

SENATE BILL NO. 861

102ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR WILLIAMS.

3695S.01H

KRISTINA MARTIN, Secretary

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.

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Section A. Sections 43.504, 43.507, and 610.140, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 43.504, 43.507, and 610.140, to read as follows:

43.504. 1. Notwithstanding section 610.120, the sheriff of any county, the sheriff of the City of St. Louis, and the judges of the circuit courts of this state may make available, for review, information obtained from the central repository to private entities responsible for probation supervision pursuant to sections 559.600 to 559.615, **as well as to expungement clinics or legal aid organizations for the purposes of pursuing relief under section 610.140.** When the term of probation is completed or when the material is no longer needed for purposes related to the probation **or expungement,** it shall be returned to the court or destroyed. Criminal history information obtained from the central repository may be made available to private entities responsible for providing services associated with drug treatment courts under sections 478.001 to 478.008 **and to expungement clinics or legal aid organizations for the purposes of pursuing relief under section 610.140.** The

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

18 private entities shall not use or make this information
19 available to any other person for any other purpose.

20 **2. For the purposes of this section, "expungement**
21 **clinic" means a pro bono service provider established by the**
22 **Missouri Bar, a local or specialty bar association as**
23 **identified by the Missouri Bar, or a nonprofit organization**
24 **located in Missouri providing legal services to indigent**
25 **citizens of Missouri.**

43.507. 1. All criminal history information, in the
2 possession or control of the central repository, except
3 criminal intelligence and investigative information, may be
4 made available to qualified persons and organizations for
5 research, evaluative and statistical purposes under written
6 agreements reasonably designed to ensure the security and
7 confidentiality of the information and the protection of the
8 privacy interests of the individuals who are subjects of the
9 criminal history.

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

20 **3. Prior to such information being made available,**
21 **information that uniquely identifies the individual shall be**
22 **deleted. Organizations receiving such criminal history**
23 **information shall not reestablish the identity of the**

24 individual and associate it with the criminal history
25 information being provided.

26 4. For purposes of this section, "expungement clinic"
27 means a pro bono service provider established by the
28 Missouri Bar, a local or specialty bar association as
29 identified by the Missouri Bar, or a nonprofit organization
30 located in Missouri providing legal services to indigent
31 citizens of Missouri.

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

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

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

7 (3) "Extended course of criminal conduct", crimes
8 which:

9 (a) Occur during a period of addiction, however long,
10 in which a person suffers from a problematic pattern of use
11 of one or more intoxicating controlled substances leading to
12 significant impairment or distress that would be
13 characterized as moderate or severe by the most recently
14 published Diagnostic and Statistical Manual of Mental
15 Disorders (DSM). A clinical diagnosis of addiction is not
16 required to prove addiction; or

17 (b) Occur while a person is between the ages of
18 sixteen to twenty-five;

19 (4) "Prosecutor" or "prosecuting attorney", the
20 prosecuting attorney, circuit attorney, or municipal
21 prosecuting attorney;

22 (5) "Same course of criminal conduct", crimes which:

23 (a) Are charged as counts in the same indictment or
24 information; or

25 **(b) Occur within a time period suggesting a common**
26 **connection between the offenses, not to exceed one year.**

27 **2.** Notwithstanding any other provision of law and
28 subject to the provisions of this section, any person may
29 apply to any court in which such person was charged or found
30 guilty of any [offenses, violations, or infractions] **crimes**
31 for an order to expunge records of such arrest, plea, trial,
32 or conviction.

33 **(1)** Subject to the limitations of subsection [12] **13**
34 of this section, a person may apply to have one or more
35 [offenses, violations, or infractions] **crimes** expunged if
36 **each** such [offense, violation, or infraction] **crime** occurred
37 within the state of Missouri and was prosecuted under the
38 jurisdiction of a Missouri [municipal, associate circuit, or
39 circuit] court, so long as such person lists all the
40 [offenses, violations, and infractions] **crimes** he or she is
41 seeking to have expunged in the petition and so long as all
42 such [offenses, violations, and infractions] **crimes** are not
43 excluded under subsection [2] **3** of this section.

