

SECOND REGULAR SESSION

HOUSE BILL NO. 2747

103RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE DAVIDSON.

4181H.01I

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Section A. Section 565.030, RSMo, is repealed and five new sections enacted in lieu thereof, to be known as sections 476.411, 565.030, 610.141, 610.143, and 610.144, to read as follows:

476.411. 1. Beginning January 1, 2031, and each year thereafter, the office of state courts administrator shall submit a report to the joint committee on the justice system, the house judiciary committee or any successor committee, and the senate judiciary and civil and criminal jurisprudence committee or any successor committee providing statistical information for the prior year, arranged by judicial circuit and county, of:

(1) The number of clean slate eligible offenses as defined under section 610.141 identified by the office of state courts administrator under subsection 2 of section 610.141 and transmitted to the courts;

(2) The number of identified clean slate eligible offenses to which a prosecuting attorney filed an objection under subsection 3 of section 610.141;

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

(4) The number of orders of expungement issued under section 610.141.

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.

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18 **The data shall be aggregated by race, sex, age, circuit, county, and offense type and level**
19 **if such data is available.**

20 **2. The provisions of this section shall become effective upon the implementation**
21 **of automated expungement technology. As used in this section, "automated**
22 **expungement" has the same meaning as such term is defined in section 610.141.**

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

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

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

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 ~~[e]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 610.143 and**
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 3 of section 610.140 for which an electronic record exists in the statewide
9 court automation case management system;

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

13 (5) "Expunge" or "expunged", to close a record in the manner established under
14 section 610.120, except the provisions of subsection 2 of section 610.120 that require
15 documents to be retyped and rewritten, or blacked out and recopied, if an agency
16 determines that these provisions are not feasible in relation to automated expungement;

17 (6) "Final disposition", the date the person has completed his or her
18 incarceration, probation, or parole;

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

22 2. (1) Subject to the provisions in subdivision (2) of subsection 3 of this section,
23 all electronic records and files maintained in the statewide court automation case
24 management system pertaining to clean slate eligible offenses shall be closed in the
25 manner established under section 610.120 without the filing of a petition under section
26 610.140 in the following cases, subject to the limitations contained in subdivisions (2),
27 (3), and (4) of this subsection:

28 (a) For cases in which the imposition of sentence has been suspended, if an
29 individual has successfully completed probation, so long as one year has passed since
30 final disposition and the individual has not committed any felony or misdemeanor
31 criminal offense in Missouri during that time;

32 (b) For misdemeanors, if one year has passed since final disposition and the
33 individual has not committed any felony or misdemeanor criminal offense in Missouri
34 during that time;

35 (c) For felony offenses, if three years have passed since final disposition and the
36 individual has not committed any felony or misdemeanor criminal offense in Missouri
37 during that time;

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

42 (e) All offenses for which the governor of Missouri has granted a full pardon.
43 (2) Records pertaining to juvenile adjudications or offenses involving the
44 operation of a motor vehicle are not eligible for automated expungement.

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

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

53 a. No more than two felony offenses; and
54 b. No more than three misdemeanor offenses.

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

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

61 a. If the offenses were charged as counts in the same case, all such offenses and
62 violations shall count as only the highest-level offense in that case for purposes of
63 determining lifetime limits on expungement under this section and section 610.140.
64 However, if one or more counts in the same indictment or information or conduct
65 committed were a part of the same course of criminal conduct as an offense listed in
66 subsection 3 of section 610.140, the entire record shall not be expunged under this
67 section;

68 b. If the offenses were committed by an individual who has attained sixty-five
69 years of age and has not been convicted of any misdemeanors or felonies in the
70 immediate ten preceding years in Missouri, all clean slate eligible offenses shall be
71 expunged; and

72 c. Only convictions contained within the statewide court automation case
73 management system shall be considered when determining eligibility under this section.

