

SECOND REGULAR SESSION

HOUSE BILL NO. 1659

101ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE HICKS.

3236H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal section 610.140, RSMo, and to enact in lieu thereof two new sections relating to expungement.

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

Section A. Section 610.140, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 610.132 and 610.140, to read as follows:

610.132. 1. Notwithstanding any provision of law, any person who has been convicted of an offense or municipal violation relating to the possession of marijuana before August 28, 2022, and has obtained a patient identification card under Article XIV, Section 1 of the Constitution of Missouri before August 28, 2022, shall automatically have such offense or violation expunged from his or her record by the court in which the person was convicted if such offense or violation occurred within the state of Missouri and was prosecuted under the jurisdiction of a Missouri associate circuit or circuit court or a municipal court. For an offense or municipal violation under this subsection that occurred before:

(1) August 28, 2022, but after August 27, 2015, the record shall be expunged before August 28, 2024;

(2) August 28, 2015, but after August 27, 2002, the record shall be expunged before August 28, 2026; and

(3) August 28, 2002, the record shall be expunged before August 28, 2028.

2. (1) If a person was convicted of an offense or municipal violation relating to the possession of marijuana before August 28, 2022, and such person obtained a patient identification card under Article XIV, Section 1 of the Constitution of Missouri after

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.

18 **August 28, 2022, such person may be eligible to have such offense or violation expunged**
19 **by petitioning the court in which the person was convicted if the offense or municipal**
20 **violation occurred within the state of Missouri prior to the issuance of the patient**
21 **identification card and was prosecuted under the jurisdiction of a Missouri associate**
22 **circuit or circuit court or a municipal court.**

23 **(2) If the court determines, after hearing, that a person has been issued a patient**
24 **identification card, the offense or municipal violation seeking to be expunged is related**
25 **to the possession of marijuana, and such offense or violation occurred within the state of**
26 **Missouri prior to the issuance of the patient identification card, the court shall enter an**
27 **order for expungement.**

28 **(3) A petition for expungement under this subsection may be made at any time,**
29 **provided such offense or violation occurred within the state of Missouri prior to the**
30 **issuance of a patient identification card.**

31 **3. Upon automatic expungement under subsection 1 of this section or granting of**
32 **the order of expungement under subsection 2 of this section, the records and files**
33 **maintained in any court proceeding in an associate or a circuit division of the circuit**
34 **court or in municipal court under this section shall be confidential and only available to**
35 **the parties or by order of the court for good cause shown. The effect of expungement**
36 **under subsections 1 and 2 of this section shall be to restore such person to the status he**
37 **or she occupied prior to such arrest, plea, or conviction and as if such event had never**
38 **taken place. If expungement under subsection 1 or 2 of this section has been ordered, no**
39 **person shall be held thereafter under any provision of any law to be guilty of perjury or**
40 **otherwise giving a false statement by reason of his or her failure to recite or**
41 **acknowledge such arrest, plea, trial, conviction, or expungement in response to any**
42 **inquiry made of him or her for any purpose, and no such inquiry shall be made for**
43 **information relating to an expungement under this section.**

44 **4. The provisions of this section shall not be construed to authorize expungement**
45 **of any conviction or plea of guilty for any offense committed by a commercial driver's**
46 **license holder that shall result in a violation of 49 CFR 384.226, as amended, or an**
47 **offense committed by a person while operating a commercial motor vehicle in violation**
48 **of 49 CFR 391.15.**

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
5 may apply to have one or more offenses, violations, or infractions expunged if such offense,
6 violation, or infraction occurred within the state of Missouri and was prosecuted under the

7 jurisdiction of a Missouri municipal, associate circuit, or circuit court, so long as such person
8 lists all the offenses, violations, and infractions he or she is seeking to have expunged in the
9 petition and so long as all such offenses, violations, and infractions are not excluded under
10 subsection 2 of this section. If the offenses, violations, or infractions were charged as counts
11 in the same indictment or information or were committed as part of the same course of
12 criminal conduct, the person may include all the related offenses, violations, and infractions
13 in the petition, regardless of the limits of subsection 12 of this section, and the petition shall
14 only count as a petition for expungement of the highest level violation or offense contained in
15 the petition for the purpose of determining 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,
25 105.478, 115.631, 130.028, 188.030, 188.080, 191.677, 194.425, 217.360, 217.385, 334.245,
26 375.991, 389.653, 455.085, 455.538, 557.035, 565.084, 565.085, 565.086, 565.095, 565.120,
27 565.130, 565.156, 565.200, 565.214, 566.093, 566.111, 566.115, 568.020, 568.030, 568.032,
28 568.045, 568.060, 568.065, 568.080, 568.090, 568.175, 569.030, 569.035, 569.040, 569.050,
29 569.055, 569.060, 569.065, 569.067, 569.072, 569.160, 570.025, 570.090, 570.180, 570.223,
30 570.224, 570.310, 571.020, 571.060, 571.063, 571.070, 571.072, 571.150, 574.070, 574.105,
31 574.115, 574.120, 574.130, 575.040, 575.095, 575.153, 575.155, 575.157, 575.159, 575.195,
32 575.200, 575.210, 575.220, 575.230, 575.240, 575.350, 575.353, 577.078, 577.703, 577.706,
33 578.008, 578.305, 578.310, or 632.520;