44 **(2)** If the [offenses, violations, or infractions were
45 charged as counts in the same indictment or information or]
46 **crimes sought to be expunged** were committed as part of the
47 same course of criminal conduct, the person may include all
48 the **such** related [offenses, violations, and infractions]
49 **crimes** in the petition, regardless of the limits of
50 subsection [12] **13** of this section, and [the petition] **those**
51 **related crimes** shall only count as [a petition for
52 expungement of] the highest level [violation or offense
53 contained in the petition] for the purpose of determining
54 **current and** future eligibility for expungement.

55 (3) If the crimes sought to be expunged were committed
56 as part of an extended course of criminal conduct, the
57 person may include all such related crimes in the petition:

58 (a) The person may include all crimes that were
59 committed during that period in the petition for those
60 crimes committed during a period of addiction, regardless of
61 the limits of subsection 13 of this section, and those
62 crimes shall count only as the highest level among them for
63 the purpose of determining current and future eligibility
64 for expungement.

65 (b) The person may include all crimes that were
66 committed during that period in the petition for those
67 crimes committed while a person was between the ages of
68 sixteen and twenty-five, regardless of the limits of
69 subsection 13 of this section, and those crimes shall count
70 only as the highest level among them for the purpose of
71 determining current and future eligibility for expungement.

72 [2.] 3. The following [offenses, violations, and
73 infractions] **crimes** shall not be eligible for expungement
74 under this section:

75 (1) Any class A felony offense;

76 (2) Any dangerous felony as that term is defined in
77 section 556.061;

78 (3) Any offense **at the time of conviction** that
79 requires registration as a sex offender;

80 (4) Any felony offense where death is an element of
81 the offense;

82 (5) Any felony offense of assault; misdemeanor or
83 felony offense of domestic assault; or felony offense of
84 kidnapping;

85 (6) Any offense listed, [or] previously listed, **or is**
86 **a successor to an offense** in chapter 566 or section 105.454,

87 105.478, 115.631, 130.028, 188.030, 188.080, 191.677,
88 194.425, [217.360,]217.385, 334.245, 375.991, 389.653,
89 455.085, 455.538, 557.035, [565.084, 565.085, 565.086,
90 565.095,]565.120, 565.130, 565.156, [565.200,
91 565.214,]566.093, 566.111, 566.115, **566.116**, 568.020,
92 568.030, 568.032, 568.045, 568.060, 568.065, [568.080,
93 568.090,]568.175, [569.030, 569.035,]569.040, 569.050,
94 569.055, 569.060, 569.065, 569.067, 569.072, 569.160,
95 570.025, [570.090,]570.180, 570.223, 570.224,
96 [570.310,]571.020, 571.060, 571.063, 571.070, 571.072,
97 571.150, **573.200**, **573.205**, 574.070, 574.105, 574.115,
98 574.120, 574.130, **574.140**, 575.040, 575.095, 575.153,
99 575.155, 575.157, 575.159, 575.195, 575.200, 575.210,
100 575.220, 575.230, 575.240, [575.350,]575.353, 577.078,
101 577.703, 577.706, [578.008, 578.305, 578.310,] or 632.520;

102 (7) Any offense eligible for expungement under section
103 [577.054 or] 610.130;

104 (8) Any intoxication-related traffic or boating
105 offense as defined in section 577.001, or any offense of
106 operating an aircraft with an excessive blood alcohol
107 content or while in an intoxicated condition;

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

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

117 (11) Any **felony** offense of section 571.030, except any
118 offense under subdivision (1) of subsection 1 of section

119 571.030 where the person was convicted or found guilty prior
120 to January 1, 2017, or any offense under subdivision (4) of
121 subsection 1 of section 571.030.

