

SENATE BILL NO. 36

102ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR WILLIAMS.

1048S.01I

KRISTINA MARTIN, Secretary

AN ACT

To repeal sections 43.504, 43.507, 488.650, 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Section A. Sections 43.504, 43.507, 488.650, and 610.140, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 43.504, 43.507, and 610.140, to read as follows: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 of
34 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
46 or]**crimes sought to be expunged** were committed as part of
47 the same course of criminal conduct, the person may include
48 all the **such** related [offenses, violations, and
49 infractions]**crimes** in the petition, regardless of the limits
50 of subsection [12]13 of this section, and [the
51 petition]**those related crimes** shall only count as [a
52 petition for expungement of] the highest level [violation or
53 offense contained in the petition] for the purpose of
54 determining **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 as defined in
61 subsection 1 of this section, regardless of the limits of
62 subsection 13 of this section, and those crimes shall count
63 only as the highest level among them for the purpose of
64 determining current and future eligibility 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
146 infractions]crimes occurred in a municipality, the name of
147 the municipality for each [offense, violation, or
148 infraction]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 the
152 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]crimes
169 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 it**
191 **has been at least three years if the offense is a felony, or**
192 **at least one year if the offense is a misdemeanor, municipal**
193 **violation, or infraction, from the date the petitioner**
194 **completed any authorized disposition imposed under section**
195 **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 public
204 welfare and the interests of justice warrant the expungement.

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

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

220 [6.]7. A petition to expunge records related to an
221 arrest for an eligible [offense, violation, or
222 infraction]**crime** may be made in accordance with the
223 provisions of this section to a court of competent
224 jurisdiction in the county where the petitioner was arrested
225 no earlier than [three years]**eighteen months** from the date
226 of arrest; provided that, during such time, the petitioner
227 has not been charged and the petitioner has not been found
228 guilty of any misdemeanor or felony offense.

229 [7.]8. If the court determines that such person meets
230 all the criteria set forth in subsection [5]6 of this
231 section for each of the [offenses, violations, or
232 infractions]**crimes** listed in the petition for expungement,
233 the court shall enter an order of expungement. In all cases
234 under this section, the court shall issue an order of
235 expungement or dismissal within six months of the filing of
236 the petition. A copy of the order of expungement shall be
237 provided to the petitioner and each entity possessing
238 records subject to the order, and, upon receipt of the
239 order, each entity shall close any record in its possession
240 relating to any [offense, violation, or infraction]**crime**
241 listed in the petition, in the manner established by section
242 610.120. The records and files maintained in any
243 administrative or court proceeding in a municipal,
244 associate, or circuit court for any [offense, infraction, or
245 violation]**crime** ordered expunged under this section shall be

246 confidential and only available to the parties or by order
247 of the court for good cause shown. The central repository
248 shall request the Federal Bureau of Investigation to expunge
249 the records from its files.

250 **[8.]9.** The order shall not limit any of the
251 petitioner's rights that were restricted as a collateral
252 consequence of such person's criminal record, and such
253 rights shall be restored upon issuance of the order of
254 expungement. **Except as otherwise provided under this**
255 **section, the effect of such order shall be to fully restore**
256 **the civil rights of such person to the status he or she**
257 **occupied prior to such arrests, pleas, trials, or**
258 **convictions as if such events had never taken place. This**
259 **includes fully restoring the civil rights of a person to the**
260 **right to vote, the right to hold public office, and to serve**
261 **as a juror.** For purposes of 18 U.S.C. Section
262 921(a)(33)(B)(ii), an order **[or]of** expungement granted
263 pursuant to this section shall be considered a complete
264 removal of all effects of the expunged conviction. Except
265 as otherwise provided under this section, the effect of such
266 order shall be to restore such person to the status he or
267 she occupied prior to such arrests, pleas, trials, or
268 convictions as if such events had never taken place. No
269 person as to whom such order has been entered shall be held
270 thereafter under any provision of law to be guilty of
271 perjury or otherwise giving a false statement by reason of
272 his or her failure to recite or acknowledge such arrests,
273 pleas, trials, convictions, or expungement in response to an
274 inquiry made of him or her and no such inquiry shall be made
275 for information relating to an expungement, except the
276 petitioner shall disclose the expunged **[offense, violation,**
277 **or infraction]crime** to any court when asked or upon being

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

283 [9.]10. Notwithstanding the provisions of subsection
284 [8]9 of this section to the contrary, a person granted an
285 expungement shall disclose any expunged [offense, violation,
286 or infraction]crime when the disclosure of such information
287 is necessary to complete any application for:

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

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

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

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

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

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

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

321 [10.] **11.** A person who has been granted an expungement
322 of records pertaining to a [misdemeanor or felony offense,
323 an ordinance violation, or an infraction] **crime** may answer
324 "no" to an employer's inquiry into whether the person has
325 ever been **arrested, charged, or** convicted of a crime if,
326 after the granting of the expungement, the person has no
327 public record of a [misdemeanor or felony offense, an
328 ordinance violation, or an infraction] **crime**. The person,
329 however, shall answer such an inquiry affirmatively and
330 disclose his or her criminal convictions, including any
331 offense [or violation] expunged under this section or
332 similar law, if the employer is required to exclude
333 applicants with certain criminal convictions from employment
334 due to federal or state law, including corresponding rules
335 and regulations.

336 [11.] **12.** If the court determines that the petitioner
337 has not met the criteria for any of the [offenses,
338 violations, or infractions] **crimes** listed in the petition for
339 expungement or the petitioner has knowingly provided false
340 information in the petition, the court shall enter an order
341 dismissing the petition. Any person whose petition for

342 expungement has been dismissed by the court for failure to
343 meet the criteria set forth in subsection [5]6 of this
344 section may not refile another petition until a year has
345 passed since the date of filing for the previous petition.

346 [12.]13. A person may be granted more than one
347 expungement under this section provided that during his or
348 her lifetime, the total number of [offenses, violations, or
349 infractions]crimes for which orders of expungement are
350 granted to the person shall not exceed the following limits:

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

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

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

368 [13.]14. The court shall make available a form for pro
369 se petitioners seeking expungement, which shall include the
370 following statement: "I declare under penalty of perjury
371 that the statements made herein are true and correct to the
372 best of my knowledge, information, and belief."

373 [14.]15. Nothing in this section shall be construed to
374 limit or restrict the availability of expungement to any
375 person under any other law.

2 [488.650. There shall be assessed as costs
3 a surcharge in the amount of two hundred fifty
4 dollars on all petitions for expungement filed
5 under the provisions of section 610.140. The
6 judge may waive the surcharge if the petitioner
7 is found by the judge to be indigent and unable
8 to pay the costs. Such surcharge shall be
9 collected and disbursed by the clerk of the
10 court as provided by sections 488.010 to
11 488.020. Moneys collected from this surcharge
shall be payable to the general revenue fund.]

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