

Expungements

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GOALS - You will under- stand...

- What can be expunged
- What cannot be expunged
- New legislation
- How to advise clients as to **collateral consequences** of plea & expungement eligibility
- How to analyze **plea negotiations**
- How to help clients **file *pro se***

Many Statutes

- 311.326 - MIP
- 610.122 & 610.123 – Arrests
- 610.130 – DWI
- 610.131 – Offenses when < 18 yo
- **610.140 – General (eff. 1/1/18)**
- 610.145 – Stolen & Mistaken ID

610.140 Purpose

- To close records of ARREST, PLEA, TRIAL, CONVICTIONS
- Longer list of what does qualify than years past, but....
- Still long list of what does NOT qualify for expungement
- New legislation pending to include more

Why bother expunging?

- GUNS
- JOBS
- HOUSING
- GOV'T ASSISTANCE
- Jury duty

Why bother expunging?

- **Central Repository shall request the FBI to expunge(!)**
- Rights that were limited are now restored (i.e. guns)

Why bother expunging?

- Each defendant **SHALL close any record**
- NOTE: Used to say destroy but no longer does

Why bother expunging?

- What does CLOSED RECORD really mean?
- Closed record defined at 610.120 = shall be *inaccessible* to the general public and to all persons other than the defendant
- But with a few *exceptions...*

Why bother expunging?

- Expunged records still available to the parties or by court order with good cause shown
- **However – LEO's & PAs can see expunged cases &**
- **PAs can use expunged cases as a prior for enhancement purposes(!)**

Is an expungement
worth it? Does it
really do anything?

The statute is GOOD but not all we
want it to be...

610.140 & OSCA website says as to JOBS...

- May say “no” to employer’s questions about convictions if have closed record
- But must say “yes” if employer is required to EXCLUDE the applicant under federal or state law, or rules & regulations

OSCA website also says as to JOBS...

- Applicant SHALL disclose if applying for following jobs:
 - Professional license, certificate, or permit issued by this state
 - Any license issued under Ch 313
 - Any permit issued under Ch 571
 - Paid or unpaid employment with entity licensed under Ch 313

OR...
jobs for

- Any state-operated lottery
- Any emergency services provider
- Any Law Enforcement Agency
- Any federally insured bank or savings institution or credit union
- Some jobs in business of insurance if required to exclude certain criminal convictions

BOTTOM LINE...

Client's decision

WHO DOES NOT
QUALIFY

DOES NOT QUALIFY

- All class A felonies
- Dangerous felonies (556.061)
 - Murder 2nd
 - Robbery 1st
 - Arson 1st
 - Assault 1st
 - Domestic assault 1st
 - Elder abuse 1st
 - Child abuse (if child died)

DOES NOT QUALIFY

- Dangerous felonies (cont'd)
 - Statutory rape 1st (vic <12)
 - Attempted rape 1st
 - Attempted rape 1st w/ physical injury
 - Attempted forcible rape or sodomy w/ physical injury
 - Rape or sodomy 1st

DOES
NOT
QUALIFY

- Dangerous felonies (cont'd)
 - Kidnapping
 - Child kidnapping
 - Parental kidnapping by detaining/concealing whereabouts of child >120 days

ALSO
DOES
NOT
QUALIFY

- If requires SOR
- Any offense listed (or previously listed) under 566

DOES NOT QUALIFY

- Any DV
- Felony kidnapping
- Felony where death is element
- Felony assault

DOES NOT QUALIFY

- If can expunge under different statute
- IRTTO or IRBO or IRAO
 - (traffic & boats & aircrafts)
- "Substantially equivalent" ordinance
- Anyone with CDL

WHO ELSE DOES NOT QUALIFY

- UUW (but ACA not on list)
- VOP
- Child endangerment

WHO ELSE DOES NOT QUALIFY

- Stealing *
- Property damage 1st *
- Burglary 1st
- Forgery
- Fraudulent use of credit/debit device *

WHO ELSE DOES NOT QUALIFY

- There are more in the statute but not as likely to see them
- Full list in materials
(go more)

DAMN!

Does anybody qualify???

