

SECOND REGULAR SESSION

[CORRECTED]

# HOUSE BILL NO. 1776

## 99TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE ELLINGTON.

5449H.011

D. ADAM CRUMBLISS, Chief Clerk

### AN ACT

To repeal sections 558.041 and 610.140, RSMo, and to enact in lieu thereof two new sections relating to postconviction procedures.

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

Section A. Sections 558.041 and 610.140, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 558.041 and 610.140, to read as follows:

558.041. 1. Any offender committed to the department of corrections, except those persons committed pursuant to subsection ~~[7]~~ **3 and subdivisions (1) and (2) of subsection 4** of section 558.016, or subsection 3 of section 566.125, ~~[may]~~ **shall** receive additional credit in terms of days spent in confinement ~~[upon recommendation for such credit by the offender's institutional superintendent when]~~ **if** the offender meets the requirements for such credit as provided in subsections 3 and 4 of this section. Good time credit may be rescinded **and restored** by the director or his or her designee pursuant to the divisional policy issued pursuant to subsection 3 of this section.

2. Any credit extended to an offender shall only apply to the sentence which the offender is currently serving.

3. **(1)** The director of the department of corrections shall issue a policy for awarding credit. The policy ~~[may]~~ **shall** reward an ~~[inmate]~~ **offender with ten days per calendar month** who has served his or her sentence in an orderly and peaceable manner and has taken advantage of the **work and** rehabilitation programs available to him or her. Any violation of **major** institutional rules, ~~[or]~~ the laws of this state, **or the accumulation of minor misconduct**

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.

16 **violations exceeding six within a calendar year** may result in the loss of ~~[all or a portion]~~  
17 **portions** of any credit earned by the ~~[inmate]~~ **offender** pursuant to this section.

18 **(2) An offender may receive credit under subdivision (1) of this subsection for**  
19 **participation in rehabilitation programs or activities prior to August 28, 2018, if the**  
20 **director of the department of corrections determines that such programs or activities were**  
21 **the same or equivalent to those made available on or after August 28, 2018. The total time**  
22 **credit an offender may earn under this subsection shall not exceed one hundred twenty**  
23 **days for any calendar year.**

24 4. The department shall cause the policy to be published in the code of state regulations.

25 5. No rule or portion of a rule promulgated under the authority of this chapter shall  
26 become effective unless it has been promulgated pursuant to the provisions of section 536.024.

610.140. ~~[1. Notwithstanding any other provision of law and subject to the provisions~~  
2 ~~of this section, any person may apply to any court in which such person was charged or found~~  
3 ~~guilty of any offenses, violations, or infractions for an order to expunge records of such arrest,~~  
4 ~~plea, trial, or conviction. Subject to the limitations of subsection 12 of this section, a person may~~  
5 ~~apply to have one or more offenses, violations, or infractions expunged if such offense, violation,~~  
6 ~~or infraction occurred within the state of Missouri and was prosecuted under the jurisdiction of~~  
7 ~~a Missouri municipal, associate circuit, or circuit court, so long as such person lists all the~~  
8 ~~offenses, violations, and infractions he or she is seeking to have expunged in the petition and so~~  
9 ~~long as all such offenses, violations, and infractions are not excluded under subsection 2 of this~~  
10 ~~section. If the offenses, violations, or infractions were charged as counts in the same indictment~~  
11 ~~or information or were committed as part of the same course of criminal conduct, the person may~~  
12 ~~include all the related offenses, violations, and infractions in the petition, regardless of the limits~~  
13 ~~of subsection 12 of this section, and the petition shall only count as a petition for expungement~~  
14 ~~of the highest level violation or offense contained in the petition for the purpose of determining~~  
15 ~~future eligibility for expungement.~~

16 ~~2. The following offenses, violations, and infractions shall not be eligible for~~  
17 ~~expungement under this section:~~

