

FIRST REGULAR SESSION

HOUSE BILL NO. 395

102ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE BUCHHEIT-COURTWAY.

0794H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 610.120, 610.124, and 610.140, RSMo, and to enact in lieu thereof three new sections relating to expungement.

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

Section A. Sections 610.120, 610.124, and 610.140, RSMo, are repealed and three
2 new sections enacted in lieu thereof, to be known as sections 610.120, 610.124, and 610.140,
3 to read as follows:

610.120. 1. Except as otherwise provided under ~~[section]~~ **sections 610.124 and**
2 **610.140**, records required to be closed shall not be destroyed; they shall be inaccessible to the
3 general public and to all persons other than the defendant except as provided in this section
4 and chapter 43. Closed records shall be available to: criminal justice agencies for the
5 administration of criminal justice pursuant to section 43.500, criminal justice employment,
6 screening persons with access to criminal justice facilities, procedures, and sensitive
7 information; to law enforcement agencies for issuance or renewal of a license, permit,
8 certification, or registration of authority from such agency including but not limited to
9 watchmen, security personnel, and private investigators; those agencies authorized by chapter
10 43 and applicable state law when submitting fingerprints to the central repository; the
11 sentencing advisory commission created in section 558.019 for the purpose of studying
12 sentencing practices in accordance with chapter 43; to qualified entities for the purpose of
13 screening providers defined in chapter 43; the department of revenue for driver license
14 administration; the department of public safety for the purposes of determining eligibility for
15 crime victims' compensation pursuant to sections 595.010 to 595.075, department of health
16 and senior services for the purpose of licensing and regulating facilities and regulating in-

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.

17 home services provider agencies and federal agencies for purposes of criminal justice
18 administration, criminal justice employment, child, elderly, or disabled care, and for such
19 investigative purposes as authorized by law or presidential executive order.

20 2. These records shall be made available only for the purposes and to the entities
21 listed in this section. A criminal justice agency receiving a request for criminal history
22 information under its control may require positive identification, to include fingerprints of the
23 subject of the record search, prior to releasing closed record information. Dissemination of
24 closed and open records from the Missouri criminal records repository shall be in accordance
25 with section 43.509. All records which are closed records shall be removed from the records
26 of the courts, administrative agencies, and law enforcement agencies which are available to
27 the public and shall be kept in separate records which are to be held confidential and, where
28 possible, pages of the public record shall be retyped or rewritten omitting those portions of
29 the record which deal with the defendant's case. If retyping or rewriting is not feasible
30 because of the permanent nature of the record books, such record entries shall be blacked out
31 and recopied in a confidential book.

610.124. 1. All records ordered to be expunged pursuant to ~~[section]~~ **sections**
2 **610.123 and 610.140** shall be destroyed, except as provided in this section. If destruction of
3 the record is not feasible because of the permanent nature of the record books, such record
4 entries shall be blacked out. Entries of a record ordered expunged pursuant to ~~[section]~~
5 **sections 610.123 and 610.140** shall be removed from all electronic files maintained with the
6 state of Missouri. The central repository shall request the Federal Bureau of Investigation
7 expunge the records from its files.

8 2. Any petitioner, or agency protesting the expungement, may appeal the court's
9 decision in the same manner as provided for other civil actions.

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

14 only count as a petition for expungement of the highest level violation or offense contained in
15 the petition for the purpose of determining 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,
25 105.478, 115.631, 130.028, 188.030, 188.080, 191.677, 194.425, 217.360, 217.385, 334.245,
26 375.991, 389.653, 455.085, 455.538, 557.035, 565.084, 565.085, 565.086, 565.095, 565.120,
27 565.130, 565.156, 565.200, 565.214, 566.093, 566.111, 566.115, 568.020, 568.030, 568.032,
28 568.045, 568.060, 568.065, 568.080, 568.090, 568.175, 569.030, 569.035, 569.040, 569.050,
29 569.055, 569.060, 569.065, 569.067, 569.072, 569.160, 570.025, 570.090, 570.180, 570.223,
30 570.224, 570.310, 571.020, 571.060, 571.063, 571.070, 571.072, 571.150, 574.070, 574.105,
31 574.115, 574.120, 574.130, 575.040, 575.095, 575.153, 575.155, 575.157, 575.159, 575.195,
32 575.200, 575.210, 575.220, 575.230, 575.240, 575.350, 575.353, 577.078, 577.703, 577.706,
33 578.008, 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,
36 or 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
42 commercial driver's license or is required to possess a commercial driver's license issued by
43 this state or any 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
46 January 1, 2017, or any offense under subdivision (4) of subsection 1 of section 571.030.

