

FIRST REGULAR SESSION

[CORRECTED]

HOUSE BILL NO. 613

99TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE ELLINGTON.

0377H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal section 610.140 as enacted by senate bill nos. 588, 603 & 942, ninety-eighth general assembly, second regular session and section 610.140 as enacted by house bill no. 1647, ninety-sixth general assembly, second regular session, and to enact in lieu thereof one new section relating to the expungement of certain criminal records.

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

Section A. Section 610.140 as enacted by senate bill nos. 588, 603 & 942, ninety-eighth general assembly, second regular session and section 610.140 as enacted by house bill no. 1647, ninety-sixth general assembly, second regular session, are repealed and one new section enacted in lieu thereof, to be known as section 610.140, to read as follows: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 charged or found guilty of any offenses, violations, or infractions for an order to expunge records of such arrest, plea, trial, or conviction. Subject to the limitations of subsection 12 of this section, a person may apply to have one or more offenses, violations, or infractions expunged if such offense, violation, or infraction occurred within the state of Missouri and was prosecuted under the jurisdiction of a Missouri municipal, associate circuit, or circuit court, so long as such person lists all the offenses, violations, and infractions he or she is seeking to have expunged in the petition and so long as all such offenses, violations, and infractions are not excluded under subsection 2 of this section. If the offenses, violations, or infractions were charged as counts in the same indictment or information or were committed as part of the same course of criminal conduct, the person may include all the related offenses, violations, and infractions in the~~

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.

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~~
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,~~
29 ~~217.360, 217.385, 334.245, 375.991, 389.653, 455.085, 455.538, 557.035,~~
30 ~~565.084, 565.085, 565.086, 565.095, 565.120, 565.130, 565.156, 565.200,~~
31 ~~565.214, 566.093, 566.111, 566.115, 568.020, 568.030, 568.032, 568.045,~~
32 ~~568.060, 568.065, 568.080, 568.090, 568.175, 569.030, 569.035, 569.040,~~
33 ~~569.050, 569.055, 569.060, 569.065, 569.067, 569.072, 569.100, 569.160,~~
34 ~~570.025, 570.030, 570.090, 570.100, 570.130, 570.180, 570.223, 570.224,~~
35 ~~570.310, 571.020, 571.030, 571.060, 571.063, 571.070, 571.072, 571.150,~~
36 ~~574.070, 574.105, 574.115, 574.120, 574.130, 575.040, 575.095, 575.153,~~
37 ~~575.155, 575.157, 575.159, 575.195, 575.200, 575.210, 575.220, 575.230,~~
38 ~~575.240, 575.350, 575.353, 577.078, 577.703, 577.706, 578.008, 578.305,~~
39 ~~578.310, or 632.520;~~

40 ~~(7) Any offense eligible for expungement under section 577.054 or~~
41 ~~610.130;~~

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

45 ~~(9) Any ordinance violation that is the substantial equivalent of any~~
46 ~~offense that is not eligible for expungement under this section; and~~

47 ~~(10) Any violations of any state law or county or municipal ordinance~~
48 ~~regulating the operation of motor vehicles when committed by an individual who~~
49 ~~has been issued a commercial driver's license or is required to possess a~~
50 ~~commercial driver's license issued by this state or any other state.~~