18 ~~(1) Any class A felony offense;~~

19 ~~(2) Any dangerous felony as that term is defined in section 556.061;~~

20 ~~(3) Any offense that requires registration as a sex offender;~~

21 ~~(4) Any felony offense where death is an element of the offense;~~

22 ~~(5) Any felony offense of assault, misdemeanor or felony offense of domestic assault;~~  
23 ~~or felony offense of kidnapping;~~

24 ~~(6) Any offense listed, or previously listed, in chapter 566 or section 105.454, 105.478,~~  
25 ~~115.631, 130.028, 188.030, 188.080, 191.677, 194.425, 217.360, 217.385, 334.245, 375.991,~~

26 ~~389.653, 455.085, 455.538, 557.035, 565.084, 565.085, 565.086, 565.095, 565.120, 565.130,~~  
27 ~~565.156, 565.200, 565.214, 566.093, 566.111, 566.115, 568.020, 568.030, 568.032, 568.045,~~  
28 ~~568.060, 568.065, 568.080, 568.090, 568.175, 569.030, 569.035, 569.040, 569.050, 569.055,~~  
29 ~~569.060, 569.065, 569.067, 569.072, 569.100, 569.160, 570.025, 570.030, 570.090, 570.100,~~  
30 ~~570.130, 570.180, 570.223, 570.224, 570.310, 571.020, 571.030, 571.060, 571.063, 571.070,~~  
31 ~~571.072, 571.150, 574.070, 574.105, 574.115, 574.120, 574.130, 575.040, 575.095, 575.153,~~  
32 ~~575.155, 575.157, 575.159, 575.195, 575.200, 575.210, 575.220, 575.230, 575.240, 575.350,~~  
33 ~~575.353, 577.078, 577.703, 577.706, 578.008, 578.305, 578.310, or 632.520;~~

34 ~~—— (7) Any offense eligible for expungement under section 577.054 or 610.130;~~

35 ~~—— (8) Any intoxication-related traffic or boating offense as defined in section 577.001, or~~  
36 ~~any offense of operating an aircraft with an excessive blood alcohol content or while in an~~  
37 ~~intoxicated condition;~~

38 ~~—— (9) Any ordinance violation that is the substantial equivalent of any offense that is not~~  
39 ~~eligible for expungement under this section; and~~

40 ~~—— (10) Any violations of any state law or county or municipal ordinance regulating the~~  
41 ~~operation of motor vehicles when committed by an individual who has been issued a commercial~~  
42 ~~driver's license or is required to possess a commercial driver's license issued by this state or any~~  
43 ~~other state.~~

44 ~~—— 3. The petition shall name as defendants all law enforcement agencies, courts,~~  
45 ~~prosecuting or circuit attorneys, municipal prosecuting attorneys, central state repositories of~~  
46 ~~criminal records, or others who the petitioner has reason to believe may possess the records~~  
47 ~~subject to expungement for each of the offenses, violations, and infractions listed in the petition.~~  
48 ~~The court's order of expungement shall not affect any person or entity not named as a defendant~~  
49 ~~in the action.~~

50 ~~—— 4. The petition shall include the following information:~~

51 ~~—— (1) The petitioner's:~~

52 ~~—— (a) Full name;~~

53 ~~—— (b) Sex;~~

54 ~~—— (c) Race;~~

55 ~~—— (d) Driver's license number, if applicable; and~~

56 ~~—— (e) Current address;~~

57 ~~—— (2) Each offense, violation, or infraction for which the petitioner is requesting~~  
58 ~~expungement;~~

59 ~~—— (3) The approximate date the petitioner was charged for each offense, violation, or~~  
60 ~~infraction; and~~

61 ~~—— (4) The name of the county where the petitioner was charged for each offense, violation;~~  
62 ~~or infraction and if any of the offenses, violations, or infractions occurred in a municipality, the~~  
63 ~~name of the municipality for each offense, violation, or infraction; and~~

