

SECOND REGULAR SESSION

HOUSE BILL NO. 2681

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE GARDNER.

6746H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 488.650 and 610.140, RSMo, and to enact in lieu thereof two new sections relating to petitions for 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Section A. Sections 488.650 and 610.140, RSMo, are repealed and two new sections
2 enacted in lieu thereof, to be known as sections 488.650 and 610.140, to read as follows:

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

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 of the offenses specified in subsection 2 of this section for an order to expunge
4 [recordations] **records** of such arrest, plea, trial, or conviction. [A person may apply to have one
5 or more offenses expunged so long as such person lists all the offenses he or she is seeking to
6 have expunged in the same petition and so long as all such offenses are eligible under subsection
7 2 of this section.]

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

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.

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

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

16 (3) Any class B or C misdemeanor offense of section 574.010.

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

22 4. The petition shall be dismissed if it does not include the following information:]
23 **Except as otherwise provided in subsection 3 of this section, a person is eligible, during his**
24 **or her lifetime, to file petitions seeking the expungement of records related to one or more**
25 **infractions, not more than two ordinance violations that have an authorized term of**
26 **imprisonment or misdemeanor offenses, and not more than one felony offense. If the**
27 **violations or offenses were charged as counts in the same indictment or information or**
28 **were committed as part of the same course of criminal conduct, the person may include all**
29 **the related violations or offenses regardless of the limits of this subsection in a petition for**
30 **expungement, and the petition shall only count as a petition for the expungement of the**
31 **highest level violation or offense contained in the petition for purposes of determining**
32 **future eligibility for expungement.**

33 3. Notwithstanding subsection 2 of this section to the contrary, the following
34 offenses and violations shall not be eligible for expungement:

35 (1) Any class A felony offense;

36 (2) Any dangerous felony as that term is defined in section 556.061;

37 (3) Any offense that requires registration as a sex offender;

38 (4) Any felony offense where death is an element of the offense;

39 (5) Any felony offense of assault, misdemeanor or felony offense of domestic
40 assault, or felony offense of kidnapping;

41 (6) Any offense listed, or previously listed, in sections 194.425, 217.360, 217.385,
42 221.111, 389.653, 557.035, 565.084, 565.085, 565.086, 565.182, 565.212, 568.030, 568.032,
43 568.045, 568.060, 568.175, 569.030, 569.035, 569.040, 569.050, 569.072, 569.160, 570.025,
44 subdivisions (1), (2), (3), and (6) of subsection 1 of section 571.020, sections 571.030,
45 571.070, 571.072, 571.150, 574.070, 574.115, 574.120, 574.130, 575.095, 575.153, 575.155,

46 575.157, 575.210, 575.220, 575.230, 575.240, 577.078, 577.703, 577.706, 578.008, 578.305,
47 and 578.310; and

48 (7) Any ordinance violation that is the substantial equivalent of any offense that is
49 not eligible for expungement under this section.

50 4. A petition to expunge records related to a finding of guilt for an infraction,
51 eligible ordinance violation, or eligible misdemeanor offense may be made to the court
52 where the petitioner was found guilty no earlier than three years from the date the
53 petitioner completed any authorized disposition imposed under section 557.011 for each
54 offense listed in the petition, provided that, during such time the petitioner has not been
55 found guilty of any other misdemeanor or felony offense. A person is not eligible for
56 expungement under this section unless all obligations related to any such disposition have
57 been satisfied, including the payment of any fines or restitution, and the person does not
58 have any charges pending.

59 5. A petition to expunge records related to a finding of guilt for an eligible felony
60 offense may be made to the court where the petitioner was found guilty no earlier than five
61 years from the date the petitioner completed any authorized disposition imposed under
62 section 557.011 for each offense listed in the petition, provided that, during such time the
63 petitioner has not been found guilty of any other misdemeanor or felony offense. A person
64 is not eligible to have his or her records expunged unless all obligations related to any such
65 disposition have been satisfied, including the payment of any fines or restitution, and the
66 person does not have any charges pending.

67 6. A petition to expunge records related to an arrest for an eligible violation or
68 offense may be made to the court where the petitioner was charged no earlier than three
69 years from the date each charge in the petition was filed, provided that, during such time,
70 the prosecution of each charge has not been pursued and the petitioner has not been found
71 guilty of any other misdemeanor or felony offense.