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

58 ~~4. The petition shall include the following information:~~
59 ~~(1) The petitioner's:~~
60 ~~(a) Full name;~~
61 ~~(b) Sex;~~
62 ~~(c) Race;~~
63 ~~(d) Driver's license number, if applicable; and~~
64 ~~(e) Current address;~~
65 ~~(2) Each offense, violation, or infraction for which the petitioner is~~
66 ~~requesting expungement;~~
67 ~~(3) The approximate date the petitioner was charged for each offense,~~
68 ~~violation, or infraction; and~~
69 ~~(4) The name of the county where the petitioner was charged for each~~
70 ~~offense, violation, or infraction and if any of the offenses, violations, or~~
71 ~~infractions occurred in a municipality, the name of the municipality for each~~
72 ~~offense, violation, or infraction; and~~
73 ~~(5) The case number and name of the court for each offense.~~
74 ~~5. The clerk of the court shall give notice of the filing of the petition to~~
75 ~~the office of the prosecuting attorney, circuit attorney, or municipal prosecuting~~
76 ~~attorney that prosecuted the offenses, violations, or infractions listed in the~~
77 ~~petition. If the prosecuting attorney, circuit attorney, or municipal prosecuting~~
78 ~~attorney objects to the petition for expungement, he or she shall do so in writing~~
79 ~~within thirty days after receipt of service. Unless otherwise agreed upon by the~~
80 ~~parties, the court shall hold a hearing within sixty days after any written objection~~
81 ~~is filed, giving reasonable notice of the hearing to the petitioner. If no objection~~
82 ~~has been filed within thirty days after receipt of service, the court may set a~~
83 ~~hearing on the matter and shall give reasonable notice of the hearing to each~~
84 ~~entity named in the petition. At any hearing, the court may accept evidence and~~
85 ~~hear testimony on, and may consider, the following criteria for each of the~~
86 ~~offenses, violations, or infractions listed in the petition for expungement:~~
87 ~~(1) It has been at least seven years if the offense is a felony, or at least~~
88 ~~three years if the offense is a misdemeanor, municipal offense, or infraction, from~~
89 ~~the date the petitioner completed any authorized disposition imposed under~~
90 ~~section 557.011 for each offense, violation, or infraction listed in the petition;~~
91 ~~(2) The person has not been found guilty of any other misdemeanor or~~
92 ~~felony, not including violations of the traffic regulations provided under chapters~~
93 ~~304 and 307, during the time period specified for the underlying offense,~~
94 ~~violation, or infraction in subdivision (1) of this subsection;~~
95 ~~(3) The person has satisfied all obligations relating to any such~~
96 ~~disposition, including the payment of any fines or restitution;~~
97 ~~(4) The person does not have charges pending;~~
98 ~~(5) The petitioner's habits and conduct demonstrate that the petitioner is~~
99 ~~not a threat to the public safety of the state; and~~

100 ~~_____ (6) The expungement is consistent with the public welfare and the~~
101 ~~interests of justice warrant the expungement.~~
102 ~~_____~~

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~~
107 ~~shall 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~~
114 ~~of this section to a court of competent jurisdiction in the county where the~~
115 ~~petitioner was arrested no earlier than three years from the date of arrest;~~
116 ~~provided that, during such time, the petitioner has not been charged and the~~
117 ~~petitioner has not 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 610.120.~~
127 ~~The records and files maintained in any administrative or court proceeding in a~~
128 ~~municipal, associate, or circuit court for any offense, infraction, or violation~~
129 ~~ordered expunged under this section shall be confidential and only available to~~
130 ~~the parties or by order of the court for good cause shown. The central repository~~
131 ~~shall request the Federal Bureau of Investigation to expunge the records from its~~
132 ~~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, or~~
138 ~~convictions as if such events had never taken place. No person as to whom such~~
139 ~~order has been entered shall be held thereafter under any provision of law to be~~
140 ~~guilty of perjury or otherwise giving a false statement by reason of his or her~~
141 ~~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~~
161 ~~or credit union or an affiliate of such institution or credit union for the purposes~~
162 ~~of 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~~
167 ~~from 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
172 ~~An employer shall notify an applicant of the requirements under subdivisions (4)~~
173 ~~to (6) of this subsection. Notwithstanding any provision of law to the contrary,~~
174 ~~an expunged offense, violation, or infraction shall not be grounds for automatic~~
175 ~~disqualification of an applicant, but may be a factor for denying employment, or~~
176 ~~a professional license, certificate, or permit; except that, an offense, violation, or~~
177 ~~infraction expunged under the provisions of this section may be grounds for~~
178 ~~automatic disqualification if the application is for employment under~~
179 ~~subdivisions (4) to (6) of this subsection.~~

180 ~~10. A person who has been granted an expungement of records pertaining~~
181 ~~to a misdemeanor or felony offense, an ordinance violation, or an infraction may~~
182 ~~answer "no" to an employer's inquiry into whether the person has ever been~~
183 ~~convicted of a crime if, after the granting of the expungement, the person has no~~
184 ~~public record of a misdemeanor or felony offense, an ordinance violation, or an~~
185 ~~infraction. The person, however, shall answer such an inquiry affirmatively and~~

186 ~~disclose his or her criminal convictions, including any offense or violation~~
 187 ~~expunged under this section or similar law, if the employer is required to exclude~~
 188 ~~applicants with certain criminal convictions from employment due to federal or~~
 189 ~~state law, including corresponding rules and regulations.~~

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

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

201 ~~(1) Not more than two misdemeanor offenses or ordinance violations that~~
 202 ~~have an authorized term of imprisonment; and~~

