

CRIMINAL LAW:
CRIMINAL PROCEDURE:
CONTROLLED SUBSTANCES:
NARCOTICS:
DRUGS:

The expungement of records authorized by Section 195.290, RSMo Supp. 1971, requires the physical destruction of such records.

OPINION NO. 111

February 4, 1974

Honorable Kenneth J. Rothman
State Representative, 77th District
Room 309, State Capitol Building
Jefferson City, Missouri 65101



Dear Representative Rothman:

This official opinion is issued in response to your request for a ruling on the following question:

"Under RSMo 195.290 1971 Supp. dealing with the expungement of criminal records, does expunge mean to remove from the files and place in a non-public file, or does it mean to physically destroy?"

You state that several judges have taken the position that physical destruction of an expunged record is not required, and that one judge has placed a record in his safe in order to prevent it from being made available to the public.

Section 195.290, RSMo Supp. 1971, provides as follows:

"After a period of not less than six months from the time that an offender was placed on probation by a court, such person, who at the time of the offense was twenty-one years of age or younger, may apply to the court which sentenced him for an order to expunge from all official records, except from those records maintained under the comprehensive drug abuse prevention and control act, as enacted in 1970, and all recordations of his arrest, trial and conviction. If the court determines, after a hearing and after reference to the controlled dangerous substances registry,

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that such person during the period of such probation and during the period of time prior to his application to the court under this section has not been guilty of any offenses, or repeated violation of the conditions of such probation, he shall enter such order. The effect of such order shall be to restore such person, in the contemplation of the law, to the status he occupied prior to such arrest and conviction. No person as to whom such order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest or trial or conviction in response to any inquiry made of him for any purpose."

These provisions, of course, refer to offenses for violation of the Drug Regulations or Controlled Substances Act, Sections 195.010 through 195.320, RSMo Supp. 1971.

In our Opinion No. 299, issued September 28, 1973, to Theodore D. McNeal and Curtis Brostron, we stated as follows:

". . . Black's Law Dictionary, Fourth Edition, defines 'to expunge' as 'to destroy or obliterate; it implies not a legal act, but a physical annihilation.' Webster's New World Dictionary of the American Language, College Edition, defines 'expunge' as 'to blot, wipe, or strike out; erase; delete; cancel; efface.' The clear meaning of the word, then, implies physical destruction of the records. . . ."

We enclose a copy of Opinion No. 299.

We cited this meaning for the word "expunge" in the context of Senate Bill No. 1, 77th General Assembly (1973). However, we see no reason to believe that the meaning of the word "expunge" in Section 195.290, RSMo Supp. 1971, is different. Nothing in the terms of Section 195.290 implies that the requirement of expungement can or should be met by segregation of certain records from other records which are accessible to the public, nor by any other disposition of records short of their physical destruction.

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CONCLUSION

Therefore, it is the opinion of this office that the expungement of records authorized by Section 195.290, RSMo Supp. 1971, requires the physical destruction of such records.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Mark D. Mittleman.

Very truly yours,

A handwritten signature in black ink, appearing to read "John C. Danforth". The signature is fluid and cursive, with a large initial "J" and a long, sweeping underline.

JOHN C. DANFORTH
Attorney General

Enclosure: Op. No. 299
9-28-73, McNeal