

2016 Regular Session

HOUSE BILL NO. 7

BY REPRESENTATIVE PRICE

CRIMINAL/PROCEDURE: Provides with respect to expungement

1 AN ACT

2 To amend and reenact Code of Criminal Procedure Articles 978(B)(1), 989, and 992 and to
3 enact Code of Criminal Procedure Articles 976(A)(4) and 978(E), relative to
4 expungement; to provide for eligibility for an expungement in cases of factual
5 innocence; to provide for the expungement of certain crimes of violence after a
6 cleansing period; to provide for the expungement forms to be used; and to provide
7 for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. Code of Criminal Procedure Articles 978(B)(1), 989, and 992 are hereby
10 amended and reenacted and Code of Criminal Procedure Articles 976(A)(4) and 978(E) are
11 hereby enacted to read as follows:

12 Art. 976. Motion to expunge record of arrest that did not result in a conviction

13 A. A person may file a motion to expunge a record of his arrest for a felony
14 or misdemeanor offense that did not result in a conviction if any of the following
15 apply:

16 * * *

17 (4) The person was judicially determined to be factually innocent and
18 entitled to compensation for a wrongful conviction pursuant to the provisions of R.S.
19 15:572.8. The person may seek to have the arrest and conviction which formed the
20 basis for the wrongful conviction expunged without the limitations or time delays

1 imposed by the provisions of this Article or any other provision of law to the
2 contrary.

3 * * *

4 Art. 978. Motion to expunge record of arrest and conviction of a felony offense

5 * * *

6 B. No expungement shall be granted nor shall a person be permitted to file
7 a motion to expunge the record of arrest and conviction of a felony offense if the
8 person was convicted of the commission or attempted commission of any of the
9 following offenses:

10 (1) A crime of violence as defined by or enumerated in R.S. 14:2(B), unless
11 otherwise authorized in Paragraph E of this Article.

12 * * *

13 E.(1) Notwithstanding any other provision of law to the contrary, after a
14 contradictory hearing, the court may order the expungement of the arrest and
15 conviction records of a person pertaining to a conviction of aggravated battery,
16 second degree battery, aggravated criminal damage to property, simple robbery,
17 purse snatching, or illegal use of weapons or dangerous instrumentalities if all of the
18 following conditions are proven by the petitioner:

19 (a) More than ten years have elapsed since the person completed any
20 sentence, deferred adjudication, or period of probation or parole based on the felony
21 conviction.

22 (b) The person has not been convicted of any other criminal offense during
23 the ten-year period.

24 (c) The person has no criminal charge pending against him.

25 (d) The person has been continuously employed for a period of ten
26 consecutive years.

27 (2) The motion filed pursuant to this Paragraph shall include a certification
28 from the district attorney which verifies that, to his knowledge, the applicant has no
29 convictions during the ten-year period and no pending charges under a bill of

1 information or indictment. The motion shall be heard by contradictory hearing as
2 provided by Article 980.

3 * * *

4 Art. 989. Motion for expungement forms to be used

5 **STATE OF LOUISIANA**

6 **JUDICIAL DISTRICT FOR THE PARISH OF**

7 _____

8 No.: _____

Division: " _____ "

9 **State of Louisiana**

10 vs.

11 _____

12 **MOTION FOR EXPUNGEMENT**

13 NOW INTO COURT comes mover, who provides the court with the
14 following information in connection with this request:

15 **I. DEFENDANT INFORMATION**

16 NAME: _____

17 (Last, First, MI)

18 DOB: _____ / _____ / _____ (MM/DD/YYYY)

19 GENDER _____ Female _____ Male

20 SSN (last 4 digits): XXX-XX-_____

21 RACE: _____

22 DRIVER LIC.# _____

23 ARRESTING AGENCY: _____

24 SID# (if available): _____

25 ARREST NUMBER: _____

26 Mover is entitled to expunge the record of his arrest/conviction pursuant to
27 Louisiana Code of Criminal Procedure Article 971 et seq. and states the following
28 in support:

