

FIRST REGULAR SESSION

# HOUSE BILL NO. 902

## 101ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE LOVASCO.

1703H.011

DANA RADEMAN MILLER, Chief Clerk

### AN ACT

To repeal sections 610.122 and 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Section A. Sections 610.122 and 610.140, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 610.122 and 610.140, to read as follows:

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

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

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

(b) No charges will be pursued as a result of the arrest; and

(c) 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; or

(2) The court determines the person was arrested for, or was subsequently charged with, a misdemeanor offense of chapter 303 or any moving violation as the term moving violation is defined under section 302.010, except for any intoxication-related traffic offense as intoxication-related traffic offense is defined under section 577.023 and:

(a) Each such offense or violation related to the arrest was subsequently nolle prossed or dismissed, or the accused was found not guilty of each offense or violation; and

(b) The person is not a commercial driver's license holder and was not operating a commercial motor vehicle at the time of the arrest.

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           2. A record of arrest shall only be eligible for expungement under this section if[:

19       ~~—— (1) The subject of the arrest has no prior or subsequent misdemeanor or felony~~  
20 ~~convictions; and~~

21       ~~—— (2)]~~ no civil action is pending relating to the arrest or the records sought to be expunged.

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;

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

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

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

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

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

53 4. The petition shall include the following information:

54 (1) The petitioner's:

55 (a) Full name;

56 (b) Sex;

57 (c) Race;

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

59 (e) Current address;

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

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

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

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

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

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

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

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

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

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

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

94

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

102           6. A petition to expunge records related to an arrest for an eligible offense, violation, or  
103 infraction may be made in accordance with the provisions of this section to a court of competent

104 jurisdiction in the county where the petitioner was arrested no earlier than three years from the  
105 date of arrest; provided that, during such time, the petitioner has not been charged and the  
106 petitioner has not been found guilty of any misdemeanor or felony offense.

107         7. If the court determines that such person meets all the criteria set forth in subsection  
108 5 of this section for each of the offenses, violations, or infractions listed in the petition for  
109 expungement, the court shall enter an order of expungement. In all cases under this section, the  
110 court shall issue an order of expungement or dismissal within six months of the filing of the  
111 petition. A copy of the order of expungement shall be provided to the petitioner and each entity  
112 possessing records subject to the order, and, upon receipt of the order, each entity shall ~~delete~~  
113 **destroy** any record in its possession relating to any offense, violation, or infraction listed in the  
114 petition, in the manner established by section 610.120. The records and files maintained in any  
115 administrative or court proceeding in a municipal, associate, or circuit court for any offense,  
116 infraction, or violation ordered expunged under this section shall be confidential and only  
117 available to the parties or by order of the court for good cause shown. The central repository  
118 shall request the Federal Bureau of Investigation to expunge the records from its files.

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

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

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

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

(3) Paid or unpaid employment with an entity licensed under chapter 313, any state-operated lottery, or any emergency services provider, including any law enforcement 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. 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 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. 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 of this section may not refile another petition until a year has passed since the date of filing for the previous petition.

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

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

179           (2) Not more than one felony offense.

180

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

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

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

✓