

FIRST REGULAR SESSION

HOUSE BILL NO. 1115

103RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE CUPPS.

2379H.011

JOSEPH ENGLER, Chief Clerk

AN ACT

To repeal section 565.030, RSMo, and to enact in lieu thereof five new sections relating to proceedings resulting from criminal conduct.

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

Section A. Section 565.030, RSMo, is repealed and five new sections enacted in lieu thereof, to be known as sections 565.030, 610.141, 610.142, 610.143, and 610.144, to read as follows:

565.030. 1. Where murder in the first degree is charged but not submitted or where the state waives the death penalty, the submission to the trier and all subsequent proceedings in the case shall proceed as in all other criminal cases.

2. Where murder in the first degree is submitted to the trier without a waiver of the death penalty, the trial shall proceed in two stages before the same trier. At the first stage the trier shall decide only whether the defendant is guilty or not guilty of any submitted offense. The issue of punishment shall not be submitted to the trier at the first stage. If an offense is charged other than murder in the first degree in a count together with a count of murder in the first degree, the trial judge shall assess punishment on any such offense according to law, after the defendant is found guilty of such offense and after he finds the defendant to be a prior offender pursuant to chapter 558.

3. If murder in the first degree is submitted and the death penalty was not waived but the trier finds the defendant guilty of a lesser homicide, a second stage of the trial shall proceed as in all other criminal cases. The attorneys may then argue as in other criminal cases the issue of punishment, after which the trier shall assess and declare the punishment as in all other criminal cases.

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 4. If the trier at the first stage of a trial where the death penalty was not waived finds
18 the defendant guilty of murder in the first degree, a second stage of the trial shall proceed at
19 which the only issue shall be the punishment to be assessed and declared. Evidence in
20 aggravation and mitigation of punishment, including but not limited to evidence supporting
21 any of the aggravating or mitigating circumstances listed in subsection 2 or 3 of section
22 565.032, may be presented subject to the rules of evidence at criminal trials. Such evidence
23 may include, within the discretion of the court, evidence concerning the murder victim and
24 the impact of the offense upon the family of the victim and others. Rebuttal and surrebuttal
25 evidence may be presented. The state shall be the first to proceed. If the trier is a jury it shall
26 be instructed on the law. The attorneys may then argue the issue of punishment to the jury,
27 and the state shall have the right to open and close the argument. The trier shall assess and
28 declare the punishment at life imprisonment without eligibility for probation, parole, or
29 release except by act of the governor:

30 (1) If the trier finds by a preponderance of the evidence that the defendant is
31 intellectually disabled; or

32 (2) If the trier does not find beyond a reasonable doubt at least one of the statutory
33 aggravating circumstances set out in subsection 2 of section 565.032; or

34 (3) If the trier ~~concludes that there is evidence in mitigation of punishment, including~~
35 ~~but not limited to evidence supporting the statutory mitigating circumstances listed in~~
36 ~~subsection 3 of section 565.032, which is sufficient to outweigh the evidence in aggravation~~
37 ~~of punishment found by the trier]~~ **does not determine by unanimous vote that the**
38 **aggravating circumstance or circumstances previously found outweigh the mitigating**
39 **circumstance or circumstances including, but not limited to, those mitigating**
40 **circumstances set out in subsection 3 of section 565.032; or**

41 (4) If the trier decides under all of the circumstances not to assess and declare the
42 punishment at death. If the trier is a jury it shall be so instructed.

43

44 If the trier assesses and declares the punishment at death it shall, in its findings or verdict, set
45 out in writing the aggravating circumstance or circumstances listed in subsection 2 of section
46 565.032 which it found beyond a reasonable doubt. If the trier is a jury it shall be instructed
47 before the case is submitted that if it is unable to decide or agree upon the punishment the
48 court shall assess and declare the punishment at life imprisonment without eligibility for
49 probation, parole, or release except by act of the governor ~~[or death. The court shall follow~~
50 ~~the same procedure as set out in this section whenever it is required to determine punishment~~
51 ~~for murder in the first degree].~~

52 5. Upon written agreement of the parties and with leave of the court, the issue of the
53 defendant's intellectual disability may be taken up by the court and decided prior to trial

54 without prejudicing the defendant's right to have the issue submitted to the trier of fact as
55 provided in subsection 4 of this section.

