EXPUNGEMENT OF CRIMINAL RECORDS

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*What was your name in the states?*

*Was it Thompson or Johnson or Bates?*

*Did you murder your wife*

*And run for your life*

*Oh what was your name in the states?*

Folk song of the Old West

STATE

Long ago a criminal could move, change his name and his history would go unquestioned. This has changed. Computers never forget. Convictions under Missouri law do not “go away” no matter how ancient the offense. The good news is that under Missouri law at RSMo 610.140 a number of misdemeanors and felonies can be expunged. The crime must have been filed in Missouri state or municipal courts. The action must be brought in the court where the case was filed. The law allows expungement of convictions, guilty pleas and suspended imposition of sentence. For misdemeanors it must have been three years since released from incarceration or probation. For felonies it must have been seven years since released from incarceration or probation.

The petition must name every agency which may have a record of the arrest. This often requires some research. If the agency is not named in the suit, it is not required to expunge its records, and the conviction will remain on record.

As of this writing only one felony and two misdemeanors can be expunged for any individual. This may require consideration of which conviction is the most damaging.

NOT EXPUNGED

1. Any Class A felony
2. Any “dangerous felony” as defined at RSM0 556.061. This statute covers attacks, arson, sex crimes, kidnapping, parental kidnapping and certain intoxication related offenses.
3. Any offense that requires registration as a sex offender
4. Any felony where death is an element of the offense
5. Any felony offense of assault
6. Any felony offense of kidnaping
7. Any felony or misdemeanor offense of domestic assault
8. Any offense eligible for expungement under RSMo 577.054 or 610.130. These statutes are the old and current basis for expunging ten year old first DWI offenses.
9. Any driving or boating while drunk or operating an aircraft while drunk or intoxicated
10. Any traffic violation by a person with a commercial driver’s license.
11. RSMo 610.140.2(6) lists a half page of specific statutes which cannot be expunged. Some seem arbitrarily narrow. First Degree Burglary cannot be expunged; Second Degree Burglary can be expunged. It doesn’t have to make sense; its just the law.

A good first move would be to contact the circuit clerk for the county where the conviction occurred and obtain a copy of the file; at least the sentencing document. This should provide the statute governing the conviction.

 A DWI cannot be expunged under RSMo 610.140. A first DWI can be expunged after ten years have passed under RSMo 610.130. This seldom occurs. I saw it done once and the judge was incredulous. He demanded proof that there was such a statute before he would proceed.

 EFFECT

 Under the statute the crime is erased and the defendant is placed in the same position he was in before the crime occurred. This is as close to “washed in the blood of the lamb” as the legislature is ever likely to write. However. There is always a “however.” The record is moved to the computer holding records of dismissals and not-guilty verdicts. This creates some trouble for gun rights under federal law.

 A person who has had a crime expunged can get a license to carry concealed weapons. The applicant must reveal the expungement to the sheriff when the application is made. A person with a suspended imposition of sentence can possess firearms but can NOT get a license to carry concealed weapons. It doesn’t have to make sense; its just the law. If the suspended imposition of sentence is expunged that may remove the obstacle. The statute is not specific and there have been no cases.

 The Missouri Supreme Court has ruled that courts do not have the authority to expunge a conviction under their equitable powers. Courts can raise taxes and sentence people to death. They cannot expunge a conviction except under RSMo 610.140. It doesn’t have to make sense; its just the law.

FEDERAL VIEW

There is a federal statute which provides for restoration of the right to possess firearms. This program has not been funded for nearly thirty years. Without the budget to buy a piece of paper on which to write the restoration of rights it cannot happen. Suits have been filed claiming that the refusal of congress to fund the program is a denial which can be appealed through the courts. The US Supreme Court said no; *U.S. v Bean*,10 December 2002.

The federal government does not recognize Missouri expungements as valid for the purpose of restoring gun rights. It does not recognize the expungement of any state with which I am familiar; *State of Wyoming ex rel Crank v United States*, 539 F.3d 1236 (10th Cir. 2008). The problem is that the federal government does not accept any expungement unless it is “complete.” The Missouri expungement law allows the case to remain in the system for the purpose of increasing the sentence of a future crime. As of this writing there is a lawsuit over this question and a legislative attempt to change the law.

 Expunged persons can buy guns privately; but that is another problem. Because the federal government views the state expungement as ineffective, possession of guns is possession by a felon, which is another felony. The case probably could not be filed in state court. Missouri courts must respect actions of the legislature and of the court which issued the expungement. The feds, on the other hand, do not have to respect anything the state does. Federal anything trumps state anything. This means that expunged persons in possession of firearms can be arrested and tried in federal court; and convicted waiving their expungement all the way to prison. What to do? I intend to continue filing expungements for clients. There are other reasons to expunge a felony, jobs, public housing; women check such records before a date (sex offenses cannot be expunged). Once there are a number of expunged persons, there will be a greater demand for the expungement to be a reality.

ALTERNATIVES

 The Governor has an absolute right to pardon. The Western District Court of Appeals decided that a pardon does not allow a person to have a license to carry concealed weapons. I do not agree. But, I just work here, I don’t make policy.

 Pardons are rare. The governor is not required to look at the application. A bare application has worked but should not be relied upon.

 Post-trial relief is a “Hail Mary” request for a new trial. It relies on a claim that the defendant did not receive a fair trial. The result may be a new trial and a worse result. They are seldom successful.

Mayors of First Class cities with a charter form of government may pardon city ordinance violations; if the charter gives them that authority. Third Class city mayors have the power to pardon ordinance violations under RSMo 77.360. Fourth Class city mayors have the same power under RSMo 79.220. Second Class city mayors appear to be out of luck.

EXPUNGE ARRESTS

 Arrests can be expunged under RSMo 610.122 and Mo Court Rule 155.01-05.

 FUTURE

 The legislature has expanded the expungement law nearly every year since it passed. New laws become effective on 28 August of each year.

If this information has been helpful, please go to my web site www.KLJamisonLaw.com , click on “Review the Firm” and leave an encouraging comment.