

SENATE BILL NO. 1807

103RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR WASHINGTON.

6620S.02I

KRISTINA MARTIN, Secretary

AN ACT

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

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

Section A. Section 565.030, RSMo, is repealed and five
2 new sections enacted in lieu thereof, to be known as sections
3 476.411, 565.030, 610.141, 610.143, and 610.144, to read as
4 follows:

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

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

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

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

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

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

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

6 2. Where murder in the first degree is submitted to
7 the trier without a waiver of the death penalty, the trial
8 shall proceed in two stages before the same trier. At the
9 first stage the trier shall decide only whether the
10 defendant is guilty or not guilty of any submitted offense.
11 The issue of punishment shall not be submitted to the trier
12 at the first stage. If an offense is charged other than
13 murder in the first degree in a count together with a count
14 of murder in the first degree, the trial judge shall assess
15 punishment on any such offense according to law, after the
16 defendant is found guilty of such offense and after he finds
17 the defendant to be a prior offender pursuant to chapter 558.

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

25 4. If the trier at the first stage of a trial where
26 the death penalty was not waived finds the defendant guilty
27 of murder in the first degree, a second stage of the trial

28 shall proceed at which the only issue shall be the
29 punishment to be assessed and declared. Evidence in
30 aggravation and mitigation of punishment, including but not
31 limited to evidence supporting any of the aggravating or
32 mitigating circumstances listed in subsection 2 or 3 of
33 section 565.032, may be presented subject to the rules of
34 evidence at criminal trials. Such evidence may include,
35 within the discretion of the court, evidence concerning the
36 murder victim and the impact of the offense upon the family
37 of the victim and others. Rebuttal and surrebuttal evidence
38 may be presented. The state shall be the first to proceed.
39 If the trier is a jury it shall be instructed on the law.
40 The attorneys may then argue the issue of punishment to the
41 jury, and the state shall have the right to open and close
42 the argument. The trier shall assess and declare the
43 punishment at life imprisonment without eligibility for
44 probation, parole, or release except by act of the governor:

- 45 (1) If the trier finds by a preponderance of the
46 evidence that the defendant is intellectually disabled; or
47 (2) If the trier does not find beyond a reasonable
48 doubt at least one of the statutory aggravating
49 circumstances set out in subsection 2 of section 565.032; or
50 (3) If the trier [concludes that there is evidence in
51 mitigation of punishment, including but not limited to
52 evidence supporting the statutory mitigating circumstances
53 listed in subsection 3 of section 565.032, which is
54 sufficient to outweigh the evidence in aggravation of
55 punishment found by the trier] **does not determine by**
56 **unanimous vote that the aggravating circumstance or**
57 **circumstances previously found outweigh the mitigating**
58 **circumstance or circumstances including, but not limited to,**

59 **those mitigating circumstances set out in subsection 3 of**
60 **section 565.032; or**

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

64 If the trier assesses and declares the punishment at death
65 it shall, in its findings or verdict, set out in writing the
66 aggravating circumstance or circumstances listed in
67 subsection 2 of section 565.032 which it found beyond a
68 reasonable doubt. If the trier is a jury it shall be
69 instructed before the case is submitted that if it is unable
70 to decide or agree upon the punishment the court shall
71 assess and declare the punishment at life imprisonment
72 without eligibility for probation, parole, or release except
73 by act of the governor [or death. The court shall follow
74 the same procedure as set out in this section whenever it is
75 required to determine punishment for murder in the first
76 degree].

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

83 6. As used in this section, the terms "intellectual
84 disability" or "intellectually disabled" refer to a
85 condition involving substantial limitations in general
86 functioning characterized by significantly subaverage
87 intellectual functioning with continual extensive related
88 deficits and limitations in two or more adaptive behaviors
89 such as communication, self-care, home living, social

90 skills, community use, self-direction, health and safety,
91 functional academics, leisure and work, which conditions are
92 manifested and documented before eighteen years of age.

