

SECOND REGULAR SESSION

HOUSE BILL NO. 2636

100TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE SHARP (36).

5626H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 43.504, 43.507, and 610.140, RSMo, and to enact in lieu thereof three new sections relating to expungement of records.

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

Section A. Sections 43.504, 43.507, and 610.140, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 43.504, 43.507, and 610.140, to read as follows:

43.504. Notwithstanding section 610.120, the sheriff of any county, the sheriff of the City of St. Louis, and the judges of the circuit courts of this state may make available, for review, information obtained from the central repository to private entities responsible for probation supervision pursuant to sections 559.600 to 559.615, **as well as to expungement clinics or legal aid organizations for the purposes of pursuing relief under section 610.140.** When the term of probation is completed or when the material is no longer needed for purposes related to the probation **or expungement**, it shall be returned to the court or destroyed. Criminal history information obtained from the central repository may be made available to private entities responsible for providing services associated with drug treatment courts under sections 478.001 to 478.008 **and to expungement clinics or legal aid organizations for the purposes of pursuing relief under section 610.140.** The private entities shall not use or make this information available to any other person for any other purpose.

43.507. **1.** All criminal history information, in the possession or control of the central repository, except criminal intelligence and investigative information, may be made available to qualified persons and organizations for research, evaluative and statistical purposes under written agreements reasonably designed to ensure the security and confidentiality of the

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.

5 information and the protection of the privacy interests of the individuals who are subjects of the
6 criminal history.

7 **2. Pro-bono clinics and legal aid organizations which seek to expunge the records**
8 **of petitioners at no-charge, pursuant to the provisions of section 610.140, shall have access**
9 **to all criminal history information in the possession or control of the central repository,**
10 **except criminal intelligence and investigation, for each petitioner who has executed a**
11 **written agreement with said clinic or organization. In these cases, pro-bono clinics and**
12 **legal aid organizations shall not be subject to the provisions of subsection 3 of this section.**

13 **3. Prior to such information being made available, information that uniquely**
14 **identifies the individual shall be deleted. Organizations receiving such criminal history**
15 **information shall not reestablish the identity of the individual and associate it with the**
16 **criminal history information being provided.**

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

- 2 (1) "Court", any Missouri municipal, associate circuit, or circuit court;
3 (2) "Offense", any offense, violation, or infraction of Missouri state, county,
4 municipal, or administrative law;
5 (3) "Prosecutor" or "prosecuting attorney", the prosecuting attorney, circuit
6 attorney, or municipal prosecuting attorney;
7 (4) "Same course of criminal conduct", offenses, violations, or infractions which:
8 (a) Arose under the same criminal statute;
9 (b) Involve conduct that is the substantial equivalent of any offense, violation, or
10 infraction sought to be expunged; or
11 (c) Occur within a time period suggesting a common connection between the
12 offenses, not to exceed one year.

13 **2.** Notwithstanding any other provision of law and subject to the provisions of this
14 section, any person may apply to any court in which such person was charged or found guilty of
15 any offenses~~[, violations, or infractions]~~ for an order to expunge records of such arrest, plea, trial,
16 or conviction.

17 **(1)** Subject to the limitations of subsection ~~[12]~~ **13** of this section, a person may apply
18 to have one or more offenses~~[, violations, or infractions]~~ expunged if such offense~~[, violation,~~
19 ~~or infraction]~~ occurred within the state of Missouri and was prosecuted under the jurisdiction of
20 a Missouri ~~[municipal, associate circuit, or circuit]~~ court, so long as such person lists all the
21 offenses~~[, violations, and infractions]~~ he or she is seeking to have expunged in the petition and
22 so long as all such offenses~~[, violations, and infractions]~~ are not excluded under subsection ~~[2]~~
23 **3** of this section.

24 (2) If the offenses~~[- violations, or infractions]~~ were charged as counts in the same
25 indictment or information or were committed as part of the same course of criminal conduct, the
26 person may include all the related offenses~~[- violations, and infractions]~~ in the petition, regardless
27 of the limits of subsection ~~[12]~~ 13 of this section, and the petition shall only count as a petition
28 for expungement of the highest level violation or offense contained in the petition for the purpose
29 of determining future eligibility for expungement.

30 ~~[2-]~~ 3. The following offenses~~[- violations, and infractions]~~ 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 section 556.061;

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

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

36 (5) Any felony offense of assault; misdemeanor or felony offense of domestic assault;
37 or felony offense of kidnapping;

38 (6) Any offense listed, or previously listed, in chapter 566 or section 105.454, 105.478,
39 115.631, 130.028, 188.030, 188.080, 191.677, 194.425, ~~[217.360,]~~ 217.385, 334.245, 375.991,
40 389.653, 455.085, 455.538, 557.035, 565.084, 565.085, 565.086, 565.095, 565.120, 565.130,
41 565.156, 565.200, 565.214, 566.093, 566.111, 566.115, 568.020, 568.030, 568.032, 568.045,
42 568.060, 568.065, 568.080, 568.090, 568.175, 569.030, 569.035, 569.040, 569.050, 569.055,
43 569.060, 569.065, 569.067, 569.072, 569.160, 570.025, ~~[570.090, 570.180,]~~ 570.223, 570.224,
44 ~~[570.310,]~~ 571.020, 571.060, 571.063, 571.070, 571.072, 571.150, 574.070, 574.105, 574.115,
45 574.120, 574.130, 575.040, 575.095, 575.153, 575.155, 575.157, 575.159, 575.195, 575.200,
46 575.210, 575.220, 575.230, 575.240, 575.350, 575.353, 577.078, 577.703, 577.706, 578.008,
47 578.305, 578.310, or 632.520;