64 ~~—— (5) The case number and name of the court for each offense.~~

65 ~~—— 5. The clerk of the court shall give notice of the filing of the petition to the office of the~~  
66 ~~prosecuting attorney, circuit attorney, or municipal prosecuting attorney that prosecuted the~~  
67 ~~offenses, violations, or infractions listed in the petition. If the prosecuting attorney, circuit~~  
68 ~~attorney, or municipal prosecuting attorney objects to the petition for expungement, he or she~~  
69 ~~shall do so in writing within thirty days after receipt of service. Unless otherwise agreed upon~~  
70 ~~by the parties, the court shall hold a hearing within sixty days after any written objection is filed,~~  
71 ~~giving reasonable notice of the hearing to the petitioner. If no objection has been filed within~~  
72 ~~thirty days after receipt of service, the court may set a hearing on the matter and shall give~~  
73 ~~reasonable notice of the hearing to each entity named in the petition. At any hearing, the court~~  
74 ~~may accept evidence and hear testimony on, and may consider, the following criteria for each of~~  
75 ~~the offenses, violations, or infractions listed in the petition for expungement:~~

76 ~~—— (1) It has been at least seven years if the offense is a felony, or at least three years if the~~  
77 ~~offense is a misdemeanor, municipal offense, or infraction, from the date the petitioner~~  
78 ~~completed any authorized disposition imposed under section 557.011 for each offense, violation;~~  
79 ~~or infraction listed in the petition;~~

80 ~~—— (2) The person has not been found guilty of any other misdemeanor or felony, not~~  
81 ~~including violations of the traffic regulations provided under chapters 304 and 307, during the~~  
82 ~~time period specified for the underlying offense, violation, or infraction in subdivision (1) of this~~  
83 ~~subsection;~~

84 ~~—— (3) The person has satisfied all obligations relating to any such disposition, including the~~  
85 ~~payment of any fines or restitution;~~

86 ~~—— (4) The person does not have charges pending;~~

87 ~~—— (5) The petitioner's habits and conduct demonstrate that the petitioner is not a threat to~~  
88 ~~the public safety of the state; and~~

89 ~~—— (6) The expungement is consistent with the public welfare and the interests of justice~~  
90 ~~warrant the expungement.~~

91

92 ~~A pleading by the petitioner that such petitioner meets the requirements of subdivisions (5) and~~  
93 ~~(6) of this subsection shall create a rebuttable presumption that the expungement is warranted~~  
94 ~~so long as the criteria contained in subdivisions (1) to (4) of this subsection are otherwise~~  
95 ~~satisfied. The burden shall shift to the prosecuting attorney, circuit attorney, or municipal~~  
96 ~~prosecuting attorney to rebut the presumption. A victim of an offense, violation, or infraction~~

97 ~~listed in the petition shall have an opportunity to be heard at any hearing held under this section;~~  
98 ~~and the court may make a determination based solely on such victim's testimony.~~

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

104 ~~7. If the court determines that such person meets all the criteria set forth in subsection~~  
105 ~~5 of this section for each of the offenses, violations, or infractions listed in the petition for~~  
106 ~~expungement, the court shall enter an order of expungement. In all cases under this section, the~~  
107 ~~court shall issue an order of expungement or dismissal within six months of the filing of the~~  
108 ~~petition. A copy of the order of expungement shall be provided to the petitioner and each entity~~  
109 ~~possessing records subject to the order, and, upon receipt of the order, each entity shall close any~~  
110 ~~record in its possession relating to any offense, violation, or infraction listed in the petition, in~~  
111 ~~the manner established by section 610.120. The records and files maintained in any~~  
112 ~~administrative or court proceeding in a municipal, associate, or circuit court for any offense,~~  
113 ~~infraction, or violation ordered expunged under this section shall be confidential and only~~  
114 ~~available to the parties or by order of the court for good cause shown. The central repository~~  
115 ~~shall request the Federal Bureau of Investigation to expunge the records from its files.~~