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

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

4 (1) "Automated expungement", technology-assisted,
5 state-initiated bulk closing of records in the manner
6 established under section 610.120;

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

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

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

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

23 (6) "Close" or "closed", to make records inaccessible
24 to the general public and to all individuals other than the
25 defendant, except as provided under section 610.120 and
26 chapter 43;

27 (7) "Expunge" or "expunged", to close an electronic
28 record in the manner established under section 610.120,
29 except the provisions of subsection 2 of section 610.120
30 that require documents to be retyped and rewritten, or
31 blacked out and recopied, if an agency determines that these
32 provisions are not feasible in relation to automated
33 expungement;

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

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

49 2. (1) Subject to the provisions in subsection 3 of
50 this section, all electronic records and files maintained in
51 the central repository pertaining to clean slate eligible
52 offenses shall be closed in the manner established under
53 section 610.120 without the filing of a petition under
54 section 610.140 in the following cases, subject to the
55 limitations contained in subdivisions (2), (3), and (4) of
56 this subsection:

57 (a) For misdemeanors, if one year has passed since
58 final disposition and the individual has not been convicted

59 of any felony or misdemeanor criminal offense in Missouri
60 during that time;

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

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

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

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

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

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

84 (5) (a) An individual may be granted more than one
85 expungement under this section, except that during his or
86 her lifetime the total number of offenses for which
87 expungement can be granted to the individual under this
88 section or section 610.140 shall not exceed the following
89 limits:

90 a. No more than two felony offenses; and

91 b. No more than three misdemeanor offenses.

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

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

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

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

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

116 (d) The Missouri state highway patrol shall maintain
117 records to ensure that a person has not exceeded the
118 limitations provided under this subsection. Nothing in this
119 section shall be construed to limit or impair the subsequent
120 use of any record expunged under this section for the
121 purpose of any law enforcement or prosecutorial
122 investigation or activity, including any arrest or findings

123 of guilt expunged under this section by a law enforcement
124 agency, criminal justice agency, prosecuting attorney,
125 circuit attorney, or municipal prosecuting attorney,
126 including its use as a prior offense in a subsequent
127 criminal or civil investigation or prosecution.

128 3. (1) Six months after the automated expungement
129 technology implementation date, and on a quarterly basis
130 thereafter, the Missouri state highway patrol shall identify
131 records that have become eligible in the last quarter and
132 transmit, or otherwise make accessible by electronic means,
133 to every prosecuting agency in the state all clean slate
134 eligible offense records within one hundred days of the
135 record becoming eligible for automated expungement.

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

147 (3) Delinquent court costs, fines, fees, or other sums
148 ordered by a court, except restitution owed to a victim of a
149 crime, shall not be considered by the court, prosecuting
150 agency, or central repository when determining eligibility
151 of a record for automated expungement under subsection 2 of
152 this section. However, the office of state courts
153 administrator may seek a setoff of any income tax refund and
154 lottery prize payouts under section 488.5028 for all

155 delinquent court costs, fines, fees, or other sums ordered
156 by a court relating to convictions expunged under subsection
157 2 of this section.

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

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

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

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

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

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

184 (6) If sixty days have passed without an objection
185 from a prosecuting agency for one of the reasons set forth
186 under this subsection, the Missouri state highway patrol

187 shall transmit, or otherwise make accessible by electronic
188 means, within fifteen days all the records to be expunged to
189 the office of state courts administrator for distribution to
190 the circuit courts.

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

196 (8) Within thirty days of receiving a notice to
197 expunge, the circuit court shall enter an order of
198 expungement in the case record associated with the clean
199 slate eligible offense being expunged.

200 (9) On a quarterly basis, each circuit court shall
201 transmit, or otherwise make accessible by electronic means,
202 copies of all orders for expungement that the court issues
203 under this section to the office of state courts
204 administrator.

205 (10) Within thirty days of the order of expungement
206 being entered and a copy being transmitted to the office of
207 state courts administrator, the office of state courts
208 administrator shall provide notice of the order of
209 expungement to the prosecuting or circuit attorneys, the
210 department of corrections, and the Missouri state highway
211 patrol. The Missouri state highway patrol shall notify law
212 enforcement agencies. Each entity possessing records
213 subject to the order shall close such records in the manner
214 established under section 610.120. The records shall be
215 confidential from the date of expungement and shall be made
216 available only to the individuals or entities and for the
217 purposes set forth in subdivision (11) of this subsection.

