

FIRST REGULAR SESSION

HOUSE BILL NO. 546

101ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE HICKS.

1389H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal section 610.140, RSMo, and to enact in lieu thereof two new sections relating to expungement.

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

Section A. Section 610.140, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 610.132 and 610.140, to read as follows:

610.132. 1. Notwithstanding any provision of law, any person who has been convicted of an offense or municipal violation relating to the possession of marijuana before August 28, 2021, and has obtained a patient identification card under Article XIV, Section 1 of the Constitution of Missouri before August 28, 2021, shall automatically have such offense or violation expunged from his or her record by the court in which the person was convicted if such offense or violation occurred within the state of Missouri and was prosecuted under the jurisdiction of a Missouri associate circuit or circuit court or a municipal court. For an offense or municipal violation under this subsection that occurred before:

(1) August 28, 2021, but after August 27, 2014, the record shall be expunged before August 28, 2023;

(2) August 28, 2014, but after August 27, 2001, the record shall be expunged before August 28, 2025; and

(3) August 28, 2001, the record shall be expunged before August 28, 2027.

2. (1) If a person was convicted of an offense or municipal violation relating to the possession of marijuana before August 28, 2021, and such person obtained a patient identification card under Article XIV, Section 1 of the Constitution of Missouri after

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.

18 **August 28, 2021, such person may be eligible to have such offense or violation expunged**
19 **by petitioning the court in which the person was convicted if the offense or municipal**
20 **violation occurred within the state of Missouri prior to the issuance of the patient**
21 **identification card and was prosecuted under the jurisdiction of a Missouri associate**
22 **circuit or circuit court or a municipal court.**

23 **(2) If the court determines, after hearing, that a person has been issued a patient**
24 **identification card, the offense or municipal violation seeking to be expunged is related to**
25 **the possession of marijuana, and such offense or violation occurred within the state of**
26 **Missouri prior to the issuance of the patient identification card, the court shall enter an**
27 **order for expungement.**

28 **(3) A petition for expungement under this subsection may be made at any time,**
29 **provided such offense or violation occurred within the state of Missouri prior to the**
30 **issuance of a patient identification card.**

31 **3. Upon automatic expungement under subsection 1 of this section or granting of**
32 **the order of expungement under subsection 2 of this section, the records and files**
33 **maintained in any court proceeding in an associate or a circuit division of the circuit court**
34 **or in municipal court under this section shall be confidential and only available to the**
35 **parties or by order of the court for good cause shown. The effect of expungement under**
36 **subsections 1 and 2 of this section shall be to restore such person to the status he or she**
37 **occupied prior to such arrest, plea, or conviction and as if such event had never taken**
38 **place. If expungement under subsection 1 or 2 of this section has been ordered, no person**
39 **shall be held thereafter under any provision of any law to be guilty of perjury or otherwise**
40 **giving a false statement by reason of his or her failure to recite or acknowledge such arrest,**
41 **plea, trial, conviction, or expungement in response to any inquiry made of him or her for**
42 **any purpose, and no such inquiry shall be made for information relating to an**
43 **expungement under this section.**

44 **4. The provisions of this section shall not be construed to authorize expungement**
45 **of any conviction or plea of guilty for any offense committed by a commercial driver's**
46 **license holder that shall result in a violation of 49 CFR 384.226, as amended, or an offense**
47 **committed by a person while operating a commercial motor vehicle in violation of 49 CFR**
48 **391.15.**

610.140. 1. Notwithstanding any other provision of law and subject to the provisions
2 of this section, any person may apply to any court in which such person was charged or found
3 guilty of any offenses, violations, or infractions for an order to expunge records of such arrest,
4 plea, trial, or conviction. Subject to the limitations of subsection 12 of this section, a person may
5 apply to have one or more offenses, violations, or infractions expunged if such offense, violation,

6 or infraction occurred within the state of Missouri and was prosecuted under the jurisdiction of
7 a Missouri municipal, associate circuit, or circuit court, so long as such person lists all the
8 offenses, violations, and infractions he or she is seeking to have expunged in the petition and so
9 long as all such offenses, violations, and infractions are not excluded under subsection 2 of this
10 section. If the offenses, violations, or infractions were charged as counts in the same indictment
11 or information or were committed as part of the same course of criminal conduct, the person may
12 include all the related offenses, violations, and infractions in the petition, regardless of the limits
13 of subsection 12 of this section, and the petition shall only count as a petition for expungement
14 of the highest level violation or offense contained in the petition for the purpose of determining
15 future eligibility for expungement.