56 6. As used in this section, the terms "intellectual disability" or "intellectually
57 disabled" refer to a condition involving substantial limitations in general functioning
58 characterized by significantly subaverage intellectual functioning with continual extensive
59 related deficits and limitations in two or more adaptive behaviors such as communication,
60 self-care, home living, social skills, community use, self-direction, health and safety,
61 functional academics, leisure and work, which conditions are manifested and documented
62 before eighteen years of age.

63 7. The provisions of this section shall only govern offenses committed on or after
64 August 28, 2001.

**610.141. 1. As used in this section, section 610.140, and sections 610.142 to
2 610.144, unless the context otherwise indicates, the following terms mean:**

3 **(1) "Automated expungement", technology-assisted, state-initiated bulk closing
4 of records in the manner established under section 610.120;**

5 **(2) "Central repository", the Missouri state highway patrol central repository
6 for compiling and disseminating complete and accurate criminal history records;**

7 **(3) "Clean slate eligible offense", a misdemeanor or felony not listed under
8 subsection 2 of section 610.140 for which an electronic record exists;**

9 **(4) "Close" or "closed", to make records inaccessible to the general public and
10 to all individuals other than the defendant, except as provided under section 610.120
11 and chapter 43;**

12 **(5) "Expunge" or "expunged", to close a record in the manner established under
13 section 610.120;**

14 **(6) "Final disposition", the date the person has completed his or her
15 incarceration, probation, or parole;**

16 **(7) "Petitioner", a person who has petitioned the court to have his or her
17 conviction or convictions expunged or a person whose conviction or convictions have
18 been automatically expunged under this section.**

19 **2. (1) Beginning August 28, 2028, all electronic records and files maintained in
20 any administrative or court proceeding in a municipal, associate, or circuit court
21 pertaining to clean slate eligible offenses shall be closed in the manner established under
22 section 610.120 without the filing of a petition under section 610.140 in the following
23 cases, subject to the limitations contained in subdivisions (2), (3), and (4) of this
24 subsection:**

25 **(a) For cases in which the imposition of sentence has been suspended, if an
26 individual has successfully completed probation, so long as one year has passed since**

27 final disposition and the individual has not committed any felony or misdemeanor
28 criminal offense in Missouri;

29 (b) For misdemeanors, if one year has passed since final disposition and the
30 individual has not committed any felony or misdemeanor criminal offense in Missouri;

31 (c) For felony offenses, if three years have passed since final disposition and the
32 individual has not committed any felony or misdemeanor criminal offense in Missouri;

33 (d) For all of an individual's offenses, if the individual has attained sixty-five
34 years of age and has not been convicted of any misdemeanors or felonies in Missouri
35 other than a technical violation of the terms of his or her probation or parole in the ten
36 immediately preceding years; or

37 (e) All offenses for which the governor of Missouri has granted a full pardon.

38 (2) Records pertaining to juvenile adjudications or offenses involving the
39 operation of a motor vehicle are not eligible for automated expungement.

40 (3) No offense shall be eligible for automated expungement if a person has
41 charges pending that have been filed in a Missouri state court for which an individual
42 has not yet been sentenced during the period of review for clean slate eligibility as
43 described in subsection 3 of this section.

44 (4) (a) An individual may be granted more than one expungement under this
45 section, except that during his or her lifetime the total number of offenses for which
46 expungement can be granted to the individual under this section or section 610.140 shall
47 not exceed the following limits:

48 a. No more than two felony offenses; and

49 b. No more than four misdemeanor offenses.

50 (b) If an individual's electronic record contains more felonies or misdemeanors
51 than can be expunged during the individual's lifetime under paragraph (a) of this
52 subdivision, the individual shall not be eligible for automated expungement under this
53 section.

