

SECOND REGULAR SESSION

SENATE BILL NO. 1031

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR NASHEED.

Read 1st time February 24, 2020, and ordered printed.

ADRIANE D. CROUSE, Secretary.

5215S.011

AN ACT

To repeal section 610.140, RSMo, and to enact in lieu thereof one new section relating to expungement of certain criminal 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Section A. Section 610.140, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 610.140, to read as follows: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 charged or found guilty of any offenses, violations, or infractions for an order to expunge records of such arrest, plea, trial, or conviction. [Subject to the limitations of subsection 12 of this section,] A person may apply to have one or more offenses, violations, or infractions expunged if such offense, violation, or infraction occurred within the state of Missouri and was prosecuted under the jurisdiction of a Missouri municipal, associate circuit, or circuit court, so long as such person lists all the offenses, violations, and infractions he or she is seeking to have expunged in the petition and so long as all such offenses, violations, and infractions are not excluded under subsection 2 of this section. If the offenses, violations, or infractions were charged as counts in the same indictment or information or were committed as part of the same course of criminal conduct, the person may include all the related offenses, violations, and infractions in the petition[, regardless of the limits of subsection 12 of this section,] and the petition shall only count as a petition for expungement of the highest level violation or offense contained in the petition for the purpose of determining future eligibility for expungement.

2. The following offenses, violations, and infractions shall not be eligible

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

20 for expungement under this section:

- 21 (1) Any class A felony offense;
- 22 (2) Any dangerous felony as that term is defined in section 556.061;
- 23 (3) Any offense that requires registration as a sex offender;
- 24 (4) Any felony offense where death is an element of the offense;
- 25 (5) Any felony offense of assault; misdemeanor or felony offense of
- 26 domestic assault; or felony offense of kidnapping;
- 27 (6) Any offense listed, or previously listed, in chapter 566 or section
- 28 105.454, 105.478, 115.631, 130.028, 188.030, 188.080, 191.677, 194.425, 217.360,
- 29 217.385, 334.245, 375.991, 389.653, 455.085, 455.538, 557.035, 565.084, 565.085,
- 30 565.086, 565.095, 565.120, 565.130, 565.156, 565.200, 565.214, 566.093, 566.111,
- 31 566.115, 568.020, 568.030, 568.032, 568.045, 568.060, 568.065, 568.080, 568.090,
- 32 568.175, 569.030, 569.035, 569.040, 569.050, 569.055, 569.060, 569.065, 569.067,
- 33 569.072, 569.160, 570.025, 570.090, 570.180, 570.223, 570.224, 570.310, 571.020,
- 34 571.060, 571.063, 571.070, 571.072, 571.150, 574.070, 574.105, 574.115, 574.120,
- 35 574.130, 575.040, 575.095, 575.153, 575.155, 575.157, 575.159, 575.195, 575.200,
- 36 575.210, 575.220, 575.230, 575.240, 575.350, 575.353, 577.078, 577.703, 577.706,
- 37 578.008, 578.305, 578.310, or 632.520;
- 38 (7) Any offense eligible for expungement under section 577.054 or 610.130;
- 39 (8) Any intoxication-related traffic or boating offense as defined in section
- 40 577.001, or any offense of operating an aircraft with an excessive blood alcohol
- 41 content or while in an intoxicated condition;
- 42 (9) Any ordinance violation that is the substantial equivalent of any
- 43 offense that is not eligible for expungement under this section;
- 44 (10) Any violation of any state law or county or municipal ordinance
- 45 regulating the operation of motor vehicles when committed by an individual who
- 46 has been issued a commercial driver's license or is required to possess a
- 47 commercial driver's license issued by this state or any other state; and
- 48 (11) Any offense of section 571.030, except any offense under subdivision
- 49 (1) of subsection 1 of section 571.030 where the person was convicted or found
- 50 guilty prior to January 1, 2017.

51 3. The petition shall name as defendants all law enforcement agencies,

52 courts, prosecuting or circuit attorneys, municipal prosecuting attorneys, central

53 state repositories of criminal records, or others who the petitioner has reason to

54 believe may possess the records subject to expungement for each of the offenses,

55 violations, and infractions listed in the petition. The court's order of

56 expungement shall not affect any person or entity not named as a defendant in
57 the action.

58 4. The petition shall include the following information:

59 (1) The petitioner's:

60 (a) Full name;

61 (b) Sex;

62 (c) Race;

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

64 (e) Current address;

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

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

69 (4) The name of the county where the petitioner was charged for each
70 offense, violation, or infraction and if any of the offenses, violations, or infractions
71 occurred in a municipality, the name of the municipality for each offense,
72 violation, or infraction; and

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

74 5. The clerk of the court shall give notice of the filing of the petition to the
75 office of the prosecuting attorney, circuit attorney, or municipal prosecuting
76 attorney that prosecuted the offenses, violations, or infractions listed in the
77 petition. If the prosecuting attorney, circuit attorney, or municipal prosecuting
78 attorney objects to the petition for expungement, he or she shall do so in writing
79 within thirty days after receipt of service. Unless otherwise agreed upon by the
80 parties, the court shall hold a hearing within sixty days after any written
81 objection is filed, giving reasonable notice of the hearing to the petitioner. If no
82 objection has been filed within thirty days after receipt of service, the court may
83 set a hearing on the matter and shall give reasonable notice of the hearing to
84 each entity named in the petition. At any hearing, the court may accept evidence
85 and hear testimony on, and may consider, the following criteria for each of the
86 offenses, violations, or infractions listed in the petition for expungement:

