
DIGEST

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Lopinto

HB No. 55

Abstract: Provides for a comprehensive revision of the expungement laws.

Present law provides for the expungement of records of arrest and misdemeanor convictions in certain circumstances.

Present law provides for the confidentiality of expunged records and authorizes access to those records by law enforcement, criminal justice agencies, and statutorily defined entities.

Proposed law retains present law.

Proposed law provides for a comprehensive revision to present law provisions, including the following major changes:

- (1) Moves expungement provisions of law from provisions regarding public records to the Code of Criminal Procedure.
- (2) Provides for statutorily defined forms to be used in motions for expungement and judgments of expungement.
- (3) Prohibits the unauthorized dissemination of expunged records by third parties and provides civil penalties for the unauthorized dissemination of expunged record information.
- (4) Provides for a five-year cleansing period without a conviction of a felony to obtain an expungement for a misdemeanor conviction.
- (5) Provides for a ten-year cleansing period without conviction to obtain an expungement for a felony conviction.
- (6) Deletes provisions of present law authorizing the destruction of criminal records.
- (7) Provides for a limitation on the number of expungements a person may obtain.
- (8) Provides eligibility criteria to obtain an expungement.
- (9) Prohibits the expungement of crimes of violence, sex offenses, and most controlled

dangerous substances violations.

- (10) Allows the expungement of a conviction for possession of a controlled dangerous substance or the possession with intent to distribute a controlled dangerous substance.
- (11) Authorizes the district attorney or the La. Bureau of Criminal Identification and Information to request a contradictory hearing on a motion to expunge and provides for time periods for raising objections.
- (12) Provides for an expungement by redaction of certain identifying information in the records of a person who is arrested or convicted with other offenders who are not entitled to an expungement. Provides that expungement by redaction is the removal of the name or any other identifying information of the person entitled to the expungement but otherwise retains the records of the incident as they relate to the other defendants.
- (13) Provides for an interim expungement of a felony arrest when that original arrest results in a conviction for a misdemeanor. Provides that these expungements are not subject to the cleansing period and are unlimited. Prohibits the expungement of misdemeanor convictions arising from the felony arrest.
- (14) Authorizes the use of expunged records by law enforcement, criminal justice agencies, prosecutors and judges for the purposes of defending a law enforcement, criminal justice agency, or prosecutor in a civil suit for damages resulting from wrongful arrest or other civil litigation and the expunged record is necessary to provide a proper defense.

Present law provides for the following fees for expungement:

- (1) The La. Bureau of Criminal Identification and Information may charge \$250.
- (2) The sheriff may charge \$50.
- (3) The district attorney may charge \$50.

Proposed law retains present law and makes the fees nonrefundable.

Proposed law authorizes the clerk of court to charge an administrative fee of up to \$200.

Present law provides that an applicant for expungement does not have to pay any fees for an expungement if a certification obtained from the district attorney is presented to the clerk of court which verifies that the applicant has no felony convictions and no pending felony charges under a bill of information or indictment and at least one of the following applies:

- (1) The applicant was acquitted, after trial, of all charges derived from the arrest, including any lesser and included offense.

- (2) The district attorney consents, and the case against the applicant was dismissed or the district attorney declined to prosecute the case prior to the time limitations provided for in present law, and the applicant did not participate in a pretrial diversion program.
- (3) The applicant was arrested and was never prosecuted within the time limitations provided for in present law and did not participate in a pretrial diversion program.

Proposed law retains present law and adds an additional circumstance for the exemption of expungement fees when the applicant has been determined to be factually innocent and entitled to compensation for a wrongful conviction pursuant to present law.

(Adds C.Cr.P. Arts. 971-995; Repeals R.S. 44:9)

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Administration of Criminal Justice to the original bill.

1. Made numerous technical changes to the proposed law forms to provide that the provisions of law were consistent with the language of the forms.
2. Required the person seeking the expungement to send the notice of the order of the expungement to any private third party disseminating criminal history information.
3. Provided that the five-year cleansing period for misdemeanor convictions applied to five years without a felony conviction. Reinstated present law regarding expungement of misdemeanor convictions.
4. Provided for interim expungements of felony arrests which result in convictions of misdemeanor offenses.
5. Prohibited the expungement of certain offenses arising out of felony arrests.
6. Granted the La. Bureau of Criminal Identification and Information 120 days to object to a motion to expunge a record for one year. On or after Aug. 1, 2015, this period is reduced to 60 days.
7. Added an additional circumstance for the exemption of expungement fees when the applicant has been determined to be factually innocent and entitled to compensation for a wrongful conviction pursuant to present law.

House Floor Amendments to the engrossed bill.

1. Extensive technical amendments to the expungement forms.

2. Defined "interim expungement".
3. Created exceptions for release of information by a "news-gathering organization" and defined that term.
4. Authorized the use of expunged records as a defense in a civil suit for damages resulting from wrongful arrest or other civil litigation.
5. Removed criminal penalties for dissemination of criminal history information by third-party entities.