

2016 Regular Session

HOUSE BILL NO. 7

BY REPRESENTATIVE PRICE

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AN ACT

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

Be it enacted by the Legislature of Louisiana:

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

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

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

* * *

(4) The person was judicially determined to be factually innocent and entitled to compensation for a wrongful conviction pursuant to the provisions of R.S. 15:572.8. The person may seek to have the arrest and conviction which formed the basis for the wrongful conviction expunged without the limitations or time delays imposed by the provisions of this Article or any other provision of law to the contrary.

* * *

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

2 * * *

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

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

9 * * *

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

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

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

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

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

23 (2) The motion filed pursuant to this Paragraph shall include a certification
24 from the district attorney which verifies that, to his knowledge, the applicant has no
25 convictions during the ten-year period and no pending charges under a bill of
26 information or indictment. The motion shall be heard by contradictory hearing as
27 provided by Article 980.

28 * * *

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

2 STATE OF LOUISIANA

3 JUDICIAL DISTRICT FOR THE PARISH OF

4 _____

5 No.: _____

Division: " _____ "

6 State of Louisiana

7 vs.

8 _____

9 MOTION FOR EXPUNGEMENT

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

12 I. DEFENDANT INFORMATION

13 NAME: _____

14 (Last, First, MI)

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

16 GENDER _____ Female _____ Male

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

18 RACE: _____

19 DRIVER LIC.# _____

20 ARRESTING AGENCY: _____

21 SID# (if available): _____

22 ARREST NUMBER: _____

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

26 II. ARREST INFORMATION

27 1. Mover was arrested on _____ / _____ / _____ (MM/DD/YYYY)

28 2. _____ YES _____ NO A supplemental sheet with arrests and/or
29 convictions is attached after page 2 of this
30 Motion.

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3. Mover was:

_____ YES _____ NO Arrested, but it did not result in conviction

_____ YES _____ NO Convicted of and seeks to expunge a misdemeanor

_____ YES _____ NO Convicted of and seeks to expunge a felony

_____ YES _____ NO Convicted but determined to be factually innocent and entitled to compensation for a wrongful conviction pursuant to the provisions of R.S. 15:572.8.

4. Mover was booked and/or charged with the following offenses: (List each offense booked and charged separately. Attach a supplemental sheet, if necessary.)

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

ITEM NO. 1 La. Rev. Stat. Ann. § _____ : _____

Name of the offense _____

() Time expired for prosecution _____
(MM/DD/YYYY)

() Not prosecuted for any offense arising out of this charge.

() Pre-trial Diversion Program.

() DWI Pre-Trial Diversion Program and 5 years have elapsed since the date of arrest.

() Charge dismissed

() Found not guilty/judgment of acquittal

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

Name of the offense _____

() Time expired for prosecution _____
(MM/DD/YYYY)

- 1 () Not prosecuted for any
- 2 offense arising out of this charge.
- 3 () Pre-trial Diversion Program.
- 4 () Charge dismissed
- 5 () Found not guilty/judgment of acquittal

ITEM NO. 3

La. Rev. Stat. Ann. § _____ : _____

Name of the offense _____

() Time expired for prosecution _____

(MM/DD/YYYY)

() Not prosecuted for any offense

arising out of this charge.

() Pre-trial Diversion Program.

() Charge dismissed

() Found not guilty/judgment of acquittal

____ Yes ____ No **MISDEMEANOR CONVICTIONS**

ITEM NO. 1

La. Rev. Stat. Ann. § _____ : _____

Name of the offense _____

() Conviction set aside/dismissed ____/____/____

pursuant to C.Cr.P. Art. 894(B) (MM/DD/YYYY)

() More than 5 years have passed

since completion of sentence.

ITEM NO. 2

La. Rev. Stat. Ann. § _____ : _____

Name of the offense _____

() Conviction set aside/dismissed ____/____/____

pursuant to C.Cr.P. Art. 894(B) (MM/DD/YYYY)

1 () More than 5 years have passed
2 since completion of sentence.