WHO DOES QUALIFY (or may in the near future)

It's better than before and may get
better...

WHO DOES QUALIFY

- All DRUGS (unless death or A felony)

WHO DOES QUALIFY

- Tampering 1st & 2nd
- Property damage 2nd
- Trespassing 1st or 2nd
- Arson 3rd

WHO DOES QUALIFY

- Burglary 2nd
- Possession of burglar tools
- Fraudulent procurement of credit device
- Issuing false instrument (570.110)

WHO DOES QUALIFY

- ACA
- Open display firearm
- Defacing firearm
- Possession of defaced firearm

WHO DOES QUALIFY

- Assault – misdemeanor
- Resisting or interfering with arrest
- Peace disturbance
- Harassment
- Stalking
- Invasion of privacy
- Custodial interference

WHO DOES QUALIFY

- Rioting
- Unlawful assembly
- Making terrorist threat 3rd

WHO DOES QUALIFY

- Hindering prosecution
- Perjury
- Making false reports
- Tampering w/ evidence
- Tampering w/ witness or victim

WHO DOES QUALIFY

- Animal neglect
- Animal trespass
- Animal abuse

WHO DOES QUALIFY

- Child endangerment 2nd
- Unlawful transactions with child (568.070) – allowing child to be at place where drugs

WHO DOES QUALIFY

- CNS
- Prostitution
- Gambling
- Public drunkenness

WHO DOES QUALIFY

- Failing to comply w/ IID
- DWI & MIP (under other statutes)
- Littering

LEGISLATION pending
to add more...

SB 1

- Property damage 1st
- Stealing
- Possession of forging instrument
- Fraudulent use of credit/debit device
- (eff. 8/28/19)

So how to
use this info
in
PLEA
NEGOTIATING

NO

- UUW

YES

- ACA
- Open display firearm
- Defacing firearm
- Possession of defaced firearm

So how to
use this info
in
PLEA
NEGOTIATING

NO

- Burglary 1st
- Stealing
 - But wait in case legislation passes

YES

- Burglary 2nd
- Possession of burglar tools
- Tampering 1st or 2nd
- Trespass 1st or 2nd

So how to
use this info
in
PLEA
NEGOTIATING

NO

- Property damage 1st
- Fraudulent USE of credit/debit device
 - But wait in case legislation passes

YES

- Property damage 2nd
- Fraudulent procurement of cr/dr device
- Issuing false instrument (570.110)

So how to
use this info
in
PLEA
NEGOTIATING

NO

- Assault - felony
- Any DV case
- VOP

YES

- Assault – misdemeanor
- Resisting or interfering w/ arrest
- Peace disturbance
- Harassment
- Stalking
- Invasion of privacy

So how to
use this info
in
PLEA
NEGOTIATING

NO

- Child abuse
- Child endangerment

YES

- Child endangerment 2nd
- Unlawful transactions w/ child where at place of drugs (568.070)

So how to
use this info
in
PLEA
NEGOTIATING

NO

- Parental kidnapping

YES

- Custodial interference
- Child endangerment 2nd
- Peace disturbance

LIMITATIONS on expungements

LIMITS TO

- Can get more than 1 expungement under 610.140 BUT....
- No more than...
 - **2** misdemeanors or ordinance violations that have authorized term of imprisonment &
 - **1** felony only

LIMITS TO

- So see if qualify under OTHER expungement statute too
 - DWI – 610.130
 - MIP – 311.326
 - Arrests – 610.122 & 610.123
 - Stolen or Mistaken ID – 610.145

IF THEY DO QUALIFY,
WHEN CAN THEY
EXPUNGE?

WAIT PERIOD

- Felonies – **7 yrs**
- Misdemeanors, Municipal offenses, infractions – **3 yrs**
- From date of completion of any authorized disposition under 557.011

IF THEY DO QUALIFY,
DO THEY STAND A
CHANCE?

**They
must
prove...**

- Have not been found guilty of any other misdemeanor or felony
 - during the wait period of 7 yrs or 3 yrs
-

- Expressly does NOT include traffic (304 & 307)
- But fails to mention ordinances & infractions generally
- NOTE: look at what is misdemeanor vs infractions in plea negotiations (ex, FTR)

And...