48 (7) Any offense eligible for expungement under section 577.054 or 610.130;

49 (8) Any intoxication-related traffic or boating offense as defined in section 577.001, or
50 any offense of operating an aircraft with an excessive blood alcohol content or while in an
51 intoxicated condition;

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

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

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

61 [3-] 4. The petition shall name as defendants all law enforcement agencies, courts,
62 prosecuting or circuit attorneys, municipal prosecuting attorneys, central state repositories of
63 criminal records, or others who the petitioner has reason to believe may possess the records
64 subject to expungement for each of the offenses, violations, and infractions listed in the petition.
65 The court's order of expungement shall not affect any person or entity not named as a defendant
66 in the action.

67 [4-] 5. The petition shall include the following information:

68 (1) The petitioner's:

69 (a) Full name;

70 (b) Sex;

71 (c) Race;

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

73 (e) Current address;

74 (2) Each offense, violation, or infraction for which the petitioner is requesting
75 expungement;

76 (3) The approximate date the petitioner was charged for each offense, violation, or
77 infraction; and

78 (4) The name of the county where the petitioner was charged for each offense, violation,
79 or infraction and if any of the offenses, violations, or infractions occurred in a municipality, the
80 name of the municipality for each offense, violation, or infraction; and

81 (5) The case number and name of the court for each offense.

82 [5-] 6. The clerk of the court shall give notice of the filing of the petition to the office
83 of the prosecuting attorney, circuit attorney, or municipal prosecuting attorney that prosecuted
84 the offenses~~[-violations, or infractions]~~ listed in the petition. If the prosecuting attorney, circuit
85 attorney, or municipal prosecuting attorney objects to the petition for expungement, he or she
86 shall do so in writing within thirty days after receipt of service. Unless otherwise agreed upon
87 by the parties, the court shall hold a hearing within sixty days after any written objection is filed,
88 giving reasonable notice of the hearing to the petitioner. If no objection has been filed within
89 thirty days after receipt of service, the court may set a hearing on the matter and shall give
90 reasonable notice of the hearing to each entity named in the petition. At any hearing, the court
91 may accept evidence and hear testimony on, and may consider, the following criteria for each of
92 the offenses~~[-violations, or infractions]~~ listed in the petition for expungement:

93 (1) At the time the petition is filed, it has been at least seven years if the offense is a
94 felony, or at least three years if the offense is a misdemeanor, municipal offense, or infraction,
95 from the date the petitioner completed any authorized disposition imposed under section 557.011
96 for each offense, violation, or infraction listed in the petition;

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

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

103 (4) The person does not have charges pending;

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

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

108

109 A pleading by the petitioner that such petitioner meets the requirements of subdivisions (5) and
110 (6) of this subsection shall create a rebuttable presumption that the expungement is warranted
111 so long as the criteria contained in subdivisions (1) to (4) of this subsection are otherwise
112 satisfied. The burden shall shift to the prosecuting attorney, circuit attorney, or municipal
113 prosecuting attorney to rebut the presumption. A victim of an offense~~[- violation, or infraction]~~
114 listed in the petition shall have an opportunity to be heard at any hearing held under this section~~[-~~
115 ~~and the court may make a determination based solely on such victim's testimony].~~

116 ~~[6.]~~ 7. A petition to expunge records related to an arrest for an eligible offense~~[-~~
117 ~~violation, or infraction]~~ may be made in accordance with the provisions of this section to a court
118 of competent jurisdiction in the county where the petitioner was arrested no earlier than three
119 years from the date of arrest; provided that, during such time, the petitioner has not been charged
120 and the petitioner has not been found guilty of any misdemeanor or felony offense.

121 **(1) Commencing on January 1, 2021, before the central repository for criminal**
122 **history information releases a record to an individual or noncriminal justice agency, it**
123 **shall extract from the record all notations of arrests, indictments, or other information**
124 **relating to the initiation of criminal proceedings where:**

125 **(a) Three years have elapsed from the date of arrest;**

126 **(b) No disposition is indicated in the record; and**

127 **(c) Nothing in the record indicates that proceedings seeking conviction remain**
128 **pending.**

129 ~~[7.]~~ **8.** If the court determines that such person meets all the criteria set forth in
130 subsection ~~[5]~~ **6** of this section for each of the offenses~~[-, violations, or infractions]~~ listed in the
131 petition for expungement, the court shall enter an order of expungement. In all cases under this
132 section, the court shall issue an order of expungement or dismissal within six months of the filing
133 of the petition. A copy of the order of expungement shall be provided to the petitioner and each
134 entity possessing records subject to the order, and, upon receipt of the order, each entity shall
135 close any record in its possession relating to any offense, violation, or infraction listed in the
136 petition, in the manner established by section 610.120. The records and files maintained in any
137 administrative or court proceeding in a ~~[municipal, associate, or circuit]~~ court for any offense~~[-~~
138 ~~infraction, or violation]~~ ordered expunged under this section shall be confidential and only
139 available to the parties or by order of the court for good cause shown. The central repository
140 shall request the Federal Bureau of Investigation to expunge the records from its files.

