

SECOND REGULAR SESSION

HOUSE BILL NO. 1435

93RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES JOHNSON (61) (Sponsor), BROWN (50), MEADOWS,
BAKER (25), MEINERS AND EL-AMIN (Co-sponsors).

Read 1st time January 18, 2006 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

3064L.01I

AN ACT

To repeal sections 610.122, 610.123, and 610.126, RSMo, and to enact in lieu thereof fifteen new sections relating to expungement.

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

Section A. Sections 610.122, 610.123, and 610.126, RSMo, are repealed and fifteen new sections enacted in lieu thereof, to be known as sections 600.106, 610.122, 610.123, 610.126, 610.128, 610.130, 610.132, 610.134, 610.136, 610.138, 610.140, 610.142, 610.144, 610.146, and 610.148, to read as follows:

600.106. 1. Subject to appropriations the director of the office of state public defender shall establish, maintain, and carry out an expungement program to provide information to persons eligible to have their arrest or criminal history record information ordered expunged or kept confidential.

2. The director of the office of state public defender shall develop brochures, pamphlets, and other materials in printed form. The pamphlets and other materials shall include at a minimum the following information:

- (1) An explanation of the state's expungement process;**
- (2) The circumstances under which expungement may occur;**
- (3) The arrests, municipal ordinance violations, and misdemeanors that may be expunged;**
- (4) The steps necessary to initiate and complete the expungement process; and**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

13 (5) **Directions on how to contact the office of state public defender.**

14 **3. The director of the office of state public defender shall:**

15 (1) **Establish and maintain a statewide toll-free number that a person may use to**
16 **receive information or assistance concerning the expungement or confidentiality of arrest**
17 **or conviction records and shall advertise the toll-free number statewide;**

18 (2) **Develop an expungement information packet that may be sent to eligible**
19 **persons seeking expungement which may include, but is not limited to, a preprinted**
20 **expungement petition or petitions with the instructions on how to complete the petition or**
21 **petitions and a pamphlet containing information that would assist individuals through the**
22 **expungement process;**

23 (3) **Compile a statewide list of volunteer attorneys willing to assist eligible**
24 **individuals through the expungement process.**

25 **4. The provisions of this section shall be implemented only from funds**
26 **appropriated by the general assembly specifically for this purpose. The director of the**
27 **office of state public defender shall employ the necessary staff and adopt the necessary**
28 **rules for implementation of this section.**

29 **5. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo,**
30 **that is created under the authority delegated in this section shall become effective only if**
31 **it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if**
32 **applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable**
33 **and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo,**
34 **to review, to delay the effective date, or to disapprove and annul a rule are subsequently**
35 **held unconstitutional, then the grant of rulemaking authority and any rule proposed or**
36 **adopted after August 28, 2005, shall be invalid and void.**

 610.122. 1. Notwithstanding other provisions of law [to the contrary], any record of
2 arrest recorded pursuant to section 43.503, RSMo, **except a record of arrest for a violation of**
3 **driving while intoxicated under section 577.010, RSMo, or driving with excessive blood**
4 **alcohol content under section 577.012, RSMo,** may be expunged if [the court determines that
5 the arrest was based on false information and] the following conditions exist:

6 (1) [There is no probable cause, at the time of the action to expunge, to believe the
7 individual committed the offense] **The subject of the arrest was an adult or a juvenile**
8 **certified to be prosecuted as an adult;**

9 (2) [No charges will be pursued as a result of the arrest] **The subject of the arrest was**
10 **arrested for or charged with a municipal ordinance violation or a misdemeanor offense;**

11 (3) The subject of the arrest has no prior or subsequent **municipal ordinance violations**
12 **or misdemeanor or felony convictions;**

13 (4) The subject of the arrest **was acquitted or released without being convicted,**
14 **regardless of whether the acquittal or release occurred before, on, or after the effective**
15 **date of this section, and the subject of the arrest** did not receive a suspended imposition of
16 sentence for the offense for which the arrest was made [or for any offense related to the arrest];
17 and

18 (5) No civil action is pending relating to the arrest or the records sought to be expunged.