- Must satisfy all obligations related to said disposition, including fines & restitution
- Have no charges pending

And the
ever so
subjective
proof of...

- Habits & conduct demonstrate not a threat to public safety of state
- Expungement is consistent w/ public welfare &
- The interests of justice warrant the expungement

HOW TO HELP CLIENTS WITH PRO SE PLEADINGS

OSCA Forms

www.courts.mo.gov

- CR 300 – Petition to Correct Arrest Record (Victim of ID Theft)
- CR 301 – Petition for Expungement of Mistaken ID
- CR 145 – Petition to Expunge Arrest – 610.122
- **CR360 – Petition to Expunge Arrest, Plea, Conviction – 610.140**

Petition for Expungement – Section 610.140, RSMo.

Pursuant to section 610.140, RSMo, I request that the court issue an order to expunge my record of arrest, plea, trial, or conviction(s), for the criminal case(s) identified below.

All of the convictions listed below occurred and were prosecuted within the state of Missouri. I am filing this petition in the county where the conviction(s) was charged or I was found guilty.

I hereby swear:

1. That the appropriate amount of time has lapsed since the arrest and/or completion of the authorized disposition imposed for each offense that I am asking to have expunged; it has been at least seven years for any felony offense or least three years for any misdemeanor, infraction, or ordinance violation;
2. I have not been found guilty of any other misdemeanor or felony, not including violations of the traffic regulations provided under chapters 304 and 307, RSMo, during the time period specified for the underlying offense, violation, or infraction in section 610.140.5.1, RSMo;
3. I have satisfied all obligations relating to any such disposition, including the payment of any fines or restitution;
4. I do not have any charges pending;
5. My habits and conduct demonstrate that the petitioner is not a threat to the public safety of the state;
6. ☐ I have not previously been granted an expungement or ☐ I have previously been granted an expungement (list court and case number: _____); and
7. The expungement is consistent with the public welfare and the interests of justice warrant the expungement.

Petition also says

- Agencies above MAY possess records subject to expungement
- Court's order shall NOT affect any person or entity NOT named as Defendant
- If I do NOT meet criteria for ANY of the offenses listed, OR
- I knowingly provide false information
- Then Petition will be dismissed
- Cannot refile for 1 year after filing date



IN THE _____ JUDICIAL CIRCUIT, _____ COUNTY, MISSOURI

Judge or Division:	Case Number:
Petitioner:	
vs. (Date File Stamp)	
Defendant(s): (select or list all of the agencies you believe may have records of each of the convictions you seek to expunge, attach additional sheets as necessary)	
<input type="checkbox"/> Circuit Court Division _____	<input type="checkbox"/> _____ County Sheriff's Dept.
<input type="checkbox"/> Municipal Division, City of _____	<input type="checkbox"/> _____ Municipal Police Dept.
<input type="checkbox"/> Missouri State Highway Patrol (MSHP) Criminal Justice Information Services (CJIS) Division	<input type="checkbox"/> Other (include name and address of agency) _____ _____ _____
<input type="checkbox"/> Prosecuting Attorney(s) / Circuit Attorney(s) (include name of county) County _____	_____ _____ _____
<input type="checkbox"/> Missouri Department of Revenue	_____

610.140 Costs

- \$250 filing fee
- Judge may waive it
- If petitioner is found by the judge to be indigent and unable to pay the costs
- See Form at OSCA website

Proceed as Poor Person

- **Motion and Affidavit in Support of Request to Proceed as a Poor Person:**
- Must have findings of indigency by the Court
- Must inform the court of his/her income & expenses under oath
- www.courts.mo.gov/courtforms/generalforms
- FORM: **GN 10** Motion and Affidavit in Support of Request to Proceed as a Poor Person.pdf

NOTE: They provide translations for Bosnian, Spanish, French, Russian, Ukrainian & Vietnamese..... But the form must be completed in ENGLISH.

IN CONCLUSION

- Strategically use info for plea negotiations
- Explain expungement eligibility to clients
- Client's choice
- Don't give up
- Expungement is better than nothing
- Can file as poor person

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