

FIRST REGULAR SESSION

# HOUSE BILL NO. 753

102ND GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE HICKS.

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DANA RADEMAN MILLER, Chief Clerk

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## AN ACT

To amend chapter 610, RSMo, by adding thereto one new section relating to expungement, with a penalty provision.

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

Section A. Chapter 610, RSMo, is amended by adding thereto one new section, to be known as section 610.147, to read as follows:

**610.147. 1. Notwithstanding any other provision of law and subject to the provisions of this section and section 610.140, any person who has been charged or found guilty of any offense, violation, or infraction and has a clean slate eligible case shall be eligible to have his or her criminal record or records automatically expunged. For purposes of this section, a "clean slate eligible case" means a case where each offense, violation, or infraction is not an offense listed under subsection 2 of section 610.140 and the offense, violation, or infraction meets the requirements under this section.**

**2. (1) A person shall become eligible for an automatic expungement of his or her offenses, violations, or infractions, subject to the following limits and all other provisions of this section, when:**

**(a) Three years have passed since final disposition, if the offense is a felony; or**

**(b) One year has passed since final disposition, if the offense is a misdemeanor, municipal offense, or infraction.**

**(2) As used in this subsection, "final disposition" means the date the person has completed his or her incarceration or probation and has satisfied all obligations, including the payment of any fines or restitution.**

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           **3. No offense, violation, or infraction shall be eligible for automatic expungement**  
19 **if:**

20           **(1) The person has not satisfied all obligations relating to any such disposition**  
21 **including, but not limited to, payment of any fines or restitution; or**

22           **(2) The person has pending charges during the time a petition for expungement**  
23 **in accordance with section 610.140 is filed or during the period of review for clean slate**  
24 **eligibility as described in subsection 6 of this section.**

25           **4. For purposes of this section and notwithstanding any other provisions of law,**  
26 **if the offenses, violations, or infractions subject to automatic expungement were charged**  
27 **as counts in the same indictment or information or were committed as part of the same**  
28 **course of criminal conduct, expungement eligibility will be determined based on the**  
29 **highest level violation or offense for such indictment, information, or course of conduct.**  
30 **However, if one or more counts in the same indictment or information or conduct**  
31 **committed were a part of the same course of criminal conduct as an offense listed in**  
32 **subsection 2 of section 610.140, the entire record shall not be expunged under this**  
33 **section.**

34           **5. Offenses that are clean slate eligible cases and were charged as counts in the**  
35 **same indictment or information or were committed as part of the same course of**  
36 **criminal conduct shall count as only one expungement regardless of the limits provided**  
37 **under subsection 7 of this section.**

38           **6. (1) A person may be granted more than one expungement under this section,**  
39 **provided that during his or her lifetime the total number of offenses, violations, or**  
40 **infractions for which orders of expungement are granted to the person shall not exceed**  
41 **the following limits:**

42           **(a) No more than two misdemeanor offenses or ordinance violations that have a**  
43 **term of imprisonment authorized by statute or ordinance, respectively; and**

44           **(b) No more than one felony offense.**

45           **(2) A person may be granted expungement under this section for any number of**  
46 **infractions.**

47           **(3) Nothing in this section shall prevent the court from maintaining records to**  
48 **ensure that a person has not exceeded the limitations provided under this subsection.**  
49 **Nothing in this section shall be construed to limit or impair the subsequent use of any**  
50 **record of any arrest or findings of guilt expunged under this section by a law**  
51 **enforcement agency, criminal justice agency, prosecuting attorney, circuit attorney, or**  
52 **municipal prosecuting attorney, including its use as a prior offense, violation, or**  
53 **infraction.**

54           7. The process for an automatic expungement of a clean slate eligible case shall  
55 be as follows:

56           (1) On a monthly basis, Missouri state highway patrol central repository,  
57 hereafter referred to as the central repository, shall identify cases that are clean slate  
58 eligible by conducting a search of the criminal history repository records;

59           (2) On a monthly basis, the central repository shall provide a list of clean slate  
60 eligible cases to every prosecuting agency in the state;

61           (3) Each prosecuting agency in this state has no later than forty-five days from  
62 the day on which the notice described in subdivision (2) of this subsection is transmitted  
63 to object to an automatic expungement and transmit such objection to all parties. The  
64 prosecuting agency may object to the automatic expungement for any of the following  
65 reasons:

66           (a) After reviewing the prosecuting agency's record, the agency believes the case  
67 does not meet the definition of a clean slate eligible case;

68           (b) The person has not paid court-ordered restitution to the victim; or

69           (c) The prosecuting agency has a reasonable belief, grounded in supporting facts,  
70 that a person with a clean slate eligible case is continuing to engage in criminal activity,  
71 regardless of whether charged with an offense, within or outside the state;

72           (4) If a prosecuting agency identified in subdivision (3) of this subsection objects  
73 for a reason described in subdivision (3) of this subsection, within forty-five days of the  
74 day on which the notice described in subdivision (2) of this subsection is transmitted, the  
75 record shall not be expunged;

76           (5) Once a year, the central repository shall submit a report to the general  
77 assembly with a list of all cases where a record was not expunged under this section; and

78           (6) After forty-five days from the day on which the notice described in  
79 subdivision (2) of this subsection is sent, the central repository shall provide to the  
80 courts a list of all cases where responses from all parties were received and no parties  
81 objected. The court shall review the list and provide to all agencies that have criminal  
82 history records a signed expungement order for all cases approved. Upon receipt of a  
83 signed expungement order, each agency shall close the relevant records. The Missouri  
84 supreme court may promulgate rules to govern the process for automatic expungement  
85 of records for a clean slate eligible case, in accordance with this section.