1 **II. ARREST INFORMATION**

- 2 1. Mover was arrested on _____/_____/_____ (MM/DD/YYYY)
- 3 2. YES NO A supplemental sheet with arrests and/or
- 4 convictions is attached after page 2 of this
- 5 Motion.
- 6 3. Mover was:
- 7 YES NO Arrested, but it did not result in conviction
- 8 YES NO Convicted of and seeks to expunge a
- 9 misdemeanor
- 10 YES NO Convicted of and seeks to expunge a felony
- 11 YES NO Convicted but determined to be factually
- 12 innocent and entitled to compensation for a
- 13 wrongful conviction pursuant to the
- 14 provisions of R.S. 15:572.8.
- 15 4. Mover was booked and/or charged with the following offenses: (List each
- 16 offense booked and charged separately. Attach a supplemental sheet, if
- 17 necessary.)

18 Yes No **ARRESTS THAT DID NOT RESULT IN CONVICTION**

- | | |
|----------------------|--|
| 19 ITEM NO. 1 | La. Rev. Stat. Ann. § _____ : _____ |
| 20 | Name of the offense _____ |
| 21 | () Time expired for prosecution _____ |
| 22 | (MM/DD/YYYY) |
| 23 | () Not prosecuted for any offense |
| 24 | arising out of this charge. |
| 25 | () Pre-trial Diversion Program. |

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

- 1 () DWI Pre-Trial Diversion Program
- 2 and 5 years have elapsed since the
- 3 date of arrest.
- 4 () Charge dismissed
- 5 () Found not guilty/judgment of acquittal

6 **ITEM NO. 2** La. Rev. Stat. Ann. § _____ : _____

7 Name of the offense _____

8 () Time expired for prosecution _____

9 (MM/DD/YYYY)

10 () Not prosecuted for any

11 offense arising out of this charge.

12 () Pre-trial Diversion Program.

13 () Charge dismissed

14 () Found not guilty/judgment of acquittal

15 **ITEM NO. 3** La. Rev. Stat. Ann. § _____ : _____

16 Name of the offense _____

17 () Time expired for prosecution _____

18 (MM/DD/YYYY)

19 () Not prosecuted for any offense

20 arising out of this charge.

21 () Pre-trial Diversion Program.

22 () Charge dismissed

23 () Found not guilty/judgment of acquittal

1 Yes No **MISDEMEANOR CONVICTIONS**

2 **ITEM NO. 1** La. Rev. Stat. Ann. § _____ : _____
 3 Name of the offense _____
 4 () Conviction set aside/dismissed ____ / ____ / ____
 5 pursuant to C.Cr.P. Art. 894(B) (MM/DD/YYYY)
 6 () More than 5 years have passed
 7 since completion of sentence.

8 **ITEM NO. 2** La. Rev. Stat. Ann. § _____ : _____
 9 Name of the offense _____
 10 () Conviction set aside/dismissed ____ / ____ / ____
 11 pursuant to C.Cr.P. Art. 894(B) (MM/DD/YYYY)
 12 () More than 5 years have passed
 13 since completion of sentence.

14 Yes No **FELONY CONVICTIONS**

15 **ITEM NO. 1** La. Rev. Stat. Ann. § _____ : _____
 16 () Conviction set aside/dismissed ____ / ____ / ____
 17 pursuant to C.Cr.P. Art. 893(E) (MM/DD/YYYY)
 18 () More than 10 years have passed
 19 since completion of sentence

20 **ITEM NO. 2** La. Rev. Stat. Ann. § _____ : _____
 21 () Conviction set aside/dismissed ____ / ____ / ____
 22 pursuant to C.Cr.P. Art. 893(E) (MM/DD/YYYY)
 23 () More than 10 years have passed
 24 since completion of sentence