122 [3.] 4. The petition shall name as defendants all law
123 enforcement agencies, courts, prosecuting or circuit
124 attorneys, [municipal prosecuting attorneys,] central state
125 repositories of criminal records, or others who the
126 petitioner has reason to believe may possess the records
127 subject to expungement for each of the [offenses,
128 violations, and infractions] **crimes** listed in the petition.
129 The court's order of expungement shall not affect any person
130 or entity not named as a defendant in the action.

131 [4.] 5. The petition shall include the following
132 information:

133 (1) The petitioner's:

134 (a) Full name;

135 (b) Sex;

136 (c) Race;

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

138 (e) Current address;

139 (2) Each [offense, violation, or infraction] **crime** for
140 which the petitioner is requesting expungement;

141 (3) The approximate date the petitioner was charged
142 for each [offense, violation, or infraction] **crime**; and

143 (4) The name of the county where the petitioner was
144 charged for each [offense, violation, or infraction] **crime**
145 and if any of the [offenses, violations, or infractions]
146 **crimes** occurred in a municipality, the name of the
147 municipality for each [offense, violation, or infraction]
148 **crime**; and

149 (5) The case number and name of the court for each
150 [offense] **crime**.

151 [5.] 6. The clerk of the court shall give notice of
152 the filing of the petition to the office of the prosecuting
153 attorney[,] or circuit attorney[, or municipal prosecuting
154 attorney] that prosecuted the [offenses, violations, or
155 infractions] **crimes** listed in the petition. If the
156 prosecuting attorney, circuit attorney, or municipal
157 prosecuting attorney objects to the petition for
158 expungement, he or she shall do so in writing within thirty
159 days after receipt of service. Unless otherwise agreed upon
160 by the parties, the court shall hold a hearing within sixty
161 days after any written objection is filed, giving reasonable
162 notice of the hearing to the petitioner. If no objection
163 has been filed within thirty days after receipt of service,
164 the court may set a hearing on the matter and shall give
165 reasonable notice of the hearing to each entity named in the
166 petition. At any hearing, the court may accept evidence and
167 hear testimony on, and may consider, the following criteria
168 for each of the [offenses, violations, or infractions]
169 **crimes** listed in the petition for expungement:

170 (1) At the time the petition is filed, it has been at
171 least three years if the offense is a felony, or at least
172 one year if the offense is a misdemeanor, municipal
173 [offense] **violation**, or infraction, from the date the
174 petitioner completed any authorized disposition imposed
175 under section 557.011 for each [offense, violation, or
176 infraction] **crime** listed in the petition;

177 (2) **At the time the petition is filed, it has been at**
178 **least ten years from the date on which the authorized**
179 **dispositions imposed under section 557.011 for all crimes**
180 **committed within the relevant period have been completed if**
181 **the crimes sought to be expunged were committed as part of**
182 **the same course of criminal conduct or as part of an**

183 **extended course of criminal conduct under subdivisions (1)**
184 **and (2) of subsection 2 of this section;**

185 **(3)** At the time the petition is filed, the person has
186 not been found guilty of any other misdemeanor or felony,
187 not including violations of the traffic regulations provided
188 under chapters 301, 302, 303, 304, and 307, during the time
189 period specified for the underlying [offense, violation, or
190 infraction] **crime** in subdivision (1) of this subsection **or**
191 **it has been at least three years if the offense is a felony,**
192 **or at least one year if the offense is a misdemeanor,**
193 **municipal violation, or infraction, from the date the**
194 **petitioner completed any authorized disposition imposed**
195 **under section 557.011 for each crime listed in the petition;**

196 [(3)] **(4)** The person has satisfied all obligations
197 relating to any such disposition, including the payment of
198 any fines or restitution;

199 [(4)] **(5)** The person does not have charges pending;

200 [(5)] **(6)** The petitioner's habits and conduct
201 demonstrate that the petitioner is not a threat to the
202 public safety of the state; and

203 [(6)] **(7)** The expungement is consistent with the
204 public welfare and the interests of justice warrant the
205 expungement.