74 (d) The court shall maintain records to ensure that a person has not exceeded the
75 limitations provided under this subsection. Nothing in this section shall be construed to
76 limit or impair the subsequent use of any record maintained by the court for the
77 purpose of any law enforcement or prosecutorial investigation or activity, including any
78 arrest or findings of guilt expunged under this section by a law enforcement agency,

79 **criminal justice agency, prosecuting attorney, circuit attorney, or municipal prosecuting**
80 **attorney, including its use as a prior offense in a subsequent criminal or civil**
81 **investigation or prosecution.**

82 **3. (1) Beginning August 28, 2029, on a quarterly basis, the office of state courts**
83 **administrator shall identify records that have become eligible in the last quarter and**
84 **transmit, or otherwise make accessible by electronic means, to the central repository**
85 **and every prosecuting agency in the state all clean slate eligible offense records within**
86 **one hundred days of the record becoming eligible for automated expungement.**

87 **(2) All electronic records in the statewide court automation case management**
88 **system that become eligible for automated expungement on or after August 28, 2026,**
89 **but before August 29, 2029, shall be identified and expunged before August 28, 2031, in**
90 **a cadence to be determined by the office of state courts administrator.**

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

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

104 **(a) After reviewing the prosecuting agency's record, the record does not meet the**
105 **definition of a clean slate eligible offense;**

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

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

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

112 **(6) The central repository has no more than sixty days from the day on which the**
113 **notice described in subdivision (1) of this subsection is transmitted, or otherwise made**
114 **accessible by electronic means, to object to an automated expungement and transmit**
115 **such objection to the office of state courts administrator and the relevant prosecutors.**

116 The central repository may object to the automated expungement if the record does not
117 meet the definition of a clean slate eligible offense based on their available data.

118 (7) If the central repository objects for a reason described in subdivision (6) of
119 this subsection, within sixty days of the day on which the notice described in subdivision
120 (1) of this subsection is transmitted, or otherwise made accessible by electronic means,
121 the record shall not be expunged.

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

127 (9) Within thirty days of receiving a notice to expunge, the circuit court shall
128 issue orders for expungement of all records maintained in the circuit.

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

132 (11) Once the transmitted records are expunged, the office of state courts
133 administrator shall provide notice to all state agencies maintaining official copies of the
134 records including, but not limited to, circuit court clerks, prosecuting or circuit
135 attorneys, law enforcement agencies, the department of corrections, and the central
136 repository within thirty days. The records and files maintained by any such persons or
137 entities pertaining to expunged records shall be held confidential from the date of
138 expungement and only made available to the people and for the purposes outlined in
139 subdivision (12) of this subsection. With respect to any person including, but not limited
140 to, a consumer reporting agency or researcher, who purchases records for information
141 pertaining to criminal matters of public record from the office of state courts
142 administrator, such office shall make available to the person information concerning the
143 criminal matters of public record that have been expunged under this section. Such
144 information shall include docket numbers or other information sufficient to permit the
145 person to accurately identify and delete records that have been expunged under this
146 section.

147 (12) (a) The Missouri state highway patrol shall retain a nonpublic record of the
148 order expunging a conviction or other notification regarding a conviction that was
149 automatically expunged under this section and of the record of the arrest, fingerprints,
150 conviction, and sentence of the person in the case to which the order or other
151 notification applies. The nonpublic record shall be made available only to a court of
152 competent jurisdiction, an independent department of the judicial branch of state

153 government, the department of corrections, a law enforcement agency, a prosecuting
154 attorney, the attorney general, or the governor upon request and only for the following
155 purposes:

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

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

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

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

166 e. Consideration by a court, law enforcement agency, prosecuting attorney, or
167 the attorney general in determining whether a person required to register under
168 sections 589.400 to 589.425 has committed an offense that requires registration under
169 sections 589.400 to 589.425, or in prosecuting a person for committing an offense
170 requiring registration under sections 589.400 to 589.425;

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

174 g. Consideration by any entity responsible for issuing commercial driver's
175 licenses for the purpose of meeting state and federal requirements to obtain commercial
176 driver's licenses.