141 ~~[8.]~~ **9.** The order shall not limit any of the petitioner's rights that were restricted as a
142 collateral consequence of such person's criminal record, and such rights shall be restored upon
143 issuance of the order of expungement. Except as otherwise provided under this section, the
144 effect of such order shall be to restore such person to the status he or she occupied prior to such
145 arrests, pleas, trials, or convictions as if such events had never taken place. No person as to
146 whom such order has been entered shall be held thereafter under any provision of law to be guilty
147 of perjury or otherwise giving a false statement by reason of his or her failure to recite or
148 acknowledge such arrests, pleas, trials, convictions, or expungement in response to an inquiry
149 made of him or her and no such inquiry shall be made for information relating to an
150 expungement, except the petitioner shall disclose the expunged offense~~[-, violation, or infraction]~~
151 to any court when asked or upon being charged with any subsequent offense, violation, or
152 infraction. The expunged offense~~[-, violation, or infraction]~~ may be considered a prior offense
153 in determining a sentence to be imposed for any subsequent offense that the person is found
154 guilty of committing.

155 ~~[9.]~~ **10.** Notwithstanding the provisions of subsection ~~[8]~~ **9** of this section to the
156 contrary, a person granted an expungement shall disclose any expunged offense~~[-, violation, or~~
157 ~~infraction]~~ when the disclosure of such information is necessary to complete any application for:

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

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

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

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

167 (5) Employment with any entity engaged in the business of insurance or any insurer for
168 the purpose of complying with 18 U.S.C. Section 1033, 18 U.S.C. Section 1034, or other similar
169 law which requires an employer engaged in the business of insurance to exclude applicants with
170 certain criminal convictions from employment; or

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

174

175 An employer shall notify an applicant of the requirements under subdivisions (4) to (6) of this
176 subsection. Notwithstanding any provision of law to the contrary, an expunged offense,
177 violation, or infraction shall not be grounds for automatic disqualification of an applicant, but
178 may be a factor for denying employment, or a professional license, certificate, or permit; except
179 that, an offense, violation, or infraction expunged under the provisions of this section may be
180 grounds for automatic disqualification if the application is for employment under subdivisions
181 (4) to (6) of this subsection.

182 ~~[10.]~~ **11.** A person who has been granted an expungement of records pertaining to a
183 misdemeanor or felony offense, an ordinance violation, or an infraction may answer "no" to an
184 employer's inquiry into whether the person has ever been **arrested, charged, or** convicted of a
185 crime if, after the granting of the expungement, the person has no public record of a
186 misdemeanor or felony offense, an ordinance violation, or an infraction. The person, however,
187 shall answer such an inquiry affirmatively and disclose his or her criminal convictions, including
188 any offense or violation expunged under this section or similar law, if the employer is required
189 to exclude applicants with certain criminal convictions from employment due to federal or state
190 law, including corresponding rules and regulations.

191 ~~[11.]~~ **12.** If the court determines that the petitioner has not met the criteria for any of the
192 offenses~~[, violations, or infractions]~~ listed in the petition for expungement or the petitioner has
193 knowingly provided false information in the petition, the court shall enter an order dismissing
194 the petition. Any person whose petition for expungement has been dismissed by the court for
195 failure to meet the criteria set forth in subsection ~~[5]~~ **6** of this section may not refile another
196 petition until a year has passed since the date of filing for the previous petition.

197 ~~[12.]~~ **13.** A person may be granted more than one expungement under this section
198 provided that during his or her lifetime, the total number of offenses, violations, or infractions
199 for which orders of expungement are granted to the person shall not exceed the following limits:

200 (1) Not more than two misdemeanor offenses or ordinance violations that have an
201 authorized term of imprisonment; and

202 (2) Not more than one felony offense.

203

204 A person may be granted expungement under this section for any number of infractions. Nothing
205 in this section shall prevent the court from maintaining records to ensure that an individual has
206 not exceeded the limitations of this subsection. Nothing in this section shall be construed to
207 limit or impair in any way the subsequent use of any record expunged under this section of any
208 arrests or findings of guilt by a law enforcement agency, criminal justice agency, prosecuting
209 attorney, circuit attorney, or municipal prosecuting attorney, including its use as a prior offense,
210 violation, or infraction.

211 ~~[13.]~~ **14.** The court shall make available a form for pro se petitioners seeking
212 expungement, which shall include the following statement: "I declare under penalty of perjury
213 that the statements made herein are true and correct to the best of my knowledge, information,
214 and belief".

215 ~~[14.]~~ **15.** Nothing in this section shall be construed to limit or restrict the availability of
216 expungement to any person under any other law.

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