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

92 (2) The person has not been found guilty of any other misdemeanor or
93 felony, not including violations of the traffic regulations provided under chapters
94 304 and 307, during the time period specified for the underlying offense,
95 violation, or infraction in subdivision (1) of this subsection;

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

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

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

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

103 A pleading by the petitioner that such petitioner meets the requirements of
104 subdivisions (5) and (6) of this subsection shall create a rebuttable presumption
105 that the expungement is warranted so long as the criteria contained in
106 subdivisions (1) to (4) of this subsection are otherwise satisfied. The burden shall
107 shift to the prosecuting attorney, circuit attorney, or municipal prosecuting
108 attorney to rebut the presumption. A victim of an offense, violation, or infraction
109 listed in the petition shall have an opportunity to be heard at any hearing held
110 under this section, and the court may make a determination based solely on such
111 victim's testimony.

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

118 7. If the court determines that such person meets all the criteria set forth
119 in subsection 5 of this section for each of the offenses, violations, or infractions
120 listed in the petition for expungement, the court shall enter an order of
121 expungement. In all cases under this section, the court shall issue an order of
122 expungement or dismissal within six months of the filing of the petition. A copy
123 of the order of expungement shall be provided to the petitioner and each entity
124 possessing records subject to the order, and, upon receipt of the order, each entity
125 shall close any record in its possession relating to any offense, violation, or
126 infraction listed in the petition, in the manner established by section
127 610.120. The records and files maintained in any administrative or court

128 proceeding in a municipal, associate, or circuit court for any offense, infraction,
129 or violation ordered expunged under this section shall be confidential and only
130 available to the parties or by order of the court for good cause shown. The central
131 repository shall request the Federal Bureau of Investigation to expunge the
132 records from its files.

133 8. The order shall not limit any of the petitioner's rights that were
134 restricted as a collateral consequence of such person's criminal record, and such
135 rights shall be restored upon issuance of the order of expungement. Except as
136 otherwise provided under this section, the effect of such order shall be to restore
137 such person to the status he or she occupied prior to such arrests, pleas, trials,
138 or convictions as if such events had never taken place. No person as to whom
139 such order has been entered shall be held thereafter under any provision of law
140 to be guilty of perjury or otherwise giving a false statement by reason of his or
141 her failure to recite or acknowledge such arrests, pleas, trials, convictions, or
142 expungement in response to an inquiry made of him or her and no such inquiry
143 shall be made for information relating to an expungement, except the petitioner
144 shall disclose the expunged offense, violation, or infraction to any court when
145 asked or upon being charged with any subsequent offense, violation, or
146 infraction. The expunged offense, violation, or infraction may be considered a
147 prior offense in determining a sentence to be imposed for any subsequent offense
148 that the person is found guilty of committing.

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

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

155 (2) Any license issued under chapter 313 or permit issued under chapter
156 571;

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

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

163 (5) Employment with any entity engaged in the business of insurance or

164 any insurer for the purpose of complying with 18 U.S.C. Section 1033, 18 U.S.C.
165 Section 1034, or other similar law which requires an employer engaged in the
166 business of insurance to exclude applicants with certain criminal convictions from
167 employment; or

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

171 An employer shall notify an applicant of the requirements under subdivisions (4)
172 to (6) of this subsection. Notwithstanding any provision of law to the contrary,
173 an expunged offense, violation, or infraction shall not be grounds for automatic
174 disqualification of an applicant, but may be a factor for denying employment, or
175 a professional license, certificate, or permit; except that, an offense, violation, or
176 infraction expunged under the provisions of this section may be grounds for
177 automatic disqualification if the application is for employment under subdivisions
178 (4) to (6) of this subsection.

179 10. A person who has been granted an expungement of records pertaining
180 to a misdemeanor or felony offense, an ordinance violation, or an infraction may
181 answer "no" to an employer's inquiry into whether the person has ever been
182 convicted of a crime if, after the granting of the expungement, the person has no
183 public record of a misdemeanor or felony offense, an ordinance violation, or an
184 infraction. The person, however, shall answer such an inquiry affirmatively and
185 disclose his or her criminal convictions, including any offense or violation
186 expunged under this section or similar law, if the employer is required to exclude
187 applicants with certain criminal convictions from employment due to federal or
188 state law, including corresponding rules and regulations.

189 11. If the court determines that the petitioner has not met the criteria for
190 any of the offenses, violations, or infractions listed in the petition for
191 expungement or the petitioner has knowingly provided false information in the
192 petition, the court shall enter an order dismissing the petition. Any person whose
193 petition for expungement has been dismissed by the court for failure to meet the
194 criteria set forth in subsection 5 of this section may not refile another petition
195 until a year has passed since the date of filing for the previous petition.

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

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

202 (2) Not more than one felony offense.

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

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

215 [14.] 13. Nothing in this section shall be construed to limit or restrict the
216 availability of expungement to any person under any other law.

Bill ✓

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