116 ~~8. The order shall not limit any of the petitioner's rights that were restricted as a~~  
117 ~~collateral consequence of such person's criminal record, and such rights shall be restored upon~~  
118 ~~issuance of the order of expungement. Except as otherwise provided under this section, the~~  
119 ~~effect of such order shall be to restore such person to the status he or she occupied prior to such~~  
120 ~~arrests, pleas, trials, or convictions as if such events had never taken place. No person as to~~  
121 ~~whom such order has been entered shall be held thereafter under any provision of law to be guilty~~  
122 ~~of perjury or otherwise giving a false statement by reason of his or her failure to recite or~~  
123 ~~acknowledge such arrests, pleas, trials, convictions, or expungement in response to an inquiry~~  
124 ~~made of him or her and no such inquiry shall be made for information relating to an~~  
125 ~~expungement, except the petitioner shall disclose the expunged offense, violation, or infraction~~  
126 ~~to any court when asked or upon being charged with any subsequent offense, violation, or~~  
127 ~~infraction. The expunged offense, violation, or infraction may be considered a prior offense in~~  
128 ~~determining a sentence to be imposed for any subsequent offense that the person is found guilty~~  
129 ~~of committing.~~

130 ~~9. Notwithstanding the provisions of subsection 8 of this section to the contrary, a~~  
131 ~~person granted an expungement shall disclose any expunged offense, violation, or infraction~~  
132 ~~when the disclosure of such information is necessary to complete any application for:~~

- 133 ~~—— (1) A license, certificate, or permit issued by this state to practice such individual's~~  
134 ~~profession;~~
- 135 ~~—— (2) Any license issued under chapter 313 or permit issued under chapter 571;~~
- 136 ~~—— (3) Paid or unpaid employment with an entity licensed under chapter 313, any~~  
137 ~~state-operated lottery, or any emergency services provider, including any law enforcement~~  
138 ~~agency;~~
- 139 ~~—— (4) Employment with any federally insured bank or savings institution or credit union~~  
140 ~~or an affiliate of such institution or credit union for the purposes of compliance with 12 U.S.C.~~  
141 ~~Section 1829 and 12 U.S.C. Section 1785;~~
- 142 ~~—— (5) Employment with any entity engaged in the business of insurance or any insurer for~~  
143 ~~the purpose of complying with 18 U.S.C. Section 1033, 18 U.S.C. Section 1034, or other similar~~  
144 ~~law which requires an employer engaged in the business of insurance to exclude applicants with~~  
145 ~~certain criminal convictions from employment; or~~
- 146 ~~—— (6) Employment with any employer that is required to exclude applicants with certain~~  
147 ~~criminal convictions from employment due to federal or state law, including corresponding rules~~  
148 ~~and regulations.~~

149

150 ~~An employer shall notify an applicant of the requirements under subdivisions (4) to (6) of this~~  
151 ~~subsection. Notwithstanding any provision of law to the contrary, an expunged offense,~~  
152 ~~violation, or infraction shall not be grounds for automatic disqualification of an applicant, but~~  
153 ~~may be a factor for denying employment, or a professional license, certificate, or permit, except~~  
154 ~~that, an offense, violation, or infraction expunged under the provisions of this section may be~~  
155 ~~grounds for automatic disqualification if the application is for employment under subdivisions~~  
156 ~~(4) to (6) of this subsection.~~

157 ~~—— 10. A person who has been granted an expungement of records pertaining to a~~  
158 ~~misdemeanor or felony offense, an ordinance violation, or an infraction may answer "no" to an~~  
159 ~~employer's inquiry into whether the person has ever been convicted of a crime if, after the~~  
160 ~~granting of the expungement, the person has no public record of a misdemeanor or felony~~  
161 ~~offense, an ordinance violation, or an infraction. The person, however, shall answer such an~~  
162 ~~inquiry affirmatively and disclose his or her criminal convictions, including any offense or~~  
163 ~~violation expunged under this section or similar law, if the employer is required to exclude~~  
164 ~~applicants with certain criminal convictions from employment due to federal or state law,~~  
165 ~~including corresponding rules and regulations.~~

