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## DIGEST

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HB 638 Original

2022 Regular Session

Freeman

**Abstract:** Provides relative to the expungement of records for victims of human trafficking and provides relative to procedures for motions to expunge records of human trafficking victims.

Present law (C.Cr.P. Art. 977(A)) provides that person may file a motion to expunge his record of arrest and conviction of a **misdemeanor offense** if either of the following apply:

- (1) The conviction was set aside and the prosecution was dismissed pursuant to present law (C.Cr.P. Art. 894(B)).
- (2) More than five years have elapsed since the person completed any sentence, deferred adjudication, or period of probation or parole, and the person has not been convicted of any felony offense during the five-year period, and has no felony charge pending against him.

Present law (C.Cr.P. Art. 978(A)) provides that a person may file a motion to expunge his record of arrest and conviction of certain **felony offenses** if any of the following apply:

- (1) The conviction was set aside and the prosecution was dismissed pursuant to present law (C.Cr.P. Art. 893).
- (2) More than 10 years have elapsed since the person completed any sentence, deferred adjudication, or period of probation or parole based on the felony conviction, and the person has not been convicted of any other criminal offense during the 10-year period, and has no criminal charge pending against him.
- (3) The person is entitled to a first offender pardon for the offense, provided that the offense is not defined as a crime of violence or a sex offense.

Proposed law adds an additional ground to present law (C.Cr.P. Arts. 977(A) and 978(A)) for which a person may be entitled to an expungement when the arrest or conviction was not for a crime of violence and was committed while the person was a victim of human trafficking as defined by present law (R.S. 14:46.2 or 46.3).

Proposed law provides that the motion filed pursuant to proposed law shall be served on the district attorney that obtained the conviction for which the expungement is sought. The district attorney shall have 45 days from the date of receipt of service to respond to the petition for relief. Official documentation of the applicant's status as a victim of a human trafficking offense from a federal,

state, or local governmental agency shall create a presumption that the applicant's participation in the offense was a result of having been a victim of human trafficking, but shall not be required for granting a motion under proposed law. If the court requires a hearing, evidence of actions taken by the perpetrator of human trafficking against the applicant seeking an expungement may be considered, but shall not be required as proof that the person seeking the expungement was a victim of human trafficking.

Proposed law further provides that if the opposition to petition is not filed by the district attorney, the court shall deem the petition unopposed and may grant the petition. If the petition is opposed or the court otherwise deems it necessary, the court shall schedule a hearing on the petition. The court may grant the order of expungement regardless of whether such conviction was set aside and the prosecution was dismissed pursuant to present law.

Proposed law amends the present law forms to conform with changes made in proposed law.

(Amends C.Cr.P. Arts. 977(A)(intro. para.), 978(D), 989, 992, and 993; Adds C.Cr.P. Arts. 977(A)(3) and (D)(3), 978(A)(4), and 979.1)