3 Yes No **FELONY CONVICTIONS**

4 **ITEM NO. 1** La. Rev. Stat. Ann. § :

5 () Conviction set aside/dismissed / /
6 pursuant to C.Cr.P. Art. 893(E) (MM/DD/YYYY)

7 () More than 10 years have passed
8 since completion of sentence

9 **ITEM NO. 2** La. Rev. Stat. Ann. § :

10 () Conviction set aside/dismissed / /
11 pursuant to C.Cr.P. Art. 893(E) (MM/DD/YYYY)

12 () More than 10 years have passed
13 since completion of sentence

14 Yes No **OPERATING A MOTOR VEHICLE WHILE**
15 **INTOXICATED CONVICTIONS**

16 Mover has attached the following:

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

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

24 Criminal Background Check from the La. State Police/Parish Sheriff
25 dated within the past 30 days (required).

- 1 Bill(s) of Information (if any).
- 2 Minute entry showing final disposition of case (if any).
- 3 Certification Letter from the District Attorney for fee waiver (if
- 4 eligible).
- 5 Certification Letter from the District Attorney verifying that the
- 6 applicant has no convictions or pending applicable criminal charges
- 7 in the requisite time periods.
- 8 Certification Letter from the District Attorney verifying that the
- 9 charges were refused.
- 10 Certification Letter from the District Attorney verifying that the
- 11 applicant did not participate in a pretrial diversion program.
- 12 A copy of the order waiving the sex offender registration and
- 13 notification requirements.
- 14 Documentation verifying that the mover has been employed for ten
- 15 consecutive years.
- 16 A copy of the court order determination of factual innocence and
- 17 order of compensation for a wrongful conviction pursuant to the
- 18 provisions of R.S. 15:572.8 if applicable.

19 The Mover prays that if there is no objection timely filed by the arresting law
 20 enforcement agency, the district attorney's office, or the Louisiana Bureau of
 21 Criminal Investigation and Information, that an order be issued herein ordering the
 22 expungement of the record of arrest and/or conviction set forth above, including all
 23 photographs, fingerprints, disposition, or any other such information, which record
 24 shall be confidential and no longer considered a public record, nor be made available
 25 to other persons, except a prosecutor, member of a law enforcement agency, or a
 26 judge who may request such information in writing, certifying that such request is
 27 for the purpose of prosecuting, investigating, or enforcing the criminal law, for the
 28 purpose of any other statutorily defined law enforcement or administrative duties,
 29 or for the purpose of the requirements of sex offender registration and notification

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

1 pursuant to the provisions of R.S. 15:541 et seq. or as an order of this Court to any
2 other person for good cause shown, or as otherwise authorized by law.

3 If an "Affidavit of No Opposition" by each agency named herein is attached
4 hereto and made a part hereof, Defendant requests that no contradictory hearing be
5 required and the Motion be granted ex parte.

6 Respectfully submitted,

7 _____
8 Signature of Attorney for Mover/Defendant

9 _____
10 Attorney for Mover/Defendant Name

11 _____
12 Attorney's Bar Roll No.

13 _____
14 Address

15 _____
16 City, State, ZIP Code

17 _____
18 Telephone Number

19 **If not represented by counsel:**

20 _____
21 Signature of Mover/Defendant

22 _____
23 Mover/Defendant Name

24 _____
25 Address

26 _____
27 City, State, ZIP Code

28 _____
29 Telephone Number

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1 Art. 992. Order of expungement form to be used

2 **STATE OF LOUISIANA**

3 **JUDICIAL DISTRICT FOR THE PARISH OF**

4 _____

5 No.: _____

Division: " _____ "

6 **State of Louisiana**

7 **vs.**

8 _____

9 **ORDER OF EXPUNGEMENT OF ARREST/CONVICTION RECORD**

10 Considering the Motion for Expungement

11 The hearing conducted and evidence adduced herein, OR

12 Affidavits of No Opposition filed,

13 IT IS ORDERED, ADJUDGED AND DECREED

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

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

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

20 Mover was convicted of one of the following ineligible felony
21 offenses:

22 A violation of the Uniform Controlled Dangerous Substances
23 Law which is ineligible to be expunged.

24 An offense currently listed as a sex offense that requires
25 registration pursuant to La. Rev. Stat. Ann. 15:540 et seq., at
26 the time the Motion was filed, regardless of whether the duty
27 to register was ever imposed.

