

SECOND REGULAR SESSION

SENATE BILL NO. 1068

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR WILLIAMS.

Read 1st time February 27, 2020, and ordered printed.

ADRIANE D. CROUSE, Secretary.

5651S.011

AN ACT

To repeal sections 43.504, 43.507, and 610.140, RSMo, and to enact in lieu thereof three new sections relating to expungement of records.

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

Section A. Sections 43.504, 43.507, and 610.140, RSMo, are repealed and
2 three new sections enacted in lieu thereof, to be known as sections 43.504, 43.507,
3 and 610.140, to read as follows:

43.504. Notwithstanding section 610.120, the sheriff of any county, the
2 sheriff of the City of St. Louis, and the judges of the circuit courts of this state
3 may make available, for review, information obtained from the central repository
4 to private entities responsible for probation supervision pursuant to sections
5 559.600 to 559.615, **as well as to expungement clinics or legal aid**
6 **organizations for the purposes of pursuing relief under section**
7 **610.140**. When the term of probation is completed or when the material is no
8 longer needed for purposes related to the probation **or expungement**, it shall
9 be returned to the court or destroyed. Criminal history information obtained from
10 the central repository may be made available to private entities responsible for
11 providing services associated with drug treatment courts under sections 478.001
12 to 478.008 **and to expungement clinics or legal aid organizations for the**
13 **purposes of pursuing relief under section 610.140**. The private entities
14 shall not use or make this information available to any other person for any other
15 purpose.

43.507. 1. All criminal history information, in the possession or control
2 of the central repository, except criminal intelligence and investigative
3 information, may be made available to qualified persons and organizations for

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

4 research, evaluative and statistical purposes under written agreements
5 reasonably designed to ensure the security and confidentiality of the information
6 and the protection of the privacy interests of the individuals who are subjects of
7 the criminal history.

8 **2. Pro-bono clinics and legal aid organizations which seek to**
9 **expunge the records of petitioners at no-charge, pursuant to the**
10 **provisions of section 610.140, shall have access to all criminal history**
11 **information in the possession or control of the central repository,**
12 **except criminal intelligence and investigation, for each petitioner who**
13 **has executed a written agreement with said clinic or organization. In**
14 **these cases, pro-bono clinics and legal aid organizations shall not be**
15 **subject to the provisions of subsection 3 of this section.**

16 **3. Prior to such information being made available, information**
17 **that uniquely identifies the individual shall be deleted. Organizations**
18 **receiving such criminal history information shall not reestablish the**
19 **identity of the individual and associate it with the criminal history**
20 **information being provided.**

610.140. 1. For the purposes of this section, the following terms
2 mean:

3 **(1) "Court", any Missouri municipal, associate circuit, or circuit**
4 **court;**

5 **(2) "Offense", any offense, violation, or infraction of Missouri**
6 **state, county, municipal, or administrative law;**

7 **(3) "Prosecutor" or "prosecuting attorney", the prosecuting**
8 **attorney, circuit attorney, or municipal prosecuting attorney;**

9 **(4) "Same course of criminal conduct", offenses, violations, or**
10 **infractions which:**

11 **(a) Arose under the same criminal statute;**

12 **(b) Involve conduct that is the substantial equivalent of any**
13 **offense, violation, or infraction sought to be expunged; or**

14 **(c) Occur within a time period suggesting a common connection**
15 **between the offenses, not to exceed one year.**

16 **2. Notwithstanding any other provision of law and subject to the**
17 **provisions of this section, any person may apply to any court in which such**
18 **person was charged or found guilty of any offenses[, violations, or infractions] for**
19 **an order to expunge records of such arrest, plea, trial, or conviction.**

20 **(1) Subject to the limitations of subsection [12] 13 of this section, a**

21 person may apply to have one or more offenses[, violations, or infractions]
22 expunged if such offense[, violation, or infraction] occurred within the state of
23 Missouri and was prosecuted under the jurisdiction of a Missouri [municipal,
24 associate circuit, or circuit] court, so long as such person lists all the offenses[,
25 violations, and infractions] he or she is seeking to have expunged in the petition
26 and so long as all such offenses[, violations, and infractions] are not excluded
27 under subsection [2] 3 of this section.

28 (2) If the offenses[, violations, or infractions] were charged as counts in
29 the same indictment or information or were committed as part of the same course
30 of criminal conduct, the person may include all the related offenses[, violations,
31 and infractions] in the petition, regardless of the limits of subsection [12] 13 of
32 this section, and the petition shall only count as a petition for expungement of the
33 highest level violation or offense contained in the petition for the purpose of
34 determining future eligibility for expungement.