34 (7) Any offense eligible for expungement under section 577.054 ~~[or]~~, 610.130, **or**
35 **610.132**;

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

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

41 (10) Any violation of any state law or county or municipal ordinance regulating the
42 operation of motor vehicles when committed by an individual who has been issued a

43 commercial driver's license or is required to possess a commercial driver's license issued by
44 this state or any other state; and

45 (11) Any offense of section 571.030, except any offense under subdivision (1) of
46 subsection 1 of section 571.030 where the person was convicted or found guilty prior to
47 January 1, 2017, or any offense under subdivision (4) of subsection 1 of section 571.030.

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

54 4. The petition shall include the following information:

55 (1) The petitioner's:

56 (a) Full name;

57 (b) Sex;

58 (c) Race;

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

60 (e) Current address;

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

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

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

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

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

80 (1) At the time the petition is filed, it has been at least three years if the offense is a
81 felony, or at least one year if the offense is a misdemeanor, municipal offense, or infraction,
82 from the date the petitioner completed any authorized disposition imposed under section
83 557.011 for each offense, violation, or infraction listed in the petition;

84 (2) At the time the petition is filed, the person has not been found guilty of any other
85 misdemeanor or felony, not including violations of the traffic regulations provided under
86 chapters 301, 302, 303, 304, and 307, during the time period specified for the underlying
87 offense, violation, or infraction in subdivision (1) of this subsection;

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

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

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

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

95

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

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

108 7. If the court determines that such person meets all the criteria set forth in subsection
109 5 of this section for each of the offenses, violations, or infractions listed in the petition for
110 expungement, the court shall enter an order of expungement. In all cases under this section,
111 the court shall issue an order of expungement or dismissal within six months of the filing of
112 the petition. A copy of the order of expungement shall be provided to the petitioner and each
113 entity possessing records subject to the order, and, upon receipt of the order, each entity shall
114 close any record in its possession relating to any offense, violation, or infraction listed in the
115 petition, in the manner established by section 610.120. The records and files maintained in
116 any administrative or court proceeding in a municipal, associate, or circuit court for any

117 offense, infraction, or violation ordered expunged under this section shall be confidential and
118 only available to the parties or by order of the court for good cause shown. The central
119 repository shall request the Federal Bureau of Investigation to expunge the records from its
120 files.

121 8. The order shall not limit any of the petitioner's rights that were restricted as a
122 collateral consequence of such person's criminal record, and such rights shall be restored
123 upon issuance of the order of expungement. For purposes of 18 U.S.C. Section 921(a)(33)(B)
124 (ii), an order or expungement granted pursuant to this section shall be considered a complete
125 removal of all effects of the expunged conviction. Except as otherwise provided under this
126 section, the effect of such order shall be to restore such person to the status he or she occupied
127 prior to such arrests, pleas, trials, or convictions as if such events had never taken place. No
128 person as to whom such order has been entered shall be held thereafter under any provision of
129 law to be guilty of perjury or otherwise giving a false statement by reason of his or her failure
130 to recite or acknowledge such arrests, pleas, trials, convictions, or expungement in response
131 to an inquiry made of him or her and no such inquiry shall be made for information relating to
132 an expungement, except the petitioner shall disclose the expunged offense, violation, or
133 infraction to any court when asked or upon being charged with any subsequent offense,
134 violation, or infraction. The expunged offense, violation, or infraction may be considered a
135 prior offense in determining a sentence to be imposed for any subsequent offense that the
136 person is found guilty of committing.

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

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

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

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

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

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

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

155

156 An employer shall notify an applicant of the requirements under subdivisions (4) to (6) of this
157 subsection. Notwithstanding any provision of law to the contrary, an expunged offense,
158 violation, or infraction shall not be grounds for automatic disqualification of an applicant, but
159 may be a factor for denying employment, or a professional license, certificate, or permit;
160 except that, an offense, violation, or infraction expunged under the provisions of this section
161 may be grounds for automatic disqualification if the application is for employment under
162 subdivisions (4) to (6) of this subsection.

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

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

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

181 (1) Not more than two misdemeanor offenses or ordinance violations that have an
182 authorized term of imprisonment; **except that, marijuana-related misdemeanor offenses or**
183 **ordinance violations shall not be limited;** and

184 (2) Not more than one felony offense.

185

186 A person may be granted expungement under this section for any number of infractions.
187 Nothing in this section shall prevent the court from maintaining records to ensure that an
188 individual has not exceeded the limitations of this subsection. Nothing in this section shall be

189 construed to limit or impair in any way the subsequent use of any record expunged under this
190 section of any arrests or findings of guilt by a law enforcement agency, criminal justice
191 agency, prosecuting attorney, circuit attorney, or municipal prosecuting attorney, including its
192 use as a prior offense, violation, or infraction.

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

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

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