86           8. Nothing in this section precludes a person from filing a petition for  
87 expungement of records under section 610.140 if a person is eligible for an automatic  
88 expungement under this section but the automatic expungement has not yet occurred.

89           **9. (1) Upon the occurrence of one of the circumstances provided under**  
90 **subdivision (2) or (3) of this subsection, a conviction that was expunged under this**  
91 **section shall be reinstated by the court as provided in this subsection.**

92           **(2) If it is determined that a conviction was improperly or erroneously expunged**  
93 **under this section because the conviction was not eligible to be expunged under this**  
94 **section, the court shall, on its own motion, reinstate the conviction.**

95           **(3) Upon a motion by a person owed restitution or on its own motion, the court**  
96 **shall reinstate a conviction that was expunged under this section for which the person**  
97 **whose conviction was expunged was ordered to pay restitution if the court determines**  
98 **that the person has not made a good-faith effort to pay the ordered restitution.**

99           **10. (1) Upon the entry of an order under section 610.140, or upon the automatic**  
100 **expungement of a conviction under this section, the petitioner, for purposes of the law, is**  
101 **considered not to have been previously convicted, except as provided under this**  
102 **subsection and subsection 11 of this section.**

103           **(2) The petitioner shall not be entitled to the remission of any fine, costs, or other**  
104 **moneys paid as a consequence of a conviction that is expunged.**

105           **(3) This section shall not affect the right of the petitioner to rely upon the**  
106 **conviction to bar subsequent proceedings for the same offense.**

107           **(4) This section shall not affect the right of a victim of an offense to bring or**  
108 **defend a civil action for damages.**

109           **(5) This section shall not create a right to commence an action for damages for**  
110 **incarceration under the sentence that the petitioner served before the conviction is**  
111 **expunged under this section.**

112           **(6) This section shall not relieve any obligation to pay restitution owed to the**  
113 **victim of an offense nor shall such sections affect the jurisdiction of the convicting court**  
114 **or the authority of any court order with regard to enforcing an order for restitution.**

115           **(7) A conviction, including any records relating to the conviction and any**  
116 **records concerning a collateral action, that has been expunged under this section shall**  
117 **not be used as evidence in an action for negligent hiring, admission, or licensure against**  
118 **any person.**

119           **(8) A conviction that is expunged under this section or section 610.140 may be**  
120 **considered a prior conviction by a court, law enforcement agency, prosecuting attorney,**  
121 **or the attorney general, as applicable, for purposes of charging a crime as a second or**  
122 **subsequent offense or for sentencing under section 550.016.**

123           **(9) As used in this subsection, "petitioner" includes a person who has petitioned**  
124 **the court to have his or her conviction or convictions expunged and a person whose**  
125 **conviction or convictions have been automatically expunged under this section.**

126           **11. (1) Upon the entry of an order under section 610.140, the court shall send a**  
127 **copy of the order to the arresting law enforcement agency and the Missouri state**  
128 **highway patrol.**

129           **(2) The Missouri state highway patrol shall retain a nonpublic record of the**  
130 **order expunging a conviction or other notification regarding a conviction that was**  
131 **automatically expunged under this section and of the record of the arrest, fingerprints,**  
132 **conviction, and sentence of the person in the case to which the order or other**  
133 **notification applies. Except as provided in subdivision (3) of this subsection, the**  
134 **nonpublic record shall be made available only to a court of competent jurisdiction, an**  
135 **independent department of the judicial branch of state government, the department of**  
136 **corrections, a law enforcement agency, a prosecuting attorney, the attorney general, or**  
137 **the governor upon request and only for the following purposes:**

138           **(a) To show that a person who has filed a petition to expunge a conviction has**  
139 **previously had a conviction expunged under this section;**

140           **(b) The court's consideration in determining the sentence to be imposed upon**  
141 **conviction for a subsequent offense that is punishable as a felony or by imprisonment**  
142 **for more than one year;**

143           **(c) Consideration by the governor if a person whose conviction has been**  
144 **expunged applies for a pardon for another offense;**

145           **(d) Consideration by the department of corrections or a law enforcement agency**  
146 **if a person whose conviction has been expunged applies for employment with the**  
147 **department of corrections or a law enforcement agency;**

148           **(e) Consideration by a court, law enforcement agency, prosecuting attorney, or**  
149 **the attorney general in determining whether a person required to register under**  
150 **sections 589.400 to 589.425 has committed an offense that requires registration under**  
151 **sections 589.400 to 589.425, or for use in a prosecution for committing an offense**  
152 **requiring registration under sections 589.400 to 589.425; or**

153           **(f) Consideration by a court, law enforcement agency, prosecuting attorney, or**  
154 **the attorney general for use in making determinations regarding charges, plea offers,**  
155 **and sentencing, as applicable.**

156           **(3) A copy of the nonpublic record created under subdivision (2) of this**  
157 **subsection shall be provided to the person whose conviction is expunged under this**  
158 **section upon payment of a fee determined and charged by the Missouri state highway**  
159 **patrol.**

160           **(4) The nonpublic record maintained under subdivision (2) of this subsection is**  
161 **exempt from disclosure under this chapter.**

162           **(5) Except as provided under subdivision (2) of this subsection, a person, other**  
163 **than the person whose conviction was expunged or a victim, who knows or should have**  
164 **known that a conviction was expunged and who divulges, uses, or publishes information**  
165 **concerning a conviction expunged is guilty of a class D misdemeanor.**

166           **(6) An entity shall not be liable for damages or subject to criminal penalties for**  
167 **reporting a public record of conviction that has been expunged by court order or**  
168 **operation of law if that record was available as a public record on the date of the report.**

169           **(7) As used in this subsection, "victim" means any person who suffers direct or**  
170 **threatened physical, financial, or emotional harm as the result of an offense that was**  
171 **committed by the applicant.**

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