35 [2.] 3. The following offenses[, violations, and infractions] shall not be
36 eligible for expungement under this section:

- 37 (1) Any class A felony offense;
- 38 (2) Any dangerous felony as that term is defined in section 556.061;
- 39 (3) Any offense that requires registration as a sex offender;
- 40 (4) Any felony offense where death is an element of the offense;
- 41 (5) Any felony offense of assault; misdemeanor or felony offense of
42 domestic assault; or felony offense of kidnapping;
- 43 (6) Any offense listed, or previously listed, in chapter 566 or section
44 105.454, 105.478, 115.631, 130.028, 188.030, 188.080, 191.677, 194.425, [217.360,]
45 217.385, 334.245, 375.991, 389.653, 455.085, 455.538, 557.035, 565.084, 565.085,
46 565.086, 565.095, 565.120, 565.130, 565.156, 565.200, 565.214, 566.093, 566.111,
47 566.115, 568.020, 568.030, 568.032, 568.045, 568.060, 568.065, 568.080, 568.090,
48 568.175, 569.030, 569.035, 569.040, 569.050, 569.055, 569.060, 569.065, 569.067,
49 569.072, 569.160, 570.025, [570.090, 570.180,] 570.223, 570.224, [570.310,]
50 571.020, 571.060, 571.063, 571.070, 571.072, 571.150, 574.070, 574.105, 574.115,
51 574.120, 574.130, 575.040, 575.095, 575.153, 575.155, 575.157, 575.159, 575.195,
52 575.200, 575.210, 575.220, 575.230, 575.240, 575.350, 575.353, 577.078, 577.703,
53 577.706, 578.008, 578.305, 578.310, or 632.520;
- 54 (7) Any offense eligible for expungement under section 577.054 or 610.130;
- 55 (8) Any intoxication-related traffic or boating offense as defined in section
56 577.001, or any offense of operating an aircraft with an excessive blood alcohol

57 content or while in an intoxicated condition;

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

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

64 (11) Any **felony** offense of section 571.030, except any offense under
65 subdivision (1) of subsection 1 of section 571.030 where the person was convicted
66 or found guilty prior to January 1, 2017.

67 [3.] 4. The petition shall name as defendants all law enforcement
68 agencies, courts, prosecuting or circuit attorneys, municipal prosecuting
69 attorneys, central state repositories of criminal records, or others who the
70 petitioner has reason to believe may possess the records subject to expungement
71 for each of the offenses, violations, and infractions listed in the petition. The
72 court's order of expungement shall not affect any person or entity not named as
73 a defendant in the action.

74 [4.] 5. The petition shall include the following information:

75 (1) The petitioner's:

76 (a) Full name;

77 (b) Sex;

78 (c) Race;

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

80 (e) Current address;

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

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

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

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

90 [5.] 6. The clerk of the court shall give notice of the filing of the petition
91 to the office of the prosecuting attorney, circuit attorney, or municipal prosecuting
92 attorney that prosecuted the offenses[, violations, or infractions] listed in the

93 petition. If the prosecuting attorney, circuit attorney, or municipal prosecuting
94 attorney objects to the petition for expungement, he or she shall do so in writing
95 within thirty days after receipt of service. Unless otherwise agreed upon by the
96 parties, the court shall hold a hearing within sixty days after any written
97 objection is filed, giving reasonable notice of the hearing to the petitioner. If no
98 objection has been filed within thirty days after receipt of service, the court may
99 set a hearing on the matter and shall give reasonable notice of the hearing to
100 each entity named in the petition. At any hearing, the court may accept evidence
101 and hear testimony on, and may consider, the following criteria for each of the
102 offenses[, violations, or infractions] listed in the petition for expungement:

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

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

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

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

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

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

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

129 [6.] 7. A petition to expunge records related to an arrest for an eligible
130 offense[, violation, or infraction] may be made in accordance with the provisions
131 of this section to a court of competent jurisdiction in the county where the
132 petitioner was arrested no earlier than three years from the date of arrest;
133 provided that, during such time, the petitioner has not been charged and the
134 petitioner has not been found guilty of any misdemeanor or felony offense.

135 (1) **Commencing on January 1, 2021, before the central repository**
136 **for criminal history information releases a record to an individual or**
137 **noncriminal justice agency, it shall extract from the record all**
138 **notations of arrests, indictments, or other information relating to the**
139 **initiation of criminal proceedings where:**

140 (a) **Three years have elapsed from the date of arrest;**

141 (b) **No disposition is indicated in the record; and**

142 (c) **Nothing in the record indicates that proceedings seeking**
143 **conviction remain pending.**

144 [7.] 8. If the court determines that such person meets all the criteria set
145 forth in subsection [5] 6 of this section for each of the offenses[, violations, or
146 infractions] listed in the petition for expungement, the court shall enter an order
147 of expungement. In all cases under this section, the court shall issue an order of
148 expungement or dismissal within six months of the filing of the petition. A copy
149 of the order of expungement shall be provided to the petitioner and each entity
150 possessing records subject to the order, and, upon receipt of the order, each entity
151 shall close any record in its possession relating to any offense, violation, or
152 infraction listed in the petition, in the manner established by section
153 610.120. The records and files maintained in any administrative or court
154 proceeding in a [municipal, associate, or circuit] court for any offense[, infraction,
155 or violation] ordered expunged under this section shall be confidential and only
156 available to the parties or by order of the court for good cause shown. The central
157 repository shall request the Federal Bureau of Investigation to expunge the
158 records from its files.

