

FIRST REGULAR SESSION

HOUSE BILL NO. 1130

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE GARDNER.

0198L.031

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal section 610.140, RSMo, and to enact in lieu thereof one new section relating to expungement of certain records.

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

Section A. Section 610.140, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 610.140, to read as follows:

610.140. 1. Notwithstanding any other provision of law and subject to the provisions of this section, any person may apply to any court in which such person was found guilty of any of the offenses specified in subsection 2 of this section for an order to expunge recordations of such arrest, plea, trial, or conviction. A person may apply to have one or more offenses expunged so long as such person lists all the offenses he or she is seeking to have expunged in the same petition and so long as all such offenses are eligible under subsection 2 of this section.

2. The following offenses are eligible to be expunged when such offenses occurred within the state of Missouri and were prosecuted under the jurisdiction of a Missouri municipal associate or circuit court:

(1) Any [felony or] misdemeanor offense [of passing a bad check under 570.120, fraudulently stopping payment of an instrument under 570.125, or fraudulent use of a credit device or debit device under section 570.130];

(2) Any [misdemeanor offense of sections 569.065, 569.067, 569.090, subdivision (1) of subsection 1 of section 569.120, sections 569.140, 569.145, 572.020, 574.020, or 574.075] **nonviolent felony. As used in this subdivision, "nonviolent felony" means any felony offense that is not committed, conspired to be committed, or attempted to be committed by a person during which, or in the immediate flight therefrom, the person uses, or possesses**

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 **and threatens the use of, a deadly weapon or causes serious bodily injury or death to any**
19 **other person except another participant; or**

20 (3) Any [class B or C misdemeanor offense of section 574.010] **drug-related offense.**

21 3. **Notwithstanding any provision of law, any convictions for sex-related offenses**
22 **shall not be expunged.**

23 4. The petition shall name as defendants all law enforcement agencies, courts,
24 prosecuting or circuit attorneys, central state repositories of criminal records, or others who the
25 petitioner has reason to believe may possess the records subject to expungement for each of the
26 offenses listed in the petition. The court's order of expungement shall not affect any person or
27 entity not named as a defendant in the action.

28 [4.] 5. The petition shall be dismissed if it does not include the following information:

29 (1) The petitioner's:

30 (a) Full name;

31 (b) Sex;

32 (c) Race;

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

34 (e) Current address;

35 (2) Each offense charged against the petitioner for which the petitioner is requesting
36 expungement;

37 (3) The date the petitioner was arrested for each offense;

38 (4) The name of the county where the petitioner was arrested for each offense and if any
39 of the offenses occurred in a municipality, the name of the municipality for each offense;

40 (5) The name of the agency that arrested the petitioner for each offense;

41 (6) The case number and name of the court for each offense; [and]

42 (7) Petitioner's fingerprints on a standard fingerprint card at the time of filing a petition
43 for expungement which will be forwarded to the central repository for the sole purpose of
44 positively identifying the petitioner; **and**

45 **(8) A fee, to be determined by the court.**

46 [5.] 6. The court may set a hearing on the matter no sooner than thirty days from the
47 filing of the petition and shall give reasonable notice of the hearing to each entity named in the
48 petition. At the hearing, the court may accept evidence and hear testimony on, and may consider,
49 the following criteria for each of the offenses listed in the petition for expungement:

50 (1) It has been at least [twenty] **five** years [if the offense is a felony, or at least ten years
51 if the offense is a misdemeanor, municipal offense, or infraction,] since the person making the
52 application completed:

53 (a) Any sentence of imprisonment; or

- 54 (b) Any period of probation or parole;
- 55 (2) The person has not been found guilty of a misdemeanor or felony, not including
- 56 violations of the traffic regulations provided under chapters 304 and 307, during the time period
- 57 specified for the underlying offense in subdivision (1) of this subsection;
- 58 (3) The person has paid any amount of restitution ordered by the court;
- 59 (4) The circumstances and behavior of the petitioner warrant the expungement; and
- 60 (5) The expungement is consistent with the public welfare.

61 [6.] 7. If the court determines at the conclusion of the hearing that such person meets all

62 the criteria set forth in subsection [5] 6 of this section for each of the offenses listed in the

63 petition for expungement, the court may enter an order of expungement. A copy of the order

64 shall be provided to each entity named in the petition, and, upon receipt of the order, each entity

65 shall destroy any record in its possession relating to any offense listed in the petition. If

66 destruction of the record is not feasible because of the permanent nature of the record books,

67 such record entries shall be blacked out. Entries of a record ordered expunged shall be removed

68 from all electronic files maintained with the state of Missouri, except for the files of the court.

69 The records and files maintained in any administrative or court proceeding in a municipal,

70 associate, or circuit court for any offense ordered expunged under this section shall be

71 confidential and only available to the parties or by order of the court for good cause shown. The

72 central repository shall request the Federal Bureau of Investigation to expunge the records from

73 its files.

74 [7.] 8. The order shall not limit any of the petitioner's rights that were restricted as a

75 collateral consequence of such person's criminal record, and such rights shall be restored upon

76 issuance of the order of expungement. Except as otherwise provided under this section, the

77 effect of such order shall be to restore such person to the status he or she occupied prior to such

78 arrests, pleas, trials, or convictions as if such events had never taken place. No person as to

79 whom such order has been entered shall be held thereafter under any provision of law to be guilty

80 of perjury or otherwise giving a false statement by reason of his or her failure to recite or

81 acknowledge such arrests, pleas, trials, convictions, or expungement in response to an inquiry

82 made of him or her and no such inquiry shall be made for information relating to an

83 expungement, except the petitioner shall disclose the expunged offense to any court when asked

84 or upon being charged with any subsequent offense. The expunged offense may be considered

85 a prior offense in determining a sentence to be imposed for any subsequent offense that the

86 person is found guilty of committing.

87 [8.] 9. Notwithstanding the provisions of subsection [7] 8 of this section to the contrary,

88 a person granted an expungement shall disclose any expunged offense when the disclosure of

89 such information is necessary to complete any application for:

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

92 (2) Any license issued under chapter 313; or

93 (3) Paid or unpaid employment with an entity licensed under chapter 313, any
94 state-operated lottery, or any emergency services provider, including any law enforcement
95 agency. Notwithstanding any provision of law to the contrary, an expunged offense shall not be
96 grounds for automatic disqualification of an applicant, but may be a factor for denying
97 employment, or a professional license, certificate, or permit.

98 [9.] **10.** If the court determines that such person has not met the criteria for any of the
99 offenses listed in the petition for expungement, the court shall enter an order dismissing the
100 petition. Any person whose petition for expungement has been dismissed by the court for failure
101 to meet the criteria set forth in subsection [5] **6** of this section may not refile another petition
102 until a year has passed since the date of filing for the previous petition.

103 [10.] **11.** A person may be granted more than one expungement under this section
104 provided that no person shall be granted more than one order of expungement from the same
105 court. Nothing contained in this section shall prevent the court from maintaining records to
106 ensure that an individual has only one petition for expungement granted by such court under this
107 section.

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