contains more than one expungable offense, the offense with the greatest severity shall be the only offense that counts for the purposes of this subsection.

8. Nothing in this section shall prohibit the filing of an expungement petition under any other provision of law for which such a filing is permissible.

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

10. The provisions of this section shall be effective when technically feasible for both the supreme court of Missouri and the central repository, but no later than January 1, 2028.

610.143. 1. A credit bureau may report records of arrests, indictments pending trial, and convictions of crimes for no longer than seven years from final disposition. 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. Any credit bureau or user of information that willfully fails to comply with any requirement of this section with respect to any consumer is liable to that consumer in an amount equal to:

(1) Any actual damages sustained by the consumer as a result of the failure;

(2) Punitive damages as the court may allow; and

(3) In the case of any successful action under this section, costs of the action and reasonable attorney's fees as determined by the court.

3. Any credit bureau or user of information that is negligent in failing to comply with any requirement of this

section with respect to any consumer is liable to that consumer in an amount equal to:

(1) Any actual damages sustained by the consumer as a result of the failure; and

(2) In the case of any successful action under this section, costs of the action and reasonable attorney's fees as determined by the court.

4. 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.

5. 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.

6. 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.