159 [8.] 9. The order shall not limit any of the petitioner's rights that were
160 restricted as a collateral consequence of such person's criminal record, and such
161 rights shall be restored upon issuance of the order of expungement. Except as
162 otherwise provided under this section, the effect of such order shall be to restore
163 such person to the status he or she occupied prior to such arrests, pleas, trials,
164 or convictions as if such events had never taken place. No person as to whom

165 such order has been entered shall be held thereafter under any provision of law
166 to be guilty of perjury or otherwise giving a false statement by reason of his or
167 her failure to recite or acknowledge such arrests, pleas, trials, convictions, or
168 expungement in response to an inquiry made of him or her and no such inquiry
169 shall be made for information relating to an expungement, except the petitioner
170 shall disclose the expunged offense[, violation, or infraction] to any court when
171 asked or upon being charged with any subsequent offense, violation, or
172 infraction. The expunged offense[, violation, or infraction] may be considered a
173 prior offense in determining a sentence to be imposed for any subsequent offense
174 that the person is found guilty of committing.

175 [9.] 10. Notwithstanding the provisions of subsection [8] 9 of this section
176 to the contrary, a person granted an expungement shall disclose any expunged
177 offense[, violation, or infraction] when the disclosure of such information is
178 necessary to complete any application for:

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

181 (2) Any license issued under chapter 313 or permit issued under chapter
182 571;

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

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

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

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

197 An employer shall notify an applicant of the requirements under subdivisions (4)
198 to (6) of this subsection. Notwithstanding any provision of law to the contrary,
199 an expunged offense, violation, or infraction shall not be grounds for automatic
200 disqualification of an applicant, but may be a factor for denying employment, or

201 a professional license, certificate, or permit; except that, an offense, violation, or
202 infraction expunged under the provisions of this section may be grounds for
203 automatic disqualification if the application is for employment under subdivisions
204 (4) to (6) of this subsection.

205 [10.] 11. A person who has been granted an expungement of records
206 pertaining to a misdemeanor or felony offense, an ordinance violation, or an
207 infraction may answer "no" to an employer's inquiry into whether the person has
208 ever been **arrested, charged, or convicted** of a crime if, after the granting of the
209 expungement, the person has no public record of a misdemeanor or felony offense,
210 an ordinance violation, or an infraction. The person, however, shall answer such
211 an inquiry affirmatively and disclose his or her criminal convictions, including
212 any offense or violation expunged under this section or similar law, if the
213 employer is required to exclude applicants with certain criminal convictions from
214 employment due to federal or state law, including corresponding rules and
215 regulations.

216 [11.] 12. If the court determines that the petitioner has not met the
217 criteria for any of the offenses[, violations, or infractions] listed in the petition
218 for expungement or the petitioner has knowingly provided false information in
219 the petition, the court shall enter an order dismissing the petition. Any person
220 whose petition for expungement has been dismissed by the court for failure to
221 meet the criteria set forth in subsection [5] 6 of this section may not refile
222 another petition until a year has passed since the date of filing for the previous
223 petition.

224 [12.] 13. A person may be granted more than one expungement under
225 this section provided that during his or her lifetime, the total number of offenses,
226 violations, or infractions for which orders of expungement are granted to the
227 person shall not exceed the following limits:

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

230 (2) Not more than one felony offense.

231 A person may be granted expungement under this section for any number of
232 infractions. Nothing in this section shall prevent the court from maintaining
233 records to ensure that an individual has not exceeded the limitations of this
234 subsection. Nothing in this section shall be construed to limit or impair in any
235 way the subsequent use of any record expunged under this section of any arrests
236 or findings of guilt by a law enforcement agency, criminal justice agency,

237 prosecuting attorney, circuit attorney, or municipal prosecuting attorney,
238 including its use as a prior offense, violation, or infraction.

239 [13.] 14. The court shall make available a form for pro se petitioners
240 seeking expungement, which shall include the following statement: "I declare
241 under penalty of perjury that the statements made herein are true and correct to
242 the best of my knowledge, information, and belief."

243 [14.] 15. Nothing in this section shall be construed to limit or restrict the
244 availability of expungement to any person under any other law.

Unofficial ✓

Bill

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