19 **2. Any state or local law enforcement agency which is required to expunge arrest**
20 **records by a court order issued pursuant to sections 610.122 to 610.126 may charge the**
21 **petitioner a fee equivalent to the cost of processing any such order to expunge.**

 610.123. 1. Any person who wishes to have a record of arrest expunged pursuant to
2 section 610.122 may file a verified petition for expungement in the civil division of the circuit
3 court in the county of the arrest as provided in subsection 4 of this section. The petition shall
4 include the following information or shall be dismissed if the information is not given:

5 (1) The petitioner's:

6 (a) Full name;

7 (b) Sex;

8 (c) Race;

9 (d) Date of birth;

10 (e) Driver's license number;

11 (f) Social Security number; and

12 (g) Address at the time of the arrest;

13 (2) The offense charged against the petitioner;

14 (3) The date the petitioner was arrested;

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

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

18 (6) The case number and court of the offense;

19 (7) Petitioner's fingerprints on a standard fingerprint card at the time of filing a petition
20 to expunge a record that will be forwarded to the central repository for the sole purpose of
21 positively identifying the petitioner.

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

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

29 4. If the court finds that the petitioner is entitled to expungement of any record that is the
30 subject of the petition, it shall enter an order directing expungement. Upon granting of the order
31 of expungement, the records and files maintained in any administrative or court proceeding in
32 an associate or circuit division of the circuit court under this section shall be confidential and
33 only available to the parties or by order of the court for good cause shown. A copy of the order
34 shall be provided to each agency identified in the petition pursuant to subsection 2 of this section.

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

 610.126. 1. An expungement of an arrest record shall not reflect on the validity of the
2 arrest and shall not be construed to indicate a lack of probable cause for the arrest.

3 2. Except as provided by sections 610.122 to 610.126, **sections 610.128 to 610.136,**
4 **section 610.138, 610.140, and section 577.054, RSMo,** the courts of this state shall have no
5 legal or equitable authority to close or expunge any arrest record.

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

610.128. Notwithstanding any other provision of law and except as provided in
2 **section 610.132 any conviction for a municipal ordinance violation or a misdemeanor and**
3 **any arrest that led to the conviction may be expunged and the records and files maintained**
4 **in any administrative or court proceeding in a municipal, associate, or circuit division of**
5 **the circuit court ordered to be kept confidential and only available to the parties or by**
6 **order of the court for good cause shown if the following conditions exist:**

7 **(1) The person was convicted of a municipal ordinance violation or a misdemeanor**
8 **or received a suspended imposition of sentence for a misdemeanor;**

9 **(2) The subject of the arrest and conviction or suspended imposition of sentence has**
10 **no prior or subsequent felony convictions;**

11 **(3) At least five years have elapsed since the conviction or suspended imposition of**
12 **sentence or term of any sentence, probation or parole, or supervision, if any, whichever is**
13 **the last in time.**

610.130. When multiple offenses are petitioned to be expunged under sections
2 **610.128 to 610.136 the requirements of section 610.128 each apply. In instances in which**
3 **more than one waiting period is applicable under section 610.128 the longer applicable**
4 **period applies, and the requirements of section 610.128 shall be considered met when the**
5 **petition is filed after the passage of the longer applicable waiting period. That period**

6 commences on the date of the completion of the last sentence or the end of supervision,
7 probation, or parole, whichever is last in time.

610.132. The following offenses may be expunged and the records and files
2 maintained in any administrative or court proceeding in a municipal, associate, or circuit
3 division of the circuit court ordered to be kept confidential and only available to the parties
4 or by order of the court for good cause shown:

5 (1) All municipal ordinance violations and misdemeanors with the exception of the
6 following:

7 (a) Driving while intoxicated under section 577.010, RSMo, and driving with
8 excessive blood alcohol content under section 577.012, RSMo, or any similar provision of
9 a local ordinance;

10 (b) Misdemeanor offenses under chapters 566, 567, 568, and 573, RSMo, except
11 prostitution under section 567.020, RSMo, or any similar provision of a local ordinance;

12 (2) Violent misdemeanors which includes any misdemeanor offense involving the
13 threat or use of force or any similar provision of a local ordinance;

14 (3) Animal neglect under section 578.009, RSMo, and animal abuse under section
15 578.010, RSMo, or any similar provision of a local ordinance;

16 (4) Violation of a full order of protection or an ex parte order of protection under
17 section 455.085, RSMo, and violation of a full order of protection or an ex parte order of
18 protection under section 455.538, RSMo, or any similar provision of a local ordinance;

19 (5) Any offense or attempted offense that would subject a person to registration
20 under section 589.400, RSMo.