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

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

183 (d) An entity shall not be liable for damages or subject to criminal penalties for
184 reporting a public record of conviction that has been expunged by court order or
185 operation of law prior to August 28, 2029, if that record was available as a public record
186 on the date of the report.

187 4. Any court sentencing an individual for a clean slate eligible offense shall
188 provide the individual a document outlining the state's clean slate expungement
189 program at the time of sentencing.

190 **5. Any probation or parole office releasing an individual from supervision for a**
191 **clean slate eligible offense shall provide the individual a document outlining the state's**
192 **clean slate expungement program at the time of release.**

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

197 **7. Nothing in this section precludes an individual from filing a petition for**
198 **expungement of records under section 610.140 if an individual is eligible for automated**
199 **expungement under this section but such automated expungement has not yet occurred**
200 **or cannot occur.**

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

204 **9. (1) Upon the entry of an order under section 610.140, or upon the automated**
205 **expungement of a conviction under this section, the petitioner, for purposes of the law, is**
206 **considered not to have been previously convicted, except as provided under this**
207 **subsection and subsection 10 of section 610.140.**

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

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

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

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

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

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

224 **(8) A conviction that is expunged under this section or section 610.140 may be**
225 **considered a prior conviction by a court, law enforcement agency, prosecuting attorney,**

226 or the attorney general, as applicable, for purposes of charging a crime as a second or
227 subsequent offense or for sentencing under section 558.016.

228 10. The office of state courts administrator shall collaborate with the Missouri
229 state highway patrol to establish and implement data-sharing procedures regarding the
230 information required under this section.

231 11. Any person eligible for expungement under this section who has filed a
232 petition for expungement under section 610.140 shall be granted an expungement,
233 subject to subsection 3 of this section.

234 12. The provisions of this section shall become effective upon the implementation
235 of automated expungement technology.

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, volunteer organization, or landlord who employs, qualifies, or
24 otherwise engages an individual whose criminal history record has been expunged shall
25 be immune from liability for any claim arising out of the misconduct of the individual if
26 the misconduct relates to the portion of the criminal history record that has been
27 expunged.

28 **6. A person granted an expungement shall disclose any expunged offense if the**
29 **disclosure of such information is necessary to complete any application for employment**
30 **with any:**

31 **(1) Federally insured bank or savings institution or credit union or an affiliate of**
32 **such institution or credit union for the purpose of compliance with 12 U.S.C. Section**
33 **1829 and 12 U.S.C. Section 1785; or**

34 **(2) Entity engaged in the business of insurance or any insurer for the purpose of**
35 **complying with 18 U.S.C. Section 1033, 18 U.S.C. Section 1034, or other similar law that**
36 **requires an employer engaged in the business of insurance to exclude applicants with**
37 **certain criminal convictions from employment.**

38 **7. The provisions of this section shall become effective upon the implementation**
39 **of automated expungement technology.**

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

11 **2. The office of state courts administrator, the department of public safety, and**
12 **the information technology services division within the office of administration shall**
13 **expend moneys from the fund, upon appropriation, on the statewide court automation**
14 **case management system and the Missouri criminal history record information system**
15 **established under sections 43.500 to 43.530 for one or more of the following purposes:**

16 **(1) Expenses that may be incurred to develop, establish, maintain, or operate**
17 **any information technology equipment, software, systems, or services associated with**
18 **the expungement or closing of records under Missouri law, including the development**
19 **and implementation of any technology-assisted, state-initiated bulk expungement or**
20 **sealing of records under Missouri law; or**

21 **(2) The cost of necessary personnel or contractors.**

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23 The office of state courts administrator, the department of public safety, and the
24 information technology services division within the office of administration shall each
25 receive one-third of any total amount appropriated from the fund for a fiscal year.

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