

# SENATE BILL NO. 1356

103RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR WASHINGTON.

4755S.011

KRISTINA MARTIN, Secretary

## AN ACT

To repeal sections 610.120 and 610.140, RSMo, and to enact in lieu thereof two new sections relating to criminal records.

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

Section A. Sections 610.120 and 610.140, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 610.120 and 610.140, to read as follows:

610.120. 1. Except as otherwise provided under section 610.124, records required to be closed shall **[not]** be destroyed **within six months of being closed; [they] the record of arrest shall be closed and** shall be inaccessible

to the general public and to all persons other than the defendant except as provided in this section and chapter 43. **[Closed records shall be available to: criminal justice agencies for the administration of criminal justice pursuant to section 43.500, criminal justice employment, screening persons with access to criminal justice facilities, procedures, and sensitive information; to law enforcement agencies for issuance or renewal of a license, permit, certification, or registration of authority from such agency including but not limited to watchmen, security personnel, and private investigators; those agencies authorized by chapter 43 and applicable state law when submitting fingerprints to the central repository; the sentencing**

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

advisory commission created in section 558.019 for the purpose of studying sentencing practices in accordance with chapter 43; to qualified entities for the purpose of screening providers defined in chapter 43; the department of revenue for driver license administration; the department of public safety for the purposes of determining eligibility for crime victims' compensation pursuant to sections 595.010 to 595.075, 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, and for such investigative purposes as authorized by law or presidential executive order.]

2. [These records shall be made available only for the purposes and to the entities listed in this section. A criminal justice agency receiving a request for criminal history information under its control may require positive identification, to include fingerprints of the subject of the record search, prior to releasing closed record information.] Dissemination of closed and open records from the Missouri criminal records repository shall be in accordance with section 43.509. All records which are closed records shall be removed 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] **destruction of the record** is not feasible because of the permanent nature of the record books, such record

50 entries shall be blacked out [and recopied in a confidential  
51 book].

610.140. 1. For the purposes of this section, the  
2 following terms mean:

3 (1) "Court", any Missouri municipal, associate  
4 circuit, or circuit court;

5 (2) "Crime", any offense, violation, or infraction of  
6 Missouri state, county, municipal, or administrative law;

7 (3) "Prosecutor" or "prosecuting attorney", the  
8 prosecuting attorney, circuit attorney, or municipal  
9 prosecuting attorney.

10 2. (1) Notwithstanding any other provision of law and  
11 subject to the provisions of this section, any person may  
12 apply to any court in which such person was charged or found  
13 guilty of any crimes for an order to expunge records of such  
14 arrest, plea, trial, or conviction.

15 (2) Subject to the limitations of subsection 13 of  
16 this section, a person may apply to have one or more crimes  
17 expunged if each such crime occurred within the state of  
18 Missouri and was prosecuted under the jurisdiction of a  
19 Missouri court, so long as such person lists all the crimes  
20 he or she is seeking to have expunged in the petition and so  
21 long as all such crimes are not excluded under subsection 3  
22 of this section.

23 (3) If the crimes sought to be expunged were committed  
24 as part of the same course of criminal conduct, the person  
25 may include all such related crimes in the petition,  
26 regardless of the limits of subsection 13 of this section,  
27 and those related crimes shall only count as the highest  
28 level for the purpose of determining current and future  
29 eligibility for expungement.

30           3. The following crimes shall not be eligible for  
31 expungement under this section:

32           (1) Any class A felony offense;

33           (2) Any dangerous felony as that term is defined in  
34 section 556.061;

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

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

39           (5) Any felony offense of assault; misdemeanor or  
40 felony offense of domestic assault; or felony offense of  
41 kidnapping;

42           (6) Any offense listed, previously listed, or is a  
43 successor to an offense in chapter 566 or section 105.454,  
44 105.478, 115.631, 130.028, 188.030, 188.080, 191.677,  
45 194.425, 217.385, 334.245, 375.991, 389.653, 455.085,  
46 455.538, 557.035, 565.120, 565.130, 565.156, 566.093,  
47 566.111, 566.115, 566.116, 568.020, 568.030, 568.032,  
48 568.045, 568.060, 568.065, 568.175, 569.040, 569.050,  
49 569.055, 569.060, 569.065, 569.067, 569.072, 569.160,  
50 570.025, 570.090, 570.180, 570.223, 570.224, 570.310,  
51 571.020, 571.060, 571.063, 571.070, 571.072, 571.150,  
52 573.200, 573.205, 574.070, 574.105, 574.115, 574.120,  
53 574.130, 574.140, 575.040, 575.095, 575.153, 575.155,  
54 575.157, 575.159, 575.195, 575.200, 575.210, 575.220,  
55 575.230, 575.240, 575.353, 577.078, 577.703, 577.706, or  
56 632.520;