54 (c) For purposes of determining lifetime limits on expungement under this
55 section and section 610.140:

56 a. If the offenses were charged as counts in the same case, all such offenses and
57 violations shall count as only the highest-level offense in that case for purposes of
58 determining lifetime limits on expungement under this section and section 610.140.
59 However, if one or more counts in the same indictment or information or conduct
60 committed were a part of the same course of criminal conduct as an offense listed in
61 subsection 2 of section 610.140, the entire record shall not be expunged under this
62 section; and

63 **b. If the offenses were committed by an individual who has attained sixty-five**
64 **years of age and has not been convicted of any misdemeanors or felonies in the**
65 **immediate ten preceding years, all clean slate eligible offenses shall be expunged.**

66 **(d) The court shall maintain records to ensure that a person has not exceeded the**
67 **limitations provided under this subsection. Nothing in this section shall be construed to**
68 **limit or impair the subsequent use of any record maintained by the court for the**
69 **purpose of any law enforcement or prosecutorial investigation or activity, including any**
70 **arrest or findings of guilt expunged under this section by a law enforcement agency,**
71 **criminal justice agency, prosecuting attorney, circuit attorney, or municipal prosecuting**
72 **attorney, including its use as a prior offense in a subsequent criminal or civil**
73 **investigation or prosecution.**

74 **3. (1) Beginning August 28, 2028, on a monthly basis, the office of state courts**
75 **administrator shall identify records that have become eligible in the last month and**
76 **transmit, or otherwise make accessible by electronic means, to the central repository**
77 **and every prosecuting agency in the state all clean slate eligible offense records within**
78 **thirty days of the record becoming eligible for automated expungement.**

79 **(2) All digital records that become eligible for expungement on or before August**
80 **28, 2025, shall be identified and expunged before August 28, 2030, in a cadence to be**
81 **determined by the office of state courts administrator.**

82 **(3) Delinquent court costs, fines, fees, or other sums ordered by a court, except**
83 **restitution owed to a victim of a crime, shall not be considered by the office of state**
84 **courts administrator when determining eligibility of a record for automated**
85 **expungement under subsection 2 of this section. However, the office of state courts**
86 **administrator may seek a setoff of any income tax refund and lottery prize payouts**
87 **under section 488.5028 for all delinquent court costs, fines, fees, or other sums ordered**
88 **by a court relating to convictions expunged under subsection 2 of this section.**

89 **(4) Each prosecuting agency in this state has no more than sixty days from the**
90 **day on which the notice described in subdivision (1) of this subsection is transmitted, or**
91 **otherwise made accessible by electronic means, to object to an automated expungement**
92 **and transmit such objection to the office of state courts administrator and the central**
93 **repository. The prosecuting agency may object to the automated expungement for any**
94 **of the following reasons:**

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

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

98 **(c) The person has charges pending against them in another case in Missouri.**

99 (5) If a prosecuting agency objects for a reason described in subdivision (4) of
100 this subsection, within sixty days of the day on which the notice described in subdivision
101 (1) of this subsection is transmitted, or otherwise made accessible by electronic means,
102 the record shall not be expunged.

103 (6) The central repository has no more than sixty days from the day on which the
104 notice described in subdivision (1) of this subsection is transmitted, or otherwise made
105 accessible by electronic means, to object to an automated expungement and transmit
106 such objection to the office of state courts administrator and the relevant prosecutors.
107 The central repository may object to the automatic expungement if the agency believes
108 the record does not meet the definition of a clean slate eligible case based on their
109 available data.

110 (7) If the central repository objects for a reason described in subdivision (4) of
111 this subsection, within sixty days of the day on which the notice described in subdivision
112 (1) of this subsection is transmitted, or otherwise made accessible by electronic means,
113 the record shall not be expunged.

114 (8) If sixty days have passed without an objection from a prosecuting agency or
115 the central repository for one of the reasons set forth under this subsection, the office of
116 state courts administrator shall transmit, or otherwise make accessible by electronic
117 means, within fifteen days all the records to be expunged, sorted by circuit, to the
118 presiding judges of every circuit court in Missouri.

119 (9) Within thirty days of receiving a notice to expunge, the circuit court shall
120 issue orders for expungement of all records maintained in the circuit unless the circuit
121 court determines the record is not eligible for automated expungement. If the circuit
122 court determines a record is not eligible for automated expungement, the court shall
123 notify the office of state courts administrator of its determination within thirty days and
124 shall specify the reasons the court relied upon in making the determination.