28 An offense defined or enumerated as a "crime of violence"
29 pursuant to La. Rev. Stat. Ann. 14:2(B) at the time the
30 Motion was filed.

- 1 The arrest and conviction being sought to have expunged is for
- 2 operating a motor vehicle while intoxicated and a copy of the proof
- 3 from the Department of Public Safety and Corrections, office of
- 4 motor vehicles, is not attached as required by C.Cr.P. Art. 984(A).
- 5 Mover has had another record of misdemeanor conviction expunged
- 6 during the previous five-year period.
- 7 The record of arrest and conviction which Mover seeks to have
- 8 expunged is for operating a motor vehicle while intoxicated and
- 9 Mover has had another record of arrest and misdemeanor conviction
- 10 expunged during the previous ten-year period.
- 11 Mover has had another record of felony conviction expunged during
- 12 the previous fifteen-year period.
- 13 Mover was convicted of a misdemeanor which arose from
- 14 circumstances involving a sex offense as defined in R.S. 15:541.
- 15 Mover was convicted of misdemeanor offense of domestic abuse
- 16 battery which was not dismissed pursuant to C.Cr.P. Art. 894(B).
- 17 Mover did not complete pretrial diversion.
- 18 The charges against the mover were not dismissed or refused.
- 19 Mover's felony conviction was not set aside and dismissed pursuant
- 20 to C.Cr.P. Art. 893(E).
- 21 Mover's felony conviction was not set aside and dismissed pursuant
- 22 to C.Cr.P. Art. 894(B).
- 23 Mover completed a DWI pretrial diversion program, but five years
- 24 have not elapsed since the mover's date of arrest.
- 25 Mover's conviction for felony carnal knowledge of a juvenile is not
- 26 defined as misdemeanor carnal knowledge of a juvenile had the
- 27 mover been convicted on or after August 15, 2001.
- 28 Mover has not been employed for ten consecutive years as required
- 29 by Article 978(E)(1)(d)

1 purpose of prosecuting, investigating, or enforcing the criminal law, for the purpose
 2 of any other statutorily defined law enforcement or administrative duties, or for the
 3 purpose of the requirements of sex offender registration and notification pursuant to
 4 the provisions of R.S. 15:541 et seq. or upon an order of this Court to any other
 5 person for good cause shown, or as otherwise authorized by law.

6 NAME: _____
 7 (Last, First, MI)

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

9 GENDER: ____ Female ____ Male

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

11 RACE: _____

12 DRIVER LIC.# _____

13 ARRESTING AGENCY: _____

14 SID# (if available): _____

15 ARREST NUMBER (ATN): _____

16 AGENCY ITEM NUMBER: _____

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

18 **THUS ORDERED AND SIGNED** this ____ day of _____, 20____
 19 at _____, Louisiana.

20 _____
 21 JUDGE

22 **PLEASE SERVE:**

- 23 1. District Attorney: _____
- 24 2. Arresting Agency: _____
- 25 3. Parish Sheriff: _____
- 26 4. Louisiana Bureau of Criminal Identification and Information _____
- 27 5. Attorney for Defendant (or defendant) _____
- 28 6. Clerk of Court _____

29 Section 2. This Act shall become effective upon signature by the governor or, if not
 30 signed by the governor, upon expiration of the time for bills to become law without signature

1 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
2 vetoed by the governor and subsequently approved by the legislature, this Act shall become
3 effective on the day following such approval.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____