

SECOND REGULAR SESSION  
[TRULY AGREED TO AND FINALLY PASSED]

# SENATE BILL NO. 954

99TH GENERAL ASSEMBLY

2018

5864S.01T

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## AN ACT

To repeal section 610.140, RSMo, and to enact in lieu thereof one new section relating to expungement of records relating to the offense of unlawful use of a weapon.

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*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Section A. Section 610.140, RSMo, is repealed and one new section  
2 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  
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  
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

**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, 569.100, 569.160, 570.025, 570.030, 570.090, 570.100, 570.130, 570.180,
- 34 570.223, 570.224, 570.310, 571.020, [571.030,] 571.060, 571.063, 571.070, 571.072,
- 35 571.150, 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 610.130;
- 40 (8) Any intoxication-related traffic or boating offense as defined in section
- 41 577.001, or any offense of operating an aircraft with an excessive blood alcohol
- 42 content or while in an intoxicated condition;
- 43 (9) Any ordinance violation that is the substantial equivalent of any
- 44 offense that is not eligible for expungement under this section; [and]
- 45 (10) Any [violations] **violation** of any state law or county or municipal
- 46 ordinance regulating the operation of motor vehicles when committed by an
- 47 individual who has been issued a commercial driver's license or is required to
- 48 possess a commercial driver's license issued by this state or any other state; **and**
- 49 **(11) Any offense of section 571.030, except any offense under**
- 50 **subdivision (1) of subsection 1 of section 571.030 where the person was**
- 51 **convicted or found guilty prior to January 1, 2017.**

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

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

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

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

56 violations, and infractions listed in the petition. The court's order of  
57 expungement shall not affect any person or entity not named as a defendant in  
58 the action.

59 4. The petition shall include the following information:

60 (1) The petitioner's:

61 (a) Full name;

62 (b) Sex;

63 (c) Race;

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

65 (e) Current address;

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

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

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

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

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

88 (1) It has been at least seven years if the offense is a felony, or at least  
89 three years if the offense is a misdemeanor, municipal offense, or infraction, from  
90 the date the petitioner completed any authorized disposition imposed under  
91 section 557.011 for each offense, violation, 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. 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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