

FIRST REGULAR SESSION

# HOUSE BILL NO. 97

## 101ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE SHARP (36).

0233H.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Section A. Sections 43.504, 43.507, and 610.140, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 43.504, 43.507, and 610.140, to read as follows: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 that seek to expunge the records of**  
8 **petitioners at no charge, under the provisions of section 610.140, shall have access to all**  
9 **criminal history information in the possession or control of the central repository, except**  
10 **criminal intelligence and investigation, for each petitioner who has executed a written**  
11 **agreement with such clinic or organization. In these cases, pro bono clinics and legal aid**  
12 **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 that:**

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. (1)** 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       **(2)** 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           (3) 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. (1)** 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 **(2) Beginning January 1, 2022, before the central repository for criminal history**  
122 **information releases a record to an individual or noncriminal justice agency, it shall**  
123 **extract from the record all notations of arrests, indictments, or other information relating**  
124 **to the initiation of criminal proceedings in which:**

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;

(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 offense, violation, or infraction 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, an offense, violation, or infraction 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.

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

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

~~[12.]~~ **13.** A person may be granted more than one expungement under this section provided that during his or her lifetime, the total number of offenses, violations, or infractions 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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