206 A pleading by the petitioner that such petitioner meets the
207 requirements of subdivisions [(5)] **(6)** and [(6)] **(7)** of this
208 subsection shall create a rebuttable presumption that the
209 expungement is warranted so long as the criteria contained
210 in subdivisions (1) to [(4)] **(5)** of this subsection are
211 otherwise satisfied. The burden shall shift to the
212 prosecuting attorney[,] **or** circuit attorney[, or municipal
213 prosecuting attorney] to rebut the presumption. A victim of

214 [an offense, violation, or infraction] a **crime** listed in the
215 petition shall have an opportunity to be heard at any
216 hearing held under this section[, and the court may make a
217 determination based solely on such victim's testimony]. **A**
218 **court may find that the continuing impact of the offense**
219 **upon the victim rebuts the presumption that expungement is**
220 **warranted.**

221 [6.] 7. A petition to expunge records related to an
222 arrest for an eligible [offense, violation, or infraction]
223 **crime** may be made in accordance with the provisions of this
224 section to a court of competent jurisdiction in the county
225 where the petitioner was arrested no earlier than [three
226 years] **eighteen months** from the date of arrest; provided
227 that, during such time, the petitioner has not been charged
228 and the petitioner has not been found guilty of any
229 misdemeanor or felony offense.

230 [7.] 8. If the court determines that such person meets
231 all the criteria set forth in subsection [5] 6 of this
232 section for each of the [offenses, violations, or
233 infractions] **crimes** listed in the petition for expungement,
234 the court shall enter an order of expungement. In all cases
235 under this section, the court shall issue an order of
236 expungement or dismissal within six months of the filing of
237 the petition. A copy of the order of expungement shall be
238 provided to the petitioner and each entity possessing
239 records subject to the order, and, upon receipt of the
240 order, each entity shall close any record in its possession
241 relating to any [offense, violation, or infraction] **crime**
242 listed in the petition, in the manner established by section
243 610.120. The records and files maintained in any
244 administrative or court proceeding in a municipal,
245 associate, or circuit court for any [offense, infraction, or

246 violation] **crime** ordered expunged under this section shall
247 be confidential and only available to the parties or by
248 order of the court for good cause shown. The central
249 repository shall request the Federal Bureau of Investigation
250 to expunge the records from its files.

251 [8.] **9.** The order shall not limit any of the
252 petitioner's rights that were restricted as a collateral
253 consequence of such person's criminal record, and such
254 rights shall be restored upon issuance of the order of
255 expungement. **Except as otherwise provided under this**
256 **section, the effect of such order shall be to fully restore**
257 **the civil rights of such person to the status he or she**
258 **occupied prior to such arrests, pleas, trials, or**
259 **convictions as if such events had never taken place. This**
260 **includes fully restoring the civil rights of a person to the**
261 **right to vote, the right to hold public office, and to serve**
262 **as a juror.** For purposes of 18 U.S.C. Section
263 921(a)(33)(B)(ii), an order [or] **of** expungement granted
264 pursuant to this section shall be considered a complete
265 removal of all effects of the expunged conviction. Except
266 as otherwise provided under this section, the effect of such
267 order shall be to restore such person to the status he or
268 she occupied prior to such arrests, pleas, trials, or
269 convictions as if such events had never taken place. No
270 person as to whom such order has been entered shall be held
271 thereafter under any provision of law to be guilty of
272 perjury or otherwise giving a false statement by reason of
273 his or her failure to recite or acknowledge such arrests,
274 pleas, trials, convictions, or expungement in response to an
275 inquiry made of him or her and no such inquiry shall be made
276 for information relating to an expungement, except the
277 petitioner shall disclose the expunged [offense, violation,

278 or infraction] **crime** to any court when asked or upon being
279 charged with any subsequent [offense, violation, or
280 infraction] **crime**. The expunged [offense, violation, or
281 infraction] **crime** may be considered a prior offense in
282 determining a sentence to be imposed for any subsequent
283 offense that the person is found guilty of committing.