610.134. 1. Any person who wishes to have a municipal ordinance violation or
2 misdemeanor conviction and the arrest that led to it expunged under sections 610.128 to
3 610.136 may file a verified petition for expungement in the civil division of the circuit court
4 in the county of the arrest. The petition shall include the following information or shall be
5 dismissed if the information is not given:

6 (1) The petitioner's:

7 (a) Full name;

8 (b) Sex;

9 (c) Race;

10 (d) Date of birth;

11 (e) Social Security number;

12 (f) Address at the time of the arrest or arrests; and

13 (g) Current address;

14 (2) The offense or offenses charged against the petitioner;

15 (3) The date or dates the petitioner was arrested;

16 **(4) The name of the county or counties where the petitioner was arrested and if the**
17 **arrest or arrests occurred in a municipality or municipalities, the name of the municipality**
18 **or municipalities;**

19 **(5) The name of the agency or agencies that arrested the petitioner;**

20 **(6) The case number or case numbers and court or courts of the offense or offenses;**

21 **(7) Petitioner's fingerprints on a standard fingerprint card at the time of filing a**
22 **petition to expunge a record that will be forwarded to the central repository for the sole**
23 **purpose of positively identifying the petitioner.**

24 **2. During the pendency of the proceeding the petitioner shall promptly notify the**
25 **clerk of court of any change of address.**

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

31 **4. The court shall set a hearing on the matter not sooner than ninety days from the**
32 **filing of the petition and shall give reasonable notice of the hearing to each official or**
33 **agency or other entity named in the petition.**

34 **5. Unless one or more of the defendants files an objection to the expungement**
35 **within ninety days of the date of the notice the court shall enter an order expunging the**
36 **petitioner's records so long as all the criteria listed in sections 610.128 to 610.132 have been**
37 **met.**

38 **6. If an objection is filed, the court shall set a date for a hearing and notify the**
39 **petitioner and the defendants on whom the notice has been served, and shall hear evidence**
40 **on whether the expungement of the records should or should not be granted, and shall**
41 **make a determination on whether to issue an order of expungement based on the evidence**
42 **presented at the hearing.**

43 **7. If the court finds that the petitioner is entitled to expungement of any record that**
44 **is the subject of the petition, it shall enter an order directing expungement. Upon granting**
45 **of the order of expungement, the records and files maintained in any administrative or**
46 **court proceeding in a municipal, associate, or circuit division of the circuit court under this**
47 **section shall be confidential and only available to the parties or by order of the court for**
48 **good cause shown. A copy of the order shall be provided to the petitioner and each agency**
49 **identified in the petition under subsection 3 of this section.**

50 **8. The supreme court shall promulgate rules establishing procedures for the**
51 **handling of cases filed under the provisions of sections 610.128 to 610.136. Such**

52 procedures shall be similar to the procedures established in chapter 482, RSMo, for the
53 handling of small claims.

54 9. Notwithstanding any other provision of law and subject to the approval of the
55 presiding judge of the circuit, the circuit clerk may charge a fee equivalent to the cost
56 associated with the expungement by the clerk.

610.136. Upon acquittal, release without a conviction, being given a suspended
2 imposition of sentence, or being convicted of a municipal ordinance violation or a
3 misdemeanor subject to expungement under section 610.132, the person shall be informed
4 by the court of the right to have the records expunged.

610.138. 1. Whenever a person who has been convicted of an offense is granted a
2 pardon by the governor which specifically authorizes expungement, such person may file
3 a verified petition for expungement in the civil division of the circuit court in the county
4 of the arrest.

5 2. The petition shall include the following information or shall be dismissed if the
6 information is not given:

7 (1) The petitioner's:

8 (a) Full name;

9 (b) Sex;

10 (c) Race;

11 (d) Date of birth;

12 (e) Social Security number;

13 (f) Address at the time of the arrest or arrests; and

14 (g) Current address;

15 (2) The offense or offenses charged against the petitioner which were pardoned by
16 the governor;

17 (3) The date or dates the petitioner was arrested;

18 (4) The name of the county or counties where the petitioner was arrested and if the
19 arrest or arrests occurred in a municipality or municipalities, the name of the municipality
20 or municipalities;

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

22 (6) The case number or case numbers and court or courts of the offense or offenses;

23 (7) Petitioner's fingerprints on a standard fingerprint card at the time of filing a
24 petition to expunge a record that will be forwarded to the central repository for the sole
25 purpose of positively identifying the petitioner;

26 (8) The date or dates of the pardon or pardons which specifically authorize
27 expungement.