57           (7) Any offense eligible for expungement under section  
58 610.130;

59           (8) Any intoxication-related traffic or boating  
60 offense as defined in section 577.001, or any offense of

operating an aircraft with an excessive blood alcohol content or while in an intoxicated condition;

(9) Any ordinance violation that is the substantial equivalent of any offense that is not eligible for expungement under this section;

(10) Any violation of any state law or county or municipal ordinance regulating the operation of motor vehicles when committed by an individual who has been issued a commercial driver's license or is required to possess a commercial driver's license issued by this state or any other state; and

(11) Any offense of section 571.030, except any offense under subdivision (1) of subsection 1 of section 571.030 where the person was convicted or found guilty prior to January 1, 2017, or any offense under subdivision (4) of subsection 1 of section 571.030.

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

5. The petition shall include the following information:

(1) The petitioner's:

(a) Full name;

(b) Sex;

(c) Race;

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

(e) Current address;

93           (2) Each crime for which the petitioner is requesting  
94 expungement;

95           (3) The approximate date the petitioner was charged  
96 for each crime; and

97           (4) The name of the county where the petitioner was  
98 charged for each crime and if any of the crimes occurred in  
99 a municipality, the name of the municipality for each crime;  
100 and

101           (5) The case number and name of the court for each  
102 crime.

103           6. The clerk of the court shall give notice of the  
104 filing of the petition to the office of the prosecuting  
105 attorney that prosecuted the crimes listed in the petition.  
106 If the prosecuting attorney objects to the petition for  
107 expungement, he or she shall do so in writing within thirty  
108 days after receipt of service. Unless otherwise agreed upon  
109 by the parties, the court shall hold a hearing within sixty  
110 days after any written objection is filed, giving reasonable  
111 notice of the hearing to the petitioner. If no objection  
112 has been filed within thirty days after receipt of service,  
113 the court may set a hearing on the matter and shall give  
114 reasonable notice of the hearing to each entity named in the  
115 petition. At any hearing, the court may accept evidence and  
116 hear testimony on, and may consider, the following criteria  
117 for each of the crimes listed in the petition for  
118 expungement:

119           (1) At the time the petition is filed, it has been at  
120 least three years if the offense is a felony, or at least  
121 one year if the offense is a misdemeanor, municipal  
122 violation, or infraction, from the date the petitioner  
123 completed any authorized disposition imposed under section  
124 557.011 for each crime listed in the petition;

(2) At the time the petition is filed, the person has not been found guilty of any other misdemeanor or felony, not including violations of the traffic regulations provided under chapters 301, 302, 303, 304, and 307, during the time period specified for the underlying crime in subdivision (1) of this subsection;

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

(4) The person does not have charges pending;

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

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

A pleading by the petitioner that such petitioner meets the requirements of subdivisions (5) and (6) of this subsection shall create a rebuttable presumption that the expungement is warranted so long as the criteria contained in subdivisions (1) to (4) of this subsection are otherwise satisfied. The burden shall shift to the prosecuting attorney or circuit attorney to rebut the presumption. A victim of a crime listed in the petition shall have an opportunity to be heard at any hearing held under this section. A court may find that the continuing impact of the offense upon the victim rebuts the presumption that expungement is warranted.

7. A petition to expunge records related to an arrest for an eligible crime may be made in accordance with the provisions of this section to a court of competent jurisdiction in the county where the petitioner was arrested

no earlier than eighteen months from the date of arrest; provided that, during such time, the petitioner has not been charged and the petitioner has not been found guilty of any misdemeanor or felony offense.