218 (11) (a) The Missouri state highway patrol shall
219 retain a nonpublic record of the order expunging a
220 conviction or other notification regarding a conviction that
221 was automatically expunged under this section and of the
222 record of the arrest, fingerprints, conviction, and sentence
223 of the person in the case to which the order or other
224 notification applies. The nonpublic record shall be made
225 available only to a court of competent jurisdiction, the
226 state public defender system, the department of corrections,
227 a law enforcement agency, a prosecuting attorney, the
228 attorney general, the department of revenue, or the governor
229 upon request and only for the following purposes:

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

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

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

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

244 e. Consideration by a court, law enforcement agency,
245 prosecuting attorney, or the attorney general in determining
246 whether a person required to register under sections 589.400
247 to 589.425 has committed an offense that requires
248 registration under sections 589.400 to 589.425, or in

249 prosecuting a person for committing an offense requiring
250 registration under sections 589.400 to 589.425;

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

255 g. Consideration by any entity responsible for issuing
256 commercial driver's licenses for the purpose of meeting
257 state and federal requirements to obtain commercial driver's
258 licenses.

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

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

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

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

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

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

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

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

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

301 9. (1) Upon the entry of an order under section
302 610.140, or upon the automated expungement of a conviction
303 under this section, the petitioner, for purposes of the law,
304 is considered not to have been previously convicted, except
305 as provided under this subsection and subsection 10 of
306 section 610.140.

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

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

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

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

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

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

330 (8) A conviction that is expunged under this section
331 or section 610.140 may be considered a prior conviction by a
332 court, law enforcement agency, prosecuting attorney, or the
333 attorney general, as applicable, for purposes of charging a
334 crime as a second or subsequent offense or for sentencing
335 under section 558.016.

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

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

610.143. 1. A credit bureau may report records of
2 arrests, indictments pending trial, and convictions of
3 crimes for no longer than seven years from final
4 disposition. Records of arrests, indictments pending trial,
5 and convictions of crimes shall no longer be reported if at
6 any time after a conviction it is learned that a full pardon
7 or expungement has been granted for that conviction, or at
8 any time after an arrest or indictment it is learned that a
9 conviction did not result.

10 2. Any credit bureau or user of information that
11 willfully fails to comply with any requirement of this
12 section with respect to any consumer is liable to that
13 consumer in an amount equal to:

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

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

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

20 3. Any credit bureau or user of information that is
21 negligent in failing to comply with any requirement of this
22 section with respect to any consumer is liable to that
23 consumer in an amount equal to:

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

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

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

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

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

44 (1) Federally insured bank or savings institution or
45 credit union or an affiliate of such institution or credit
46 union for the purpose of compliance with 12 U.S.C. Section
47 1829 and 12 U.S.C. Section 1785; or

48 (2) Entity engaged in the business of insurance or any
49 insurer for the purpose of complying with 18 U.S.C. Section
50 1033, 18 U.S.C. Section 1034, or other similar law that
51 requires an employer engaged in the business of insurance to
52 exclude applicants with certain criminal convictions from
53 employment.

 610.144. 1. (1) There is hereby created in the state
2 treasury the "Missouri Expungement Fund", which shall
3 consist of moneys appropriated to it by the general assembly
4 and gifts, donations, grants, and bequests. The state
5 treasurer shall be custodian of the fund. In accordance
6 with sections 30.170 and 30.180, the state treasurer may
7 approve disbursements. The fund shall be a dedicated fund
8 and, upon appropriation, moneys in this fund shall be used
9 solely as provided in subsection 2 of this section.

10 (2) The state treasurer shall invest moneys in the
11 fund in the same manner as other funds are invested. Any

12 interest and moneys earned on such investments shall be
13 credited to the fund.

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

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

29 (2) The cost of necessary personnel or contractors.

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