16 2. The following offenses, violations, and infractions shall not be eligible for
17 expungement under this section:

18 (1) Any class A felony offense;

19 (2) Any dangerous felony as that term is defined in section 556.061;

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

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

22 (5) Any felony offense of assault; misdemeanor or felony offense of domestic assault;
23 or felony offense of kidnapping;

24 (6) Any offense listed, or previously listed, in chapter 566 or section 105.454, 105.478,
25 115.631, 130.028, 188.030, 188.080, 191.677, 194.425, 217.360, 217.385, 334.245, 375.991,
26 389.653, 455.085, 455.538, 557.035, 565.084, 565.085, 565.086, 565.095, 565.120, 565.130,
27 565.156, 565.200, 565.214, 566.093, 566.111, 566.115, 568.020, 568.030, 568.032, 568.045,
28 568.060, 568.065, 568.080, 568.090, 568.175, 569.030, 569.035, 569.040, 569.050, 569.055,
29 569.060, 569.065, 569.067, 569.072, 569.160, 570.025, 570.090, 570.180, 570.223, 570.224,
30 570.310, 571.020, 571.060, 571.063, 571.070, 571.072, 571.150, 574.070, 574.105, 574.115,
31 574.120, 574.130, 575.040, 575.095, 575.153, 575.155, 575.157, 575.159, 575.195, 575.200,
32 575.210, 575.220, 575.230, 575.240, 575.350, 575.353, 577.078, 577.703, 577.706, 578.008,
33 578.305, 578.310, or 632.520;

34 (7) Any offense eligible for expungement under section 577.054 ~~[or]~~ , 610.130, **or**
35 **610.132**;

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

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

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

45 (11) Any offense of section 571.030, except any offense under subdivision (1) of
46 subsection 1 of section 571.030 where the person was convicted or found guilty prior to January
47 1, 2017.

48 3. The petition shall name as defendants all law enforcement agencies, courts,
49 prosecuting or circuit attorneys, municipal prosecuting attorneys, central state repositories of
50 criminal records, or others who the petitioner has reason to believe may possess the records
51 subject to expungement for each of the offenses, violations, and infractions listed in the petition.
52 The court's order of expungement shall not affect any person or entity not named as a defendant
53 in the action.

54 4. The petition shall include the following information:

55 (1) The petitioner's:

56 (a) Full name;

57 (b) Sex;

58 (c) Race;

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

60 (e) Current address;

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

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

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

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

69 5. The clerk of the court shall give notice of the filing of the petition to the office of the
70 prosecuting attorney, circuit attorney, or municipal prosecuting attorney that prosecuted the
71 offenses, violations, or infractions listed in the petition. If the prosecuting attorney, circuit
72 attorney, or municipal prosecuting attorney objects to the petition for expungement, he or she
73 shall do so in writing within thirty days after receipt of service. Unless otherwise agreed upon
74 by the parties, the court shall hold a hearing within sixty days after any written objection is filed,
75 giving reasonable notice of the hearing to the petitioner. If no objection has been filed within
76 thirty days after receipt of service, the court may set a hearing on the matter and shall give

77 reasonable notice of the hearing to each entity named in the petition. At any hearing, the court
78 may accept evidence and hear testimony on, and may consider, the following criteria for each of
79 the offenses, violations, or infractions listed in the petition for expungement:

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

84 (2) The person has not been found guilty of any other misdemeanor or felony, not
85 including violations of the traffic regulations provided under chapters 304 and 307, during the
86 time period specified for the underlying offense, violation, or infraction in subdivision (1) of this
87 subsection;