1 Yes No **OPERATING A MOTOR VEHICLE WHILE**
2 **INTOXICATED CONVICTIONS**

3 Mover has attached the following:

4 () A copy of the proof from the Department of Public Safety and
5 Corrections, office of motor vehicles, that it has received from the
6 clerk of court a certified copy of the record of the plea, fingerprints
7 of the defendant, and proof of the requirements set forth in C.Cr.P.
8 Art. 556, which shall include the defendant's date of birth, last four
9 digits of social security number, and driver's license number

10 5. Mover has attached to this Motion the following pertinent documents:

- 11 Criminal Background Check from the La. State Police/Parish Sheriff
- 12 dated within the past 30 days (required).
- 13 Bill(s) of Information (if any).
- 14 Minute entry showing final disposition of case (if any).
- 15 Certification Letter from the District Attorney for fee waiver (if
- 16 eligible).
- 17 Certification Letter from the District Attorney verifying that the
- 18 applicant has no convictions or pending applicable criminal charges
- 19 in the requisite time periods.
- 20 Certification Letter from the District Attorney verifying that the
- 21 charges were refused.
- 22 Certification Letter from the District Attorney verifying that the
- 23 applicant did not participate in a pretrial diversion program.
- 24 A copy of the order waiving the sex offender registration and
- 25 notification requirements.

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If not represented by counsel:

Signature of Mover/Defendant

Mover/Defendant Name

Address

City, State, ZIP Code

Telephone Number

* * *

Art. 992. Order of expungement form to be used

STATE OF LOUISIANA

JUDICIAL DISTRICT FOR THE PARISH OF

No.: _____

Division: " _____ "

State of Louisiana

vs.

ORDER OF EXPUNGEMENT OF ARREST/CONVICTION RECORD

Considering the Motion for Expungement

The hearing conducted and evidence adduced herein, OR

Affidavits of No Opposition filed,

IT IS ORDERED, ADJUDGED AND DECREED

THE MOTION IS DENIED for Item(s) No. , , , the following reasons (check all that apply):

More than five years have not elapsed since Mover completed the misdemeanor conviction sentence.

More than ten years have not elapsed since Mover completed the felony conviction sentence.

- 1 Mover was convicted of one of the following ineligible felony
2 offenses:
- 3 A violation of the Uniform Controlled Dangerous Substances
4 Law which is ineligible to be expunged.
- 5 An offense currently listed as a sex offense that requires
6 registration pursuant to La. Rev. Stat. Ann. 15:540 et seq., at
7 the time the Motion was filed, regardless of whether the duty
8 to register was ever imposed.
- 9 An offense defined or enumerated as a "crime of violence"
10 pursuant to La. Rev. Stat. Ann. 14:2(B) at the time the
11 Motion was filed.
- 12 The arrest and conviction being sought to have expunged is for
13 operating a motor vehicle while intoxicated and a copy of the proof
14 from the Department of Public Safety and Corrections, office of
15 motor vehicles, is not attached as required by C.Cr.P. Art. 984(A).
- 16 Mover has had another record of misdemeanor conviction expunged
17 during the previous five-year period.
- 18 The record of arrest and conviction which Mover seeks to have
19 expunged is for operating a motor vehicle while intoxicated and
20 Mover has had another record of arrest and misdemeanor conviction
21 expunged during the previous ten-year period.
- 22 Mover has had another record of felony conviction expunged during
23 the previous fifteen-year period.
- 24 Mover was convicted of a misdemeanor which arose from
25 circumstances involving a sex offense as defined in R.S. 15:541.
- 26 Mover was convicted of misdemeanor offense of domestic abuse
27 battery which was not dismissed pursuant to C.Cr.P. Art. 894(B).
- 28 Mover did not complete pretrial diversion.
- 29 The charges against the mover were not dismissed or refused.