166 ~~—— 11. If the court determines that the petitioner has not met the criteria for any of the~~  
167 ~~offenses, violations, or infractions listed in the petition for expungement or the petitioner has~~  
168 ~~knowingly provided false information in the petition, the court shall enter an order dismissing~~

169 ~~the petition. Any person whose petition for expungement has been dismissed by the court for~~  
170 ~~failure to meet the criteria set forth in subsection 5 of this section may not refile another petition~~  
171 ~~until a year has passed since the date of filing for the previous petition.~~

172 ~~——— 12. A person may be granted more than one expungement under this section provided~~  
173 ~~that during his or her lifetime, the total number of offenses, violations, or infractions for which~~  
174 ~~orders of expungement are granted to the person shall not exceed the following limits:~~

175 ~~——— (1) Not more than two misdemeanor offenses or ordinance violations that have an~~  
176 ~~authorized term of imprisonment; and~~

177 ~~——— (2) Not more than one felony offense.~~

178

179 ~~A person may be granted expungement under this section for any number of infractions. Nothing~~  
180 ~~in this section shall prevent the court from maintaining records to ensure that an individual has~~  
181 ~~not exceeded the limitations of this subsection. Nothing in this section shall be construed to~~  
182 ~~limit or impair in any way the subsequent use of any record expunged under this section of any~~  
183 ~~arrests or findings of guilt by a law enforcement agency, criminal justice agency, prosecuting~~  
184 ~~attorney, circuit attorney, or municipal prosecuting attorney, including its use as a prior offense,~~  
185 ~~violation, or infraction.~~

186 ~~——— 13. The court shall make available a form for pro se petitioners seeking expungement,~~  
187 ~~which shall include the following statement: “I declare under penalty of perjury that the~~  
188 ~~statements made herein are true and correct to the best of my knowledge, information, and~~  
189 ~~belief.”.~~

190 ~~——— 14. Nothing in this section shall be construed to limit or restrict the availability of~~  
191 ~~expungement to any person under any other law.]~~

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

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

203 **(1) All nonviolent offenses, including nonviolent drug offenses; or**

**(2) All misdemeanor offenses.**

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

209           **4. The petition shall be dismissed if it does not include the following information:**

210           **(1) The petitioner's:**

211           **(a) Full name;**

212           **(b) Sex;**

213           **(c) Race;**

214           **(d) Driver's license number, if applicable;**

215           **(e) Current address;**

216           **(f) Date of birth; and**

217           **(g) Social Security number;**

218           **(2) Each offense charged against the petitioner for which the petitioner is**  
219 **requesting expungement;**

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

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

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

225           **(6) The case number and name of the court for each offense; and**

226           **(7) The petitioner's fingerprints on a standard fingerprint card at the time of filing**  
227 **a petition for expungement, which will be forwarded to the central repository for the sole**  
228 **purpose of positively identifying the petitioner.**

229           **5. The court may set a hearing on the matter no sooner than thirty days from the**  
230 **filing of the petition and shall give reasonable notice of the hearing to each entity named**  
231 **in the petition. At the hearing, the court may accept evidence and hear testimony on, and**  
232 **may consider, the following criteria for each of the offenses listed in the petition for**  
233 **expungement:**

234           **(1) At least four years have elapsed since the petitioner has completed:**

235           **(a) His or her imprisonment, if sentenced to jail or prison;**

236           **(b) His or her period of probation, if placed on probation; or**

237           **(c) His or her parole, if placed on parole; and**

238           **(2) The person has:**

239           **(a) Graduated from high school or has received a GED;**



240           **(b) Graduated from an institution of higher education with at least an associate's**  
241 **degree or maintains employment with the same employer for at least two consecutive years**  
242 **prior to filing the petition for expungement;**