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

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

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

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

95

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

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

108 7. If the court determines that such person meets all the criteria set forth in subsection
109 5 of this section for each of the offenses, violations, or infractions listed in the petition for
110 expungement, the court shall enter an order of expungement. In all cases under this section, the
111 court shall issue an order of expungement or dismissal within six months of the filing of the
112 petition. A copy of the order of expungement shall be provided to the petitioner and each entity

113 possessing records subject to the order, and, upon receipt of the order, each entity shall close any
114 record in its possession relating to any offense, violation, or infraction listed in the petition, in
115 the manner established by section 610.120. The records and files maintained in any
116 administrative or court proceeding in a municipal, associate, or circuit court for any offense,
117 infraction, or violation ordered expunged under this section shall be confidential and only
118 available to the parties or by order of the court for good cause shown. The central repository
119 shall request the Federal Bureau of Investigation to expunge the records from its files.

120 8. The order shall not limit any of the petitioner's rights that were restricted as a collateral
121 consequence of such person's criminal record, and such rights shall be restored upon issuance
122 of the order of expungement. Except as otherwise provided under this section, the effect of such
123 order shall be to restore such person to the status he or she occupied prior to such arrests, pleas,
124 trials, or convictions as if such events had never taken place. No person as to whom such order
125 has been entered shall be held thereafter under any provision of law to be guilty of perjury or
126 otherwise giving a false statement by reason of his or her failure to recite or acknowledge such
127 arrests, pleas, trials, convictions, or expungement in response to an inquiry made of him or her
128 and no such inquiry shall be made for information relating to an expungement, except the
129 petitioner shall disclose the expunged offense, violation, or infraction to any court when asked
130 or upon being charged with any subsequent offense, violation, or infraction. The expunged
131 offense, violation, or infraction may be considered a prior offense in determining a sentence to
132 be imposed for any subsequent offense that the person is found guilty of committing.

133 9. Notwithstanding the provisions of subsection 8 of this section to the contrary, a person
134 granted an expungement shall disclose any expunged offense, violation, or infraction when the
135 disclosure of such information is necessary to complete any application for:

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

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

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

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

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

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

152

153 An employer shall notify an applicant of the requirements under subdivisions (4) to (6) of this
154 subsection. Notwithstanding any provision of law to the contrary, an expunged offense,
155 violation, or infraction shall not be grounds for automatic disqualification of an applicant, but
156 may be a factor for denying employment, or a professional license, certificate, or permit; except
157 that, an offense, violation, or infraction expunged under the provisions of this section may be
158 grounds for automatic disqualification if the application is for employment under subdivisions
159 (4) to (6) of this subsection.

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

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

175 12. A person may be granted more than one expungement under this section provided
176 that during his or her lifetime, the total number of offenses, violations, or infractions for which
177 orders of expungement are granted to the person shall not exceed the following limits:

178 (1) Not more than two misdemeanor offenses or ordinance violations that have an
179 authorized term of imprisonment; **except that, marijuana-related misdemeanor offenses or**
180 **ordinance violations shall not be limited;** and

181 (2) Not more than one felony offense.

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183 A person may be granted expungement under this section for any number of infractions. Nothing
184 in this section shall prevent the court from maintaining records to ensure that an individual has

185 not exceeded the limitations of this subsection. Nothing in this section shall be construed to
186 limit or impair in any way the subsequent use of any record expunged under this section of any
187 arrests or findings of guilt by a law enforcement agency, criminal justice agency, prosecuting
188 attorney, circuit attorney, or municipal prosecuting attorney, including its use as a prior offense,
189 violation, or infraction.

190 13. The court shall make available a form for pro se petitioners seeking expungement,
191 which shall include the following statement: "I declare under penalty of perjury that the
192 statements made herein are true and correct to the best of my knowledge, information, and
193 belief."

194 14. Nothing in this section shall be construed to limit or restrict the availability of
195 expungement to any person under any other law.

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