

SECOND REGULAR SESSION

SENATE BILL NO. 952

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR WILLIAMS.

Read 1st time January 30, 2020, and ordered printed.

ADRIANE D. CROUSE, Secretary.

4697S.011

AN ACT

To repeal sections 488.650 and 610.140, RSMo, and to enact in lieu thereof two new sections relating to the expungement of records.

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

Section A. Sections 488.650 and 610.140, RSMo, are repealed and two new
2 sections enacted in lieu thereof, to be known as sections 488.650 and 610.140, to
3 read as follows:

488.650. There shall be assessed as costs a surcharge in the amount of
2 [two hundred fifty] **one hundred** dollars on all petitions for expungement filed
3 under the provisions of section 610.140. [The] **In their complete discretion,**
4 **a judge** may waive the surcharge if the petitioner is found by the judge to be
5 indigent and unable to pay the costs. Such surcharge shall be collected and
6 disbursed by the clerk of the court as provided by sections 488.010 to
7 488.020. Moneys collected from this surcharge shall be payable to the general
8 revenue fund.

610.140. 1. Notwithstanding any other provision of law and subject to the
2 provisions of this section, any person may apply to any court in which such
3 person was charged or found guilty of any offenses, violations, or infractions for
4 an order to expunge records of such arrest, plea, trial, or conviction. Subject to
5 the limitations of subsection 12 of this section, a person may apply to have one
6 or more offenses, violations, or infractions expunged if such offense, violation, or
7 infraction occurred within the state of Missouri and was prosecuted under the
8 jurisdiction of a Missouri municipal, associate circuit, or circuit court, so long as
9 such person lists all the offenses, violations, and infractions he or she is seeking
10 to have expunged in the petition and so long as all such offenses, violations, and

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

11 infractions are not excluded under subsection 2 of this section. If the offenses,
12 violations, or infractions were charged as counts in the same indictment or
13 information or were committed as part of the same course of criminal conduct, the
14 person may include all the related offenses, violations, and infractions in the
15 petition, regardless of the limits of subsection 12 of this section, and the petition
16 shall only count as a petition for expungement of the highest level violation or
17 offense contained in the petition for the purpose of determining future eligibility
18 for expungement.

19 2. The following offenses, violations, and infractions shall not be eligible
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,
31 566.111, 566.115, **566.116**, 568.020, 568.030, 568.032, 568.045, 568.060, 568.065,
32 [568.080, 568.090,] 568.175, [569.030, 569.035,] 569.040, 569.050, 569.055,
33 569.060, 569.065, [569.067, 569.072,] 569.160, 570.025, 570.090, 570.180, 570.223,
34 570.224, 570.310, 571.020, 571.060, 571.063, 571.070, 571.072, 571.150, **573.200**,
35 **573.205**, 574.070, 574.105, 574.115, 574.120, 574.130, 575.040, 575.095, 575.153,
36 575.155, 575.157, 575.159, 575.195, 575.200, 575.210, 575.220, 575.230, 575.240,
37 [575.350,] 575.353, 577.078, 577.703, 577.706, [578.008, 578.305, 578.310,] or
38 632.520;
- 39 (7) Any offense eligible for expungement under section [577.054 or]
40 610.130;
- 41 (8) Any intoxication-related traffic or boating offense as defined in section
42 577.001, or any offense of operating an aircraft with an excessive blood alcohol
43 content or while in an intoxicated condition;
- 44 (9) Any ordinance violation that is the substantial equivalent of any
45 offense that is not eligible for expungement under this section;
- 46 (10) Any violation of any state law or county or municipal ordinance

47 regulating the operation of motor vehicles when committed by an individual who
48 has been issued a commercial driver's license or is required to possess a
49 commercial driver's license issued by this state or any other state; and

50 (11) Any offense of section 571.030, except any offense under subdivision
51 (1) of subsection 1 of section 571.030 where the person was convicted or found
52 guilty prior to January 1, 2017.

53 3. The petition shall name as defendants all law enforcement agencies,
54 courts, prosecuting or circuit attorneys, municipal prosecuting attorneys, central
55 state repositories of criminal records, or others who the petitioner has reason to
56 believe may possess the records subject to expungement for each of the offenses,
57 violations, and infractions listed in the petition. The court's order of
58 expungement shall not affect any person or entity not named as a defendant in
59 the action.

60 4. The petition shall include the following information:

61 (1) The petitioner's:

62 (a) Full name;

63 (b) Sex;

64 (c) Race;

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

66 (e) Current address;

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

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

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

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

76 5. The clerk of the court shall give notice of the filing of the petition to the
77 office of the prosecuting attorney, circuit attorney, or municipal prosecuting
78 attorney that prosecuted the offenses, violations, or infractions listed in the
79 petition. If the prosecuting attorney, circuit attorney, or municipal prosecuting
80 attorney objects to the petition for expungement, he or she shall do so in writing
81 within thirty days after receipt of service. Unless otherwise agreed upon by the
82 parties, the court shall hold a hearing within sixty days after any written

83 objection is filed, giving reasonable notice of the hearing to the petitioner. If no
84 objection has been filed within thirty days after receipt of service, the court may
85 set a hearing on the matter and shall give reasonable notice of the hearing to
86 each entity named in the petition. At any hearing, the court may accept evidence
87 and hear testimony on, and may consider, the following criteria for each of the
88 offenses, violations, or infractions listed in the petition for expungement:

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

94 (2) The person has not been found guilty of any other misdemeanor or
95 felony, not including violations of the traffic regulations provided under chapters
96 304 and 307, during the time period specified for the underlying offense,
97 violation, or infraction in subdivision (1) of this subsection;

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

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

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

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

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

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

119 petitioner has not been found guilty of any misdemeanor or felony offense.

120 7. If the court determines that such person meets all the criteria set forth
121 in subsection 5 of this section for each of the offenses, violations, or infractions
122 listed in the petition for expungement, the court shall enter an order of
123 expungement. In all cases under this section, the court shall issue an order of
124 expungement or dismissal within six months of the filing of the petition. A copy
125 of the order of expungement shall be provided to the petitioner and each entity
126 possessing records subject to the order, and, upon receipt of the order, each entity
127 shall close any record in its possession relating to any offense, violation, or
128 infraction listed in the petition, in the manner established by section
129 610.120. The records and files maintained in any administrative or court
130 proceeding in a municipal, associate, or circuit court for any offense, infraction,
131 or violation ordered expunged under this section shall be confidential and only
132 available to the parties or by order of the court for good cause shown. The central
133 repository shall request the Federal Bureau of Investigation to expunge the
134 records from its files.

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

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

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

157 (2) Any license issued under chapter 313 or permit issued under chapter
158 571;

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

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

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

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

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

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

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

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

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

204 (2) Not more than one felony offense.

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

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

217 14. Nothing in this section shall be construed to limit or restrict the
218 availability of expungement to any person under any other law.

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