72 7. The petition for expungement shall include the following information:

73 (1) The petitioner's:

74 (a) Full name;

75 (b) Sex;

76 (c) Race;

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

78 (e) Current address;

79 (2) Each offense [charged against the petitioner] or ordinance violation for which the
80 petitioner is requesting expungement;

81 (3) The **approximate** date the petitioner was [arrested] **charged** for each offense **or**
82 **violation; and**

83 (4) The name of the county where the petitioner was [arrested] **charged** for each offense
84 **or violation** and if any of the offenses **or violations** occurred in a municipality, the name of the
85 municipality for each offense[;] **or violation.**

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

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

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

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

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

98 (a) Any sentence of imprisonment; or

99 (b) Any period of probation or parole;

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

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

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

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

106 6. If the court determines at the conclusion of the hearing that such person meets all the
107 criteria set forth in subsection 5 of this section for each of the offenses listed in the petition for
108 expungement, the court may enter an order of expungement. A copy of the order shall be
109 provided to each entity named in the petition, and,]

110 **8. The office of the state courts administrator shall prepare and make available a**
111 **form for pro se petitioners seeking expungement, which shall include the statement: I**
112 **declare under penalty of perjury that the statements made herein are true and correct to**
113 **the best of my knowledge, information, and belief.**

114 **9. The court shall provide a copy of the petition for expungement as notice to the**
115 **office that prosecuted the violations or offenses listed in the petition. If the municipal**
116 **prosecutor or prosecuting or circuit attorney objects to the petition for expungement, he**

117 or she shall do so in writing within thirty days after receipt of service. Within sixty days
118 after any written objection is filed, unless otherwise agreed upon by the parties, the court
119 shall hold a hearing upon notice to the petitioner. If there is no objection, the court shall
120 enter an order expunging such records if, in the determination of the court, all the criteria
121 set forth in this section have been met. If the court determines the petitioner has not met
122 such criteria or the petitioner knowingly provides false information in the petition, the
123 court may enter an order dismissing the petition. In all cases, the court shall issue an order
124 under this section within six months of the filing of the petition.

125 **10.** At the hearing, the court may accept evidence and hear testimony on, and may
126 consider, whether the petitioner meets the criteria for expungement under this section. If
127 the petitioner meets the criteria, there shall be a presumption that the interests of justice
128 warrant the expungement of such records. If the court determines at the conclusion of the
129 hearing, wherein there shall be an opportunity for any victims to be heard, that the
130 interests of justice warrant the expungement of records, the court shall enter an order of
131 expungement. A copy of the order shall be provided to the petitioner and each entity
132 possessing records subject to the order. Upon receipt of the order, each entity shall [destroy]
133 seal any record in its possession relating to any offense listed in the petition. If [destruction]
134 sealing of the record is not feasible because of the permanent nature of the record books, such
135 record entries shall be blacked out. Entries of a record ordered expunged shall be removed from
136 all electronic files maintained with the state of Missouri, except for the files of the court. The
137 records and files maintained in any administrative or court proceeding in a municipal, associate,
138 or circuit court for any offense **or violation** ordered expunged under this section shall be
139 confidential and only available to the parties or by order of the court for good cause shown. The
140 central repository shall request the Federal Bureau of Investigation to expunge the records from
141 its files.

142 [7.] **11.** The order shall not limit any of the petitioner's rights that were restricted as a
143 collateral consequence of such person's criminal record, and such rights shall be restored upon
144 issuance of the order of expungement. Except as otherwise provided under this section, the
145 effect of such order shall be to restore such person to the status he or she occupied prior to such
146 arrests, pleas, trials, or convictions as if such events had never taken place. No person as to
147 whom such order has been entered shall be held thereafter under any provision of law to be guilty
148 of perjury or otherwise giving a false statement by reason of his or her failure to recite or
149 acknowledge such arrests, pleas, trials, convictions, or expungement in response to an inquiry
150 made of him or her and no such inquiry shall be made for information relating to an
151 expungement, except the petitioner shall disclose the expunged offense **or violation** to any court
152 when asked or upon being charged with any subsequent offense. [The expunged offense may

153 be considered a prior offense in determining a sentence to be imposed for any subsequent offense
154 that the person is found guilty of committing.] **A person who has been granted an**
155 **expungement of records pertaining to an infraction, ordinance violation, or misdemeanor**
156 **or felony offense may answer "no" to an employer's inquiry into whether the person has**
157 **ever been convicted of a crime. Nothing in this section shall be construed to limit or impair**
158 **in any way the subsequent use of any expunged record of any arrests or findings of guilt**
159 **by a law enforcement agency, criminal justice agency, or prosecutor or circuit attorney,**
160 **including its use as a prior offense.**

161 [8.] **12.** Notwithstanding the provisions of subsection [7] **11** of this section to the
162 contrary, a person granted an expungement shall disclose any expunged offense **or violation**
163 when the disclosure of such information is necessary to complete any application for:

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

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

167 (3) Paid or unpaid employment with an entity licensed under chapter 313, any
168 state-operated lottery, or any emergency services provider, including any law enforcement
169 agency. Notwithstanding any provision of law to the contrary, an expunged offense shall not be
170 grounds for automatic disqualification of an applicant, but may be a factor for denying
171 employment, or a professional license, certificate, or permit.

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

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

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