125 (10) On a monthly basis, each circuit court shall transmit, or otherwise make
126 accessible by electronic means, copies of all orders for expungement that the court issues
127 under this section to the office of state courts administrator.

128 (11) Once the transmitted records are expunged, the office of state courts
129 administrator shall provide notice to all state agencies maintaining official copies of the
130 records including, but not limited to, the appropriate circuit court clerk, the prosecuting
131 attorney, the arresting law enforcement agency or agencies, the department of
132 corrections, the central repository, and the department of revenue to expunge the
133 records within thirty days. With respect to any person including, but not limited to, a
134 consumer reporting agency or researcher, who purchases records for information
135 pertaining to criminal matters of public record from the office of state courts

136 administrator, such office shall make available to the person information concerning the
137 criminal matters of public record that have been erased under this section. Such
138 information shall include docket numbers or other information sufficient to permit the
139 person to accurately identify and delete records that have been erased under this
140 section.

141 (12) (a) The Missouri state highway patrol shall retain a nonpublic record of the
142 order expunging a conviction or other notification regarding a conviction that was
143 automatically expunged under this section and of the record of the arrest, fingerprints,
144 conviction, and sentence of the person in the case to which the order or other
145 notification applies. The nonpublic record shall be made available only to a court of
146 competent jurisdiction, an independent department of the judicial branch of state
147 government, the department of corrections, a law enforcement agency, a prosecuting
148 attorney, the attorney general, or the governor upon request and only for the following
149 purposes:

150 a. To show that a person who has filed a petition to expunge a conviction has
151 previously had a conviction expunged under this section;

152 b. The court's consideration in determining the sentence to be imposed upon
153 conviction for a subsequent offense that is punishable as a felony or by imprisonment
154 for more than one year;

155 c. Consideration by the governor if a person whose conviction has been
156 expunged applies for a pardon for another offense;

157 d. Consideration by the department of corrections or a law enforcement agency
158 if a person whose conviction has been expunged applies for employment with the
159 department of corrections or a law enforcement agency;

160 e. Consideration by a court, law enforcement agency, prosecuting attorney, or
161 the attorney general in determining whether a person required to register under
162 sections 589.400 to 589.425 has committed an offense that requires registration under
163 sections 589.400 to 589.425, or in prosecuting a person for committing an offense
164 requiring registration under sections 589.400 to 589.425; or

165 f. Consideration by a court, law enforcement agency, prosecuting attorney, or
166 the attorney general for use in making determinations regarding charges, plea offers,
167 and sentencing, as applicable.

168 (b) A copy of the nonpublic record created under paragraph (a) of this
169 subdivision may be provided upon request to the person whose conviction is expunged
170 under this section upon payment of a fee determined and charged by the Missouri state
171 highway patrol.

172 (c) The nonpublic record maintained under paragraph (a) of this subdivision is
173 exempt from disclosure under this chapter.

174 (d) An entity shall not be liable for damages or subject to criminal penalties for
175 reporting a public record of conviction that has been expunged by court order or
176 operation of law prior to August 28, 2028, if that record was available as a public record
177 on the date of the report.

178 4. Any court sentencing an individual for a clean slate eligible offense shall notify
179 the individual at the time of sentencing of the date when the individual's conviction may
180 become eligible for automated expungement provided the individual is not convicted of
181 any misdemeanor or felony during the time period specified for the underlying offense
182 or offenses.

183 5. Any probation or parole office releasing an individual from supervision for a
184 clean slate eligible offense shall notify the individual at the time supervision is
185 discharged of the date when the individual's record or records may become eligible for
186 automated expungement provided the individual is not convicted of any misdemeanor
187 or felony during the time period specified for the underlying offense or offenses.

188 6. The provisions of this section shall apply retroactively to any arrest, charge,
189 trial, or conviction for which there is an electronic record regardless of the date that the
190 arrest was made, the charge or charges were brought, the trial occurred, or the
191 conviction was entered.

192 7. Nothing in this section precludes an individual from filing a petition for
193 expungement of records under section 610.140 if an individual is eligible for automated
194 expungement under this section but such automated expungement has not yet occurred
195 or cannot occur.

196 8. If it is determined that a conviction was improperly or erroneously expunged
197 under this section because the conviction was not eligible to be expunged under this
198 section, the court shall, on its own motion, reinstate the conviction.