8. If the court determines that such person meets all the criteria set forth in subsection 6 of this section for each of the crimes listed in the petition for expungement, the court shall enter an order of expungement. In all cases under this section, the court shall issue an order of expungement or dismissal within six months of the filing of the petition. A copy of the order of expungement shall be provided to the petitioner and each entity possessing records subject to the order, and, upon receipt of the order, each entity shall **[close] destroy** any record, **except the arrest record**, in its possession relating to any crime listed in the petition, in the manner established by section 610.120. The records and files maintained in any administrative or court proceeding in a municipal, associate, or circuit court for any crime ordered expunged under this section shall be confidential and only available to the parties or by order of the court for good cause shown. The central repository shall request the Federal Bureau of Investigation to expunge the records from its files.

9. The order shall not limit any of the petitioner's rights that were restricted as a collateral consequence of such person's criminal record, and such rights shall be restored upon issuance of the order of expungement. Except as otherwise provided under this section, the effect of such order shall be to fully restore the civil rights of such person to the status he or she occupied prior to such arrests, pleas, trials, or convictions as if such events had



never taken place. This includes fully restoring the civil rights of a person to the right to vote, the right to hold public office, and to serve as a juror. For purposes of 18 U.S.C. Section 921(a)(33)(B)(ii), an order of expungement granted pursuant to this section shall be considered a complete removal of all effects of the expunged conviction. Except as otherwise provided under this section, the effect of such order shall be to restore such person to the status he or she occupied prior to such arrests, pleas, trials, or convictions as if such events had never taken place. No person as to whom such order has been entered 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 arrests, pleas, trials, convictions, or expungement in response to an inquiry made of him or her and no such inquiry shall be made for information relating to an expungement, except the petitioner shall disclose the expunged crime to any court when asked or upon being charged with any subsequent crime. 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.

10. Notwithstanding the provisions of subsection 9 of this section to the contrary, a person granted an expungement shall disclose any expunged crime when the disclosure of such information is necessary to complete any application for:

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

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

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

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

(5) Employment with any 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 which requires an employer engaged in the business of insurance to exclude applicants with certain criminal convictions from employment; or

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

An employer shall notify an applicant of the requirements under subdivisions (4) to (6) of this subsection.

Notwithstanding any provision of law to the contrary, an expunged crime shall not be grounds for automatic disqualification of an applicant, but may be a factor for denying employment, or a professional license, certificate, or permit; except that, a crime expunged under the provisions of this section may be grounds for automatic disqualification if the application is for employment under subdivisions (4) to (6) of this subsection.

11. A person who has been granted an expungement of records pertaining to a crime may answer "no" to an employer's inquiry into whether the person has ever been

250 arrested, charged, or convicted of a crime if, after the  
251 granting of the expungement, the person has no public record  
252 of a crime. The person, however, shall answer such an  
253 inquiry affirmatively and disclose his or her criminal  
254 convictions, including any offense expunged under this  
255 section or similar law, if the employer is required to  
256 exclude applicants with certain criminal convictions from  
257 employment due to federal or state law, including  
258 corresponding rules and regulations.

259       12. If the court determines that the petitioner has  
260 not met the criteria for any of the crimes listed in the  
261 petition for expungement or the petitioner has knowingly  
262 provided false information in the petition, the court shall  
263 enter an order dismissing the petition. Any person whose  
264 petition for expungement has been dismissed by the court for  
265 failure to meet the criteria set forth in subsection 6 of  
266 this section may not refile another petition until a year  
267 has passed since the date of filing for the previous  
268 petition.

269       13. A person may be granted more than one expungement  
270 under this section provided that during his or her lifetime,  
271 the total number of crimes for which orders of expungement  
272 are granted to the person shall not exceed the following  
273 limits:

274           (1) Not more than three misdemeanor offenses or  
275 ordinance violations that have an authorized term of  
276 imprisonment; and

277           (2) Not more than two felony offenses.

278 A person may be granted expungement under this section for  
279 any number of infractions. Nothing in this section shall be  
280 construed to limit or impair in any way the subsequent use

281 of any record expunged under this section of any arrests or  
282 findings of guilt by a law enforcement agency, criminal  
283 justice agency, prosecuting attorney or circuit attorney,  
284 including its use as a prior crime.

285 14. The court shall make available a form for pro se  
286 petitioners seeking expungement, which shall include the  
287 following statement: "I declare under penalty of perjury  
288 that the statements made herein are true and correct to the  
289 best of my knowledge, information, and belief.".

290 15. Nothing in this section shall be construed to  
291 limit or restrict the availability of expungement to any  
292 person under any other law.

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