284 [9.] 10. Notwithstanding the provisions of subsection
285 [8] 9 of this section to the contrary, a person granted an
286 expungement shall disclose any expunged [offense, violation,
287 or infraction] **crime** when the disclosure of such information
288 is necessary to complete any application for:

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

291 (2) Any license issued under chapter 313 or permit
292 issued under chapter 571;

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

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

301 (5) Employment with any entity engaged in the business
302 of insurance or any insurer for the purpose of complying
303 with 18 U.S.C. Section 1033, 18 U.S.C. Section 1034, or
304 other similar law which requires an employer engaged in the
305 business of insurance to exclude applicants with certain
306 criminal convictions from employment; or

307 (6) Employment with any employer that is required to
308 exclude applicants with certain criminal convictions from

309 employment due to federal or state law, including
310 corresponding rules and regulations.

311 An employer shall notify an applicant of the requirements
312 under subdivisions (4) to (6) of this subsection.
313 Notwithstanding any provision of law to the contrary, an
314 expunged [offense, violation, or infraction] **crime** shall not
315 be grounds for automatic disqualification of an applicant,
316 but may be a factor for denying employment, or a
317 professional license, certificate, or permit; except that,
318 [an offense, violation, or infraction] **a crime** expunged
319 under the provisions of this section may be grounds for
320 automatic disqualification if the application is for
321 employment under subdivisions (4) to (6) of this subsection.

322 [10.] **11.** A person who has been granted an expungement
323 of records pertaining to a [misdemeanor or felony offense,
324 an ordinance violation, or an infraction] **crime** may answer
325 "no" to an employer's inquiry into whether the person has
326 ever been **arrested, charged, or** convicted of a crime if,
327 after the granting of the expungement, the person has no
328 public record of a [misdemeanor or felony offense, an
329 ordinance violation, or an infraction] **crime**. The person,
330 however, shall answer such an inquiry affirmatively and
331 disclose his or her criminal convictions, including any
332 offense [or violation] expunged under this section or
333 similar law, if the employer is required to exclude
334 applicants with certain criminal convictions from employment
335 due to federal or state law, including corresponding rules
336 and regulations.

337 [11.] **12.** If the court determines that the petitioner
338 has not met the criteria for any of the [offenses,
339 violations, or infractions] **crimes** listed in the petition

340 for expungement or the petitioner has knowingly provided
341 false information in the petition, the court shall enter an
342 order dismissing the petition. Any person whose petition
343 for expungement has been dismissed by the court for failure
344 to meet the criteria set forth in subsection [5] 6 of this
345 section may not refile another petition until a year has
346 passed since the date of filing for the previous petition.

347 [12.] 13. A person may be granted more than one
348 expungement under this section provided that during his or
349 her lifetime, the total number of [offenses, violations, or
350 infractions] **crimes** for which orders of expungement are
351 granted to the person shall not exceed the following limits:

352 (1) Not more than [two] **three** misdemeanor offenses or
353 ordinance violations that have an authorized term of
354 imprisonment; and

355 (2) Not more than [one] **two** felony [offense] **offenses**.

356 A person may be granted expungement under this section for
357 any number of infractions. [Nothing in this section shall
358 prevent the court from maintaining records to ensure that an
359 individual has not exceeded the limitations of this
360 subsection] **A person may not be granted an expungement both
361 under subdivisions (1) and (2) of subsection 2 of this
362 section.** Nothing in this section shall be construed to
363 limit or impair in any way the subsequent use of any record
364 expunged under this section of any arrests or findings of
365 guilt by a law enforcement agency, criminal justice agency,
366 prosecuting attorney[,] **or** circuit attorney[, or municipal
367 prosecuting attorney,] including its use as a prior
368 [offense, violation, or infraction] **crime**.

369 [13.] 14. The court shall make available a form for
370 pro se petitioners seeking expungement, which shall include

371 the following statement: "I declare under penalty of
372 perjury that the statements made herein are true and correct
373 to the best of my knowledge, information, and belief."

374 [14.] 15. Nothing in this section shall be construed
375 to limit or restrict the availability of expungement to any
376 person under any other law.

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