199 9. (1) Upon the entry of an order under section 610.140, or upon the automated
200 expungement of a conviction under this section, the petitioner, for purposes of the law, is
201 considered not to have been previously convicted, except as provided under this
202 subsection and subsection 10 of section 610.140.

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

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

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

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

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

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

219 (8) A conviction that is expunged under this section or section 610.140 may be
220 considered a prior conviction by a court, law enforcement agency, prosecuting attorney,
221 or the attorney general, as applicable, for purposes of charging a crime as a second or
222 subsequent offense or for sentencing under section 558.016.

 610.142. Beginning August 28, 2028, the office of state courts administrator shall
2 report to the judiciary committees of the senate and house of representatives, or any
3 successor committees, the following on a yearly basis:

4 (1) The number of records expunged under subsection 2 of section 610.141, by
5 judicial circuit, with data aggregated by race, sex, age, circuit, county, and offense type
6 and level; and

7 (2) The number of records transmitted from the Missouri state highway patrol, a
8 prosecuting agency, or a circuit court back to the office of state courts administrator on
9 objection that the record is not eligible for automated expungement or by judicial
10 circuit, with data aggregated by race, sex, age, county, and offense type and level.

 610.143. 1. A credit bureau may report records of arrests, indictments pending
2 trial, and convictions of crimes for no longer than seven years from final disposition.
3 Records of arrests, indictments pending trial, and convictions of crimes shall no longer
4 be reported if at any time after a conviction it is learned that a full pardon or
5 expungement has been granted for that conviction, or at any time after an arrest or
6 indictment it is learned that a conviction did not result.

7 2. Any credit bureau or user of information that willfully fails to comply with
8 any requirement of this section with respect to any consumer is liable to that consumer
9 in an amount equal to:

10 (1) Any actual damages sustained by the consumer as a result of the failure;

11 (2) Punitive damages as the court may allow; and

12 (3) In the case of any successful action under this section, costs of the action and
13 reasonable attorney's fees as determined by the court.

14 **3. Any credit bureau or user of information that is negligent in failing to comply**
15 **with any requirement of this section with respect to any consumer is liable to that**
16 **consumer in an amount equal to:**

17 **(1) Any actual damages sustained by the consumer as a result of the failure; and**

18 **(2) In the case of any successful action under this section, costs of the action and**
19 **reasonable attorney's fees as determined by the court.**

20 **4. Injunctive relief shall be available to any consumer aggrieved by a violation or**
21 **a threatened violation of this section regardless of whether the consumer seeks any other**
22 **remedy under this section.**

23 **5. An employer who employs or otherwise engages an individual whose criminal**
24 **history record has been expunged shall be immune from liability for any claim arising**
25 **out of the misconduct of the individual if the misconduct relates to the portion of the**
26 **criminal history record that has been expunged.**

610.144. 1. (1) There is hereby created in the state treasury the "Missouri
2 **Expungement Fund", which shall consist of moneys deposited into the fund from any**
3 **source including, but not limited to, gifts, donations, grants, and bequests. The state**
4 **treasurer shall be custodian of the fund. In accordance with sections 30.170 and 30.180,**
5 **the state treasurer may approve disbursements. The fund shall be a dedicated fund and,**
6 **upon appropriation, moneys in this fund shall be used solely as provided in subsection 2**
7 **of this section.**

8 **(2) Notwithstanding the provisions of section 33.080 to the contrary, any moneys**
9 **remaining in the fund at the end of the biennium shall not revert to the credit of the**
10 **general revenue fund.**

11 **(3) The state treasurer shall invest moneys in the fund in the same manner as**
12 **other funds are invested. Any interest and moneys earned on such investments shall be**
13 **credited to the fund.**

14 **2. The department of public safety, the information technology services division**
15 **within the office of administration, and the office of state courts administrator shall**
16 **expend moneys from the fund, upon appropriation, only for one or more of the**
17 **following purposes:**

18 **(1) Implementation costs incurred under sections 610.141 to 610.143;**

19 **(2) System upgrades necessitated under sections 610.141 to 610.143; or**

20 **(3) Staffing needs necessitated under sections 610.141 to 610.143.**

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