- 1 Mover's felony conviction was not set aside and dismissed pursuant
- 2 to C.Cr.P. Art. 893(E).
- 3 Mover's felony conviction was not set aside and dismissed pursuant
- 4 to C.Cr.P. Art. 894(B).
- 5 Mover completed a DWI pretrial diversion program, but five years
- 6 have not elapsed since the mover's date of arrest.
- 7 Mover's conviction for felony carnal knowledge of a juvenile is not
- 8 defined as misdemeanor carnal knowledge of a juvenile had the
- 9 mover been convicted on or after August 15, 2001.
- 10 Mover has not been employed for ten consecutive years as required
- 11 by Article 978(E)(1)(d)
- 12 Mover was not convicted of a crime that would be eligible for
- 13 expungement as required by Article 978(E)(1)
- 14 Mover has criminal charges pending against him.
- 15 Mover was convicted of a criminal offense during the ten year period.
- 16 Denial for any other reason provided by law with attached reasons for
- 17 denial.
- 18 **THE MOTION IS HEREBY GRANTED** for Item(s) No.
- 19 _____ and all agencies are ordered to expunge the record of
- 20 arrest/conviction and any photographs, fingerprints, or any other such information
- 21 of any kind maintained in connection with the Arrest(s)/Conviction(s) in the above-
- 22 captioned matter, which record shall be confidential and no longer considered a
- 23 public record, nor be available to other persons except a prosecutor, member of a law
- 24 enforcement agency, or a judge who may request such information in writing
- 25 certifying that such request is for the purpose of prosecuting, investigating, or
- 26 enforcing the criminal law, for the purpose of any other statutorily defined law
- 27 enforcement or administrative duties, or for the purpose of the requirements of sex
- 28 offender registration and notification pursuant to the provisions of R.S. 15:541 et

1 seq. or upon an order of this Court to any other person for good cause shown, or as
2 otherwise authorized by law.

3 **THE MOTION IS HEREBY GRANTED FOR EXPUNGEMENT**
4 **BY REDACTION** If the record includes more than one individual and the mover
5 is entitled to expungement by redaction pursuant to Code of Criminal Procedure
6 Article 985, for Item(s) No. _____ and all agencies are ordered to expunge
7 the record of arrest/conviction and any photographs, fingerprints, or any other such
8 information of any kind maintained in relation to the Arrest(s)/Conviction(s) in the
9 above-captioned matter as they relate to the mover only. The record shall be
10 confidential and no longer considered a public record, nor be available to other
11 persons except a prosecutor, member of a law enforcement agency, or a judge who
12 may request such information in writing certifying that such request is for the
13 purpose of prosecuting, investigating, or enforcing the criminal law, for the purpose
14 of any other statutorily defined law enforcement or administrative duties, or for the
15 purpose of the requirements of sex offender registration and notification pursuant to
16 the provisions of R.S. 15:541 et seq. or upon an order of this Court to any other
17 person for good cause shown, or as otherwise authorized by law.

18 NAME: _____
19 (Last, First, MI)

20 DOB: ____/____/____ (MM/DD/YY)

21 GENDER: ____ Female ____ Male

22 SSN (last 4 digits): XXX-XX-_____

23 RACE: _____

24 DRIVER LIC.# _____

25 ARRESTING AGENCY: _____

26 SID# (if available): _____

27 ARREST NUMBER (ATN): _____

28 AGENCY ITEM NUMBER: _____

29 ARREST DATE: ____/____/____ (MM/DD/YY)

Proposed law retains present law and adds an additional criteria if the person was judicially determined to be factually innocent and entitled to compensation for a wrongful conviction.

Present law provides for the expungement of certain misdemeanor and felony arrest and conviction records, but prohibits an expungement of a conviction for a crime of violence.

Proposed law changes present law to allow for the expungement of aggravated battery, second degree battery, aggravated criminal damage to property, simple robbery, purse snatching, and illegal use of weapons or dangerous instrumentalities if 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, has no criminal charge pending against him, and has been continuously employed for a period of 10 consecutive years.

(Amends C.Cr.P. Arts. 978(B)(1), 989 and 992; Adds C.Cr.P. Arts. 976(A)(4) and 978(E))

Summary of Amendments Adopted by House

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

1. Amends expungement forms to reflect proposed law.
2. Requires that determination of factual innocence be a judicial determination.
3. Requires employment for 10 years to be continuous employment.