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

51 petition. The court's order of expungement shall not affect any person or entity not named as
52 a defendant 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,
65 violation, or infraction and if any of the offenses, violations, or infractions occurred in a
66 municipality, the 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
69 the prosecuting attorney, circuit attorney, or municipal prosecuting attorney that prosecuted
70 the 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
74 filed, giving reasonable notice of the hearing to the petitioner. If no objection has been filed
75 within thirty days after receipt of service, the court may set a hearing on the matter and shall
76 give reasonable notice of the hearing to each entity named in the petition. At any hearing, the
77 court may accept evidence and hear testimony on, and may consider, the following criteria for
78 each of 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 three years if the offense is a
80 felony, or at least one year if the offense is a misdemeanor, municipal offense, or infraction,
81 from the date the petitioner completed any authorized disposition imposed under section
82 557.011 for each offense, violation, or infraction listed in the petition;

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

87 (3) The person has satisfied all obligations relating to any such disposition, including
88 the 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
91 to 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)
96 and (6) of this subsection shall create a rebuttable presumption that the expungement is
97 warranted so long as the criteria contained in subdivisions (1) to (4) of this subsection are
98 otherwise satisfied. The burden shall shift to the prosecuting attorney, circuit attorney, or
99 municipal prosecuting attorney to rebut the presumption. A victim of an offense, violation, or
100 infraction listed in the petition shall have an opportunity to be heard at any hearing held under
101 this section, 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,
103 or infraction may be made in accordance with the provisions of this section to a court of
104 competent jurisdiction in the county where the petitioner was arrested no earlier than three
105 years from the date of arrest; provided that, during such time, the petitioner has not been
106 charged and the 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,
110 the court shall issue an order of expungement or dismissal within six months of the filing of
111 the petition. A copy of the order of expungement shall be provided to the petitioner and each
112 entity possessing records subject to the order, and, upon receipt of the order, each entity shall
113 ~~elose~~ **destroy** any record in its possession relating to any offense, violation, or infraction
114 listed in the petition, in the manner established by section 610.120. The records and files
115 maintained in any administrative or court proceeding in a municipal, associate, or circuit
116 court for any offense, infraction, or violation ordered expunged under this section shall be
117 confidential and only available to the parties or by order of the court for good cause shown.
118 The central repository shall request the Federal Bureau of Investigation to expunge the
119 records from its files.

120 8. The order shall not limit any of the petitioner's rights that were restricted as a
121 collateral consequence of such person's criminal record, and such rights shall be restored
122 upon issuance of the order of expungement. For purposes of 18 U.S.C. Section 921(a)(33)(B)
123 (ii), an order or expungement granted pursuant to this section shall be considered a complete

124 removal of all effects of the expunged conviction. Except as otherwise provided under this
125 section, the effect of such order shall be to restore such person to the status he or she occupied
126 prior to such arrests, pleas, trials, or convictions as if such events had never taken place. ~~No~~
127 ~~person as to whom such order has been entered shall be held thereafter under any provision of~~
128 ~~law to be guilty of perjury or otherwise giving a false statement by reason of his or her failure~~
129 ~~to recite or acknowledge such arrests, pleas, trials, convictions, or expungement in response~~
130 ~~to an inquiry made of him or her and no such inquiry shall be made for information relating to~~
131 ~~an expungement, except the petitioner shall disclose the expunged offense, violation, or~~
132 ~~infraction to any court when asked or upon being charged with any subsequent offense,~~
133 ~~violation, or infraction. The expunged offense, violation, or infraction may be considered a~~
134 ~~prior offense in determining a sentence to be imposed for any subsequent offense that the~~
135 ~~person is found guilty of committing.]~~

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

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

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

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

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

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

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

154

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

160 may be grounds for automatic disqualification if the application is for employment under
161 subdivisions (4) to (6) of this subsection.

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

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

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

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

182 (2) Not more than one felony offense.

183

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

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

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