203 ~~(2) Not more than one felony offense.~~

204
 205 ~~A person may be granted expungement under this section for any number of~~
 206 ~~infractions. Nothing in this section shall prevent the court from maintaining~~
 207 ~~records to ensure that an individual has not exceeded the limitations of this~~
 208 ~~subsection. Nothing in this section shall be construed to limit or impair in any~~
 209 ~~way the subsequent use of any record expunged under this section of any arrests~~
 210 ~~or findings of guilt by a law enforcement agency, criminal justice agency,~~
 211 ~~prosecuting attorney, circuit attorney, or municipal prosecuting attorney;~~
 212 ~~including its use as a prior offense, violation, or infraction.~~

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

217 ~~14. Nothing in this section shall be construed to limit or restrict the~~
 218 ~~availability of expungement to any person under any other law.]~~

219

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

11 (1) **All nonviolent offenses, including nonviolent drug offenses; or**

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

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

17 ~~—— (3) Any class B or C misdemeanor offense of section 574.010].~~

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

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

24 (1) The petitioner's:

25 (a) Full name;

26 (b) Sex;

27 (c) Race;

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

29 (e) Current address;

30 **(f) Date of birth; and**

31 **(g) Social Security number;**

32 (2) Each offense charged against the petitioner for which the petitioner is requesting
33 expungement;

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

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

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

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

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

42 5. The court may set a hearing on the matter no sooner than thirty days from the filing
43 of the petition and shall give reasonable notice of the hearing to each entity named in the petition.

44 At the hearing, the court may accept evidence and hear testimony on, and may consider, the
45 following criteria for each of the offenses listed in the petition for expungement:

46 (1) ~~[It has been at least twenty years if the offense is a felony, or at least ten years if the~~
47 ~~offense is a misdemeanor, municipal offense, or infraction, since the person making the~~
48 ~~application completed:~~

49 ~~— (a) Any sentence of imprisonment, or~~

50 ~~— (b) Any period of probation or parole;~~

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

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

55 ~~— (4) The circumstances and behavior of the petitioner warrant the expungement, and~~

56 ~~— (5) The expungement is consistent with the public welfare.] At least four years have~~
57 ~~elapsed since the person making the application has completed:~~

58 (a) His or her imprisonment, if sentenced to jail or prison;

59 (b) His or her period of probation, if placed on probation; or

60 (c) His or her parole, if placed on parole; and

61 (2) The person has:

62 (a) Graduated from high school or has received a GED;

63 (b) Graduated from an institution of higher education with at least an associate's
64 degree or maintains employment with the same employer for at least two consecutive years
65 prior to filing the petition for expungement;

66 (c) Completed seven hundred hours of community service; and

67 (d) Not been convicted of a misdemeanor or felony, or been placed on probation for
68 a misdemeanor or felony during the four-year period specified in subdivision (1) of this
69 subsection. For purposes of this paragraph, any moving traffic violations shall not be
70 considered.

71 6. If the court determines at the conclusion of the hearing that such person meets all the
72 criteria set forth in subsection 5 of this section for each of the offenses listed in the petition for
73 expungement, the court ~~may~~ **shall** enter an order of expungement. A copy of the order shall
74 be provided to each entity named in the petition, and, upon receipt of the order, each entity shall
75 destroy any record in its possession relating to any offense listed in the petition. If destruction
76 of the record is not feasible because of the permanent nature of the record books, such record
77 entries shall be blacked out. Entries of a record ordered expunged shall be removed from all
78 electronic files maintained with the state of Missouri, except for the files of the court. The
79 records and files maintained in any administrative or court proceeding in a municipal, associate,

80 or circuit court for any offense ordered expunged under this section shall be confidential and only
81 available to the parties or by order of the court for good cause shown. The central repository
82 shall request the Federal Bureau of Investigation to expunge the records from its files.

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

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

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

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

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

105

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

109 9. If the court determines that such person has not met the criteria for any of the offenses
110 listed in the petition for expungement, the court shall enter an order dismissing the petition. Any
111 person whose petition for expungement has been dismissed by the court for failure to meet the
112 criteria set forth in subsection 5 of this section may ~~not~~ refile ~~another~~ **such petition** ~~until a~~
113 ~~year has passed since the date of filing for the previous]~~ **as soon as all criteria have been met**
114 **for each of the offenses listed in the petition.**

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

✓