28 **3. During the pendency of the proceeding the petitioner shall promptly notify the**
29 **clerk of court of any change of address.**

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

35 **5. The court shall set a hearing on the matter not sooner than ninety days from the**
36 **filing of the petition and shall give reasonable notice of the hearing to each official or**
37 **agency or other entity named in the petition.**

38 **6. Unless one or more of the defendants files an objection to the expungement**
39 **within ninety days of the date of the notice the court shall enter an order expunging the**
40 **petitioner's records so long as the requirements of this section have been met.**

41 **7. If an objection is filed, the court shall set a date for a hearing and notify the**
42 **petitioner and the defendants on whom the notice has been served, and shall hear evidence**
43 **on whether the expungement of the records should or should not be granted, and shall**
44 **make a determination on whether to issue an order of expungement based on the evidence**
45 **presented at the hearing.**

46 **8. If the court finds that the petitioner is entitled to expungement of any record that**
47 **is the subject of the petition, it shall enter an order directing expungement. Upon granting**
48 **of the order of expungement, the records and files maintained in any administrative or**
49 **court proceeding in a municipal, associate, or circuit division of the circuit court under this**
50 **section shall be confidential and only available to the parties or by order of the court for**
51 **good cause shown. A copy of the order shall be provided to the petitioner and each agency**
52 **identified in the petition under subsection 3 of this section.**

53 **9. The supreme court shall promulgate rules establishing procedures for the**
54 **handling of cases filed under the provisions of this section. Such procedures shall be**
55 **similar to the procedures established in chapter 482, RSMo, for the handling of small**
56 **claims.**

57 **10. Notwithstanding any other provision of law and subject to the approval of the**
58 **presiding judge of the circuit, the circuit clerk may charge a fee equivalent to the cost**
59 **associated with the expungement by the clerk.**

610.140. 1. Whenever a person has been convicted of a misdemeanor or felony or
2 **of a violation of a municipal ordinance, in the name of a person whose identity he or she**
3 **has stolen or otherwise come into possession of, the aggrieved person from whom the**
4 **identity was stolen or otherwise obtained without authorization, upon learning of the**
5 **person having been arrested using his or her identity, may file a verified petition in the civil**

6 division of the circuit court in the county of arrest requesting that his or her name be
7 expunged from all arrest and conviction records.

8 2. The petition shall include the following information or shall be dismissed if the
9 information is not given:

10 (1) The petitioner's:

11 (a) Full name;

12 (b) Sex;

13 (c) Race;

14 (d) Date of birth;

15 (e) Social Security number;

16 (f) Current address;

17 (g) Address at the time of the arrest;

18 (2) The offense or offenses charged against the petitioner which were really offenses
19 committed by the person who stole or otherwise obtained without authorization the
20 identity of the petitioner;

21 (3) The date or dates the person who stole or otherwise obtained without
22 authorization the identity of the petitioner was arrested;

23 (4) The name of the county or counties where the person who stole or otherwise
24 obtained without authorization the identity of the petitioner was arrested and if the arrest
25 or arrests occurred in a municipality or municipalities, the name of the municipality or
26 municipalities;

27 (5) The name of the agency or agencies that arrested the person who stole or
28 otherwise obtained without authorization the identity of the petitioner;

29 (6) The case number or case numbers and court or courts of the offense or offenses;

30 (7) Petitioner's fingerprints on a standard fingerprint card at the time of filing a
31 petition to expunge a record that will be forwarded to the central repository for the sole
32 purpose of positively identifying the petitioner;

33 (8) The true full name, if known, of the person who stole or otherwise obtained
34 without authorization the petitioner's identity.

35 3. During the pendency of the proceeding the petitioner shall promptly notify the
36 clerk of court of any change of address.

