

FIRST REGULAR SESSION

HOUSE BILL NO. 166

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE ELLINGTON.

0688L.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal section 610.140, RSMo, and to enact in lieu thereof one new section relating to expungement of certain records, with a contingent effective date.

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Section A. Section 610.140, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 610.140, to read as follows: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 provisions of this section, any person may apply to any court in which such person was found guilty of any of the offenses specified in subsection 2 of this section for an order to expunge recordations of such arrest, plea, trial, or conviction. A person may apply to have one or more offenses expunged so long as such person lists all the offenses he or she is seeking to have expunged in the same petition and so long as all such offenses are eligible under subsection 2 of this section.

2. The following offenses are eligible to be expunged when such offenses occurred within the state of Missouri and were prosecuted under the jurisdiction of a Missouri municipal associate or circuit court:

(1) Any felony or misdemeanor offense of passing a bad check under 570.120, fraudulently stopping payment of an instrument under 570.125, or fraudulent use of a credit device or debit device under section 570.130;

(2) Any misdemeanor offense of sections 569.065, 569.067, 569.090, subdivision (1) of subsection 1 of section 569.120, sections 569.140, 569.145, 572.020, 574.020, or 574.075; [or]

(3) Any class B or C misdemeanor offense of section 574.010; **or**

(4) **Any felony or misdemeanor offense involving marijuana or marijuana drug paraphernalia under chapter 195 until December 31, 2016, and under chapter 579**

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 **beginning January 1, 2017, committed within three years prior to the passage of a**
19 **constitutional amendment or other statutory enactment legalizing marijuana. However,**
20 **if a person's record is expunged under this subdivision, such person shall pay a fine in the**
21 **amount of two hundred dollars which shall be paid to the drug court resources fund under**
22 **section 478.009 for drug treatment programming. If the constitutional amendment or**
23 **statute legalizing marijuana contains an age limitation, this subdivision shall not apply to**
24 **any person who committed an offense under this subdivision if such person was under such**
25 **age limitation at the time the offense was committed.**

26 3. The petition shall name as defendants all law enforcement agencies, courts,
27 prosecuting or circuit attorneys, central state repositories of criminal records, or others who the
28 petitioner has reason to believe may possess the records subject to expungement for each of the
29 offenses listed in the petition. The court's order of expungement shall not affect any person or
30 entity not named as a defendant in the action.

31 4. The petition shall be dismissed if it does not include the following information:

32 (1) The petitioner's:

33 (a) Full name;

34 (b) Sex;

35 (c) Race;

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

37 (e) Current address;

38 (2) Each offense charged against the petitioner for which the petitioner is requesting
39 expungement;

40 (3) The date the petitioner was arrested for each offense;

41 (4) The name of the county where the petitioner was arrested for each offense and if any
42 of the offenses occurred in a municipality, the name of the municipality for each offense;

43 (5) The name of the agency that arrested the petitioner for each offense;

44 (6) The case number and name of the court for each offense; and

45 (7) Petitioner's fingerprints on a standard fingerprint card at the time of filing a petition
46 for expungement which will be forwarded to the central repository for the sole purpose of
47 positively identifying the petitioner.

48 5. The court may set a hearing on the matter no sooner than thirty days from the filing
49 of the petition and shall give reasonable notice of the hearing to each entity named in the petition.
50 At the hearing, the court may accept evidence and hear testimony on, and may consider, the
51 following criteria for each of the offenses listed in the petition for expungement:

52 (1) It has been at least twenty years if the offense is a felony, or at least ten years if the
53 offense is a misdemeanor, municipal offense, or infraction, since the person making the
54 application completed:

55 (a) Any sentence of imprisonment; or

56 (b) Any period of probation or parole;

57 (2) The person has not been found guilty of a misdemeanor or felony, not including
58 violations of the traffic regulations provided under chapters 304 and 307, during the time period
59 specified for the underlying offense in subdivision (1) of this subsection;

60 (3) The person has paid any amount of restitution ordered by the court;

61 (4) The circumstances and behavior of the petitioner warrant the expungement; and

62 (5) The expungement is consistent with the public welfare.

63 6. If the court determines at the conclusion of the hearing that such person meets all the
64 criteria set forth in subsection 5 of this section for each of the offenses listed in the petition for
65 expungement, the court may enter an order of expungement. A copy of the order shall be
66 provided to each entity named in the petition, and, upon receipt of the order, each entity shall
67 destroy any record in its possession relating to any offense listed in the petition. If destruction
68 of the record is not feasible because of the permanent nature of the record books, such record
69 entries shall be blacked out. Entries of a record ordered expunged shall be removed from all
70 electronic files maintained with the state of Missouri, except for the files of the court. The
71 records and files maintained in any administrative or court proceeding in a municipal, associate,
72 or circuit court for any offense ordered expunged under this section shall be confidential and only
73 available to the parties or by order of the court for good cause shown. The central repository
74 shall request the Federal Bureau of Investigation to expunge the records from its files.

75 7. The order shall not limit any of the petitioner's rights that were restricted as a collateral
76 consequence of such person's criminal record, and such rights shall be restored upon issuance
77 of the order of expungement. Except as otherwise provided under this section, the effect of such
78 order shall be to restore such person to the status he or she occupied prior to such arrests, pleas,
79 trials, or convictions as if such events had never taken place. No person as to whom such order
80 has been entered shall be held thereafter under any provision of law to be guilty of perjury or
81 otherwise giving a false statement by reason of his or her failure to recite or acknowledge such
82 arrests, pleas, trials, convictions, or expungement in response to an inquiry made of him or her
83 and no such inquiry shall be made for information relating to an expungement, except the
84 petitioner shall disclose the expunged offense to any court when asked or upon being charged
85 with any subsequent offense. The expunged offense may be considered a prior offense in
86 determining a sentence to be imposed for any subsequent offense that the person is found guilty
87 of committing.

88 8. Notwithstanding the provisions of subsection 7 of this section to the contrary, a person
89 granted an expungement shall disclose any expunged offense when the disclosure of such
90 information is necessary to complete any application for:

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

93 (2) Any license issued under chapter 313; or

94 (3) Paid or unpaid employment with an entity licensed under chapter 313, any
95 state-operated lottery, or any emergency services provider, including any law enforcement
96 agency.

97 Notwithstanding any provision of law to the contrary, an expunged offense shall not be grounds
98 for automatic disqualification of an applicant, but may be a factor for denying employment, or
99 a professional license, certificate, or permit.

100 9. If the court determines that such person has not met the criteria for any of the offenses
101 listed in the petition for expungement, the court shall enter an order dismissing the petition. Any
102 person whose petition for expungement has been dismissed by the court for failure to meet the
103 criteria set forth in subsection 5 of this section may not refill another petition until a year has
104 passed since the date of filing for the previous petition.

105 10. A person may be granted more than one expungement under this section provided
106 that no person shall be granted more than one order of expungement from the same court.
107 Nothing contained in this section shall prevent the court from maintaining records to ensure that
108 an individual has only one petition for expungement granted by such court under this section.

109 Section B. This act shall be contingent upon the passage of a constitutional amendment
110 or other statutory enactment legalizing marijuana.

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