

SECOND REGULAR SESSION

SENATE BILL NO. 801

89TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR CURLS.

Read 1st time January 21, 1998, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

S2943.011

AN ACT

To repeal sections 610.122 and 610.123, RSMo Supp. 1997, relating to the expungement of certain criminal records, and to enact in lieu thereof ten new sections relating to the same subject.

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

Section A. Sections 610.122 and 610.123, RSMo Supp. 1997, are repealed and ten new sections enacted in lieu thereof, to be known as sections 610.122, 610.123, 1, 2, 3, 4, 5, 6, 7, and 8, to read as follows:

610.122. Notwithstanding other provisions of law to the contrary, any record of arrest recorded pursuant to section 43.503, RSMo, may be expunged if the court determines that:

(1) The arrest was based on false information and the following conditions exist:

[[1]] **(a)** There is no probable cause, at the time of the action to expunge, to believe the individual committed the offense;

[[2]] **(b)** No charges will be pursued as a result of the arrest;

[[3]] **(c)** The subject of the arrest has no prior or subsequent misdemeanor or felony convictions;

[[4]] **(d)** The subject of the arrest did not receive a suspended imposition of sentence for the offense for which the arrest was made or for any offense related to the arrest; and

[[5]] **(e)** No civil action is pending relating to the arrest or the records sought to be expunged[.]; **or**

(2) No criminal charges have been filed against the subject of the arrest within ten years from the date of such arrest.

610.123. 1. Any person who wishes to have a record of arrest expunged pursuant to

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

subdivision (1) of section 610.122 may file a verified petition for expungement in the civil division of the circuit court in the county of the arrest as provided in subsection 4 of this section. The petition shall include the following information or shall be dismissed if the information is not given:

(1) The petitioner's:

(a) Full name;

(b) Sex;

(c) Race;

(d) Date of birth;

(e) Driver's license number;

(f) Social security number; and

(g) Address at the time of the arrest;

(2) The offense charged against the petitioner;

(3) The date the petitioner was arrested;

(4) The name of the county where the petitioner was arrested and if the arrest occurred in a municipality, the name of the municipality;

(5) The name of the agency that arrested the petitioner;

(6) The case number and court of the offense.

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

3. The court shall set a hearing on the matter no sooner than thirty days from the filing of the petition and shall give reasonable notice of the hearing to each official or agency or other entity named in the petition.

4. If the court finds that the petitioner is entitled to expungement of any record that is the subject of the petition, it shall enter an order directing expungement. A copy of the order shall be provided to each agency identified in the petition pursuant to subsection 2 of this section.

5. The supreme court shall promulgate rules establishing procedures for the handling of cases filed pursuant to the provisions of this section and section 610.122. Such procedures shall be similar to the procedures established in chapter 482, RSMo, for the handling of small claims.

6. The court, on its own motion, or any law enforcement officer may expunge an arrest record pursuant to subdivision (2) of section 610.122 without a petition being filed.

Section 1. Sections 1 to 8 of this act may be cited as the "Missouri Rehabilitation and Expungement Act of 1997".

Section 2. For the purposes of sections 1 to 8 of this act, the following terms

mean:

(1) "Sex-related offense", any crime defined in chapter 566, RSMo, section 568.020, subdivision (2) of subsection 1 of section 568.045, subdivision (2) of subsection 1 of section 568.060, and sections 568.080 and 568.090, RSMo; and

(2) "Violent felony", any crime punishable as a class A felony, any crime punishable as a class B felony or any crime in which a deadly weapon, as defined in section 556.061, RSMo, was used or displayed.

Section 3. A person who has been convicted of one or more felonies or misdemeanors or both may petition the circuit court to have such person's record, including juvenile records, expunged, if the person:

(1) Has remained conviction free for at least ten consecutive years in the case of a misdemeanor and fifteen consecutive years in the case of a felony, after being released from incarceration;

(2) Is not currently on probation or parole;

(3) Has not been convicted of a violent felony;

(4) Has not been convicted of a sex-related offense;

(5) Has not been convicted of any offense of distributing a controlled substance as described in chapter 195, RSMo, and punishable as a class A felony or a class B felony;

(6) Has not previously petitioned for expungement pursuant to the provisions of sections 1 to 8 of this act; and

(7) Is at least twenty-five years of age.

Section 4. If the court finds that a person has met the requirements of section 3 of this act, the court shall order that such person's record be closed as provided in section 610.120, RSMo, for a probationary period of three years, the court shall also order petitioner to perform one hundred hours of community service. If the person is arrested for committing any crime, other than minor traffic offenses, during the probationary period, the court shall stay any action on the proceeding pursuant to the provisions of sections 1 to 8 of this act pending the resolution of any indictment or information filed pursuant to such arrest.

Section 5. At the end of the three-year period, the petitioner may move the court to review the expungement proceeding and if the court finds that the petitioner has not been convicted of any crime, other than minor traffic violations, from the time of the original petition to the date of the hearing and has performed the required community service, the court shall set aside all verdicts of guilty and allow the petitioner to withdraw all pleas of guilty and shall dismiss with prejudice all cases against the petitioner. Notwithstanding any other provision of law to the contrary, petitioners for expungement of their criminal records waive all rights of being employed by any

Missouri-licensed gambling operation.

Section 6. If the court finds that the petitioner has fulfilled all the requirements of sections 3 to 5 of this act, the court shall order the expungement of all criminal and juvenile records of the petitioner.

Section 7. 1. A person who knowingly fails to expunge or obliterate, or releases information which has been ordered expunged pursuant to section 6 of this act, is guilty of a class B misdemeanor.

2. A person who, knowing the records have been ordered expunged, uses the information for financial gain is guilty of a class D felony.

Section 8. 1. An expungement of any record shall not reflect on the validity of the arrest or conviction and shall not be construed to indicate a lack of probable cause for the arrest.

2. The petitioner shall not bring any action subsequent to the expungement against any person or agency relating to the arrest or conviction described in the expunged records.

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Bill

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