243           **(c) Completed seven hundred hours of community service; and**

244           **(d) Not been convicted of a misdemeanor or felony, or been placed on probation for**  
245 **a misdemeanor or felony during the four-year period specified in subdivision (1) of this**  
246 **subsection. For purposes of this paragraph, any moving traffic violations shall not be**  
247 **considered.**

248           **6. If the court determines at the conclusion of the hearing that such person meets**  
249 **all the criteria set forth in subsection 5 of this section for each of the offenses listed in the**  
250 **petition for expungement, the court shall enter an order of expungement. A copy of the**  
251 **order shall be provided to each entity named in the petition, and, upon receipt of the order,**  
252 **each entity shall destroy any record in its possession relating to any offense listed in the**  
253 **petition. If destruction of the record is not feasible because of the permanent nature of the**  
254 **record books, such record entries shall be blacked out. Entries of a record ordered**  
255 **expunged shall be removed from all electronic files maintained with the state of Missouri,**  
256 **except for the files of the court. The records and files maintained in any administrative or**  
257 **court proceeding in a municipal, associate circuit, or circuit court for any offense ordered**  
258 **expunged under this section shall be confidential and only available to the parties or by**  
259 **order of the court for good cause shown. The central repository shall request the Federal**  
260 **Bureau of Investigation to expunge the records from its files.**

261           **7. The order shall not limit any of the petitioner's rights that were restricted as a**  
262 **collateral consequence of such person's criminal record, and such rights shall be restored**  
263 **upon issuance of the order of expungement. Except as otherwise provided under this**  
264 **section, the effect of such order shall be to restore such person to the status he or she**  
265 **occupied prior to such arrests, pleas, trials, or convictions as if such events had never taken**  
266 **place. No person as to whom such order has been entered shall be held thereafter under**  
267 **any provision of law to be guilty of perjury or otherwise giving a false statement by reason**  
268 **of his or her failure to recite or acknowledge such arrests, pleas, trials, convictions, or**  
269 **expungement in response to an inquiry made of him or her and no such inquiry shall be**  
270 **made for information relating to an expungement, except the petitioner shall disclose the**  
271 **expunged offense to any court when asked or upon being charged with any subsequent**  
272 **offense. The expunged offense may be considered a prior offense in determining a sentence**  
273 **to be imposed for any subsequent offense that the person is found guilty of committing.**

274           **8. Notwithstanding the provisions of subsection 7 of this section to the contrary, a**  
275 **person granted an expungement shall disclose any expunged offense if the disclosure of**  
276 **such information is necessary to complete any application for:**

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

279           **(2) Any license issued under chapter 313; or**

280           **(3) Paid or unpaid employment with an entity licensed under chapter 313, any**  
281 **state-operated lottery, or any emergency services provider, including any law enforcement**  
282 **agency.**

283

284 **Notwithstanding any provision of law to the contrary, an expunged offense shall not be**  
285 **grounds for automatic disqualification of an applicant, but may be a factor for denying**  
286 **employment or a professional license, certificate, or permit.**

287           **9. If the court determines that such person has not met the criteria for any of the**  
288 **offenses listed in the petition for expungement, the court shall enter an order dismissing**  
289 **the petition. Any person whose petition for expungement has been dismissed by the court**  
290 **for failure to meet the criteria set forth in subsection 5 of this section may refile such**  
291 **petition as soon as all criteria have been met for each of the offenses listed in the petition.**

292           **10. A person may be granted more than one expungement under this section**  
293 **provided that no person shall be granted more than one order of expungement from the**  
294 **same court. Nothing contained in this section shall prevent the court from maintaining**  
295 **records to ensure that an individual has only one petition for expungement granted by such**  
296 **court under this section.**

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