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

42 **5. The court shall set a hearing on the matter not sooner than ninety days from the**
43 **filing of the petition and shall give reasonable notice of the hearing to each official or**
44 **agency or other entity named in the petition.**

45 **6. Unless one or more of the defendants files an objection to the expungement**
46 **within ninety days of the date of the notice the court shall enter an order expunging the**
47 **arrest record and conviction record, if any, and all official records of the persons or entities**
48 **named in subsection 4 of this section by removing the petitioner's name from all such**
49 **records in connection with the arrest and conviction, if any, and by inserting in the records**
50 **the name of the real offender, if known or ascertainable, in lieu of the petitioner's name,**
51 **so long as the requirements of this section have been met.**

52 **7. If an objection is filed, the court shall set a date for a hearing and notify the**
53 **petitioner and the defendants on whom the notice has been served, and shall hear evidence**
54 **on whether the expungement of the records should or should not be granted, and shall**
55 **make a determination on whether to issue an expungement order based on the evidence**
56 **presented at the hearing.**

57 **8. If the court finds that the petitioner is entitled to expungement of any record that**
58 **is the subject of the petition, it shall enter an order directing expungement. Upon granting**
59 **of the order of expungement, the records and files maintained in any administrative or**
60 **court proceeding in a municipal, associate, or circuit division of the circuit court under this**
61 **section shall be corrected by deleting the name of the petitioner and inserting the name of**
62 **the real offender, if known or ascertainable, in lieu of the petitioner's name. A copy of the**
63 **order shall be provided to the petitioner and each agency identified in the petition under**
64 **subsection 4 of this section.**

65 **9. The supreme court shall promulgate rules establishing procedures for the**
66 **handling of cases filed under the provisions of this section. Such procedures shall be**
67 **similar to the procedures established in chapter 482, RSMo, for the handling of small**
68 **claims.**

69 **10. Notwithstanding any other provision of law and subject to the approval of the**
70 **presiding judge of the circuit, the circuit clerk may charge a fee equivalent to the cost**
71 **associated with the expungement by the clerk.**

72 **11. Nothing in this section shall limit any law enforcement agency, the attorney**
73 **general, or prosecuting or circuit attorneys from listing under the offender's name the false**
74 **names he or she has used.**

610.142. Whenever a person has been convicted of any sexual offense under chapter
2 **566, RSMo, or of violating section 568.020, RSMo, when the offense involved the offender**
3 **having sexual intercourse or deviate sexual intercourse with the victim, or of violating**
4 **subdivision (2) of subsection 1 of section 568.045, RSMo, the victim of that offense may**

5 request that the prosecuting or circuit attorney of the county in which the offense occurred
6 file a verified petition in the civil division of the circuit court where the person was
7 convicted requesting a court order to make confidential the records of the trial court
8 concerning that offense. However, the records of the arresting authority, prosecuting or
9 circuit attorney, and the central state depositories of criminal records or others who may
10 possess the records shall not be expunged or made confidential.

610.144. 1. Notwithstanding any of the provisions of sections 610.128 to 610.142
2 all records ordered to be kept confidential are subject to inspection and use by the court
3 and inspection and use by law enforcement agencies, the attorney general, and prosecuting
4 or circuit attorneys in carrying out the duties of their offices.

5 2. Nothing in sections 610.128 to 610.142 shall prevent the department of
6 corrections or the board of probation and parole from maintaining all records of any
7 person who is committed to the department of corrections or admitted to probation or
8 parole.

610.146. No order issued under the expungement provisions of sections 610.128 to
2 610.142 shall become final for purposes of appeal until thirty days after notice is received
3 by all persons, agencies, and entities named as defendants in the petition.

610.148. 1. Except with respect to law enforcement agencies, the attorney general,
2 prosecuting or circuit attorneys, the department of corrections, and the board of probation
3 and parole, a record ordered to be expunged or kept confidential may not be considered
4 by any private or public entity in employment matters, certification, licensing, revocation
5 of certification or licensure, or registration. Applications for employment must contain
6 specific language which states that the applicant is not obligated to disclose expunged or
7 confidential records of arrest or conviction. Employers may not ask if an applicant has
8 had records expunged or ordered to be kept confidential.

9 2. A person whose records have been ordered expunged or kept confidential is not
10 entitled to remission of any fines, costs, or other money paid as a consequence of the
11 expungement or confidentiality. The provisions of sections 610.128 to 610.142 do not affect
12 the right of the victim of a crime to prosecute or defend a civil action for damages. Persons
13 engaged in civil litigation involving criminal records that have been expunged or ordered
14 kept confidential may petition the court to open the records for the limited purpose of
15 using them in the cause of litigation.

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