HLS 20RS-572 ORIGINAL

2020 Regular Session

HOUSE BILL NO. 179

1

BY REPRESENTATIVE MARINO

CRIMINAL/RECORDS: Provides relative to certain conditions to expunge a record of arrest and conviction of a felony offense

AN ACT

2	To amend and reenact Code of Criminal Procedure Articles 989 and 992 and to repeal Code					
3	of Criminal Procedure Article 978(E)(1)(d), relative to expungement; to provide					
4	relative to the expungement of certain crimes after a cleansing period; to remove the					
5	requirement that a person must be employed for a period of ten consecutive years;					
6	to provide for the expungement forms to be used; and to provide for related matter.					
7	Be it enacted by the Legislature of Louisiana:					
8	Section 1. Code of Criminal Procedure Articles 989 and 992 are hereby amended					
9	and reenacted to read as follows:					
10	Art. 989. Motion for expungement forms to be used					
11	STATE OF LOUISIANA					
12	JUDICIAL DISTRICT FOR THE PARISH OF					
13						
14	No.: Division: ""					
15	State of Louisiana					
16	vs.					
17						
18	MOTION FOR EXPUNGEMENT					
19	NOW INTO COURT comes mover, who provides the court with the					
20	following information in connection with this request:					

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CODING: Words in struck through type are deletions from existing law; words <u>underscored</u> are additions.

1	I.	DEFENDANT IN	NFORM	ATION	
2	NAN	ME:			
3		(Last,	First	t, MI)	
4	DOE	B:	/	/	_ (MM/DD/YYYY)
5	GEN	NDER		Female	Male
6	SSN	(last 4 digits):	XXX	X-XX	_
7	RAC	CE:			
8	DRI	VER LIC.#			<u> </u>
9	ARF	RESTING AGENCY:			
10	SID#	# (if available):			
11	ARF	REST NUMBER (AT	N):		
12	AGE	ENCY ITEM NO			
13		Mover is entitled t	to expung	ge the record o	of his arrest/conviction pursuant to
14	Loui	siana Code of Crimi	nal Proce	dure Article 9	71 et seq. and states the following
15	in su	pport:			
16	II.	ARREST INFOR	RMATIO)N	
17	1.	Mover was arreste	ed on	//	(MM/DD/YYYY)
18	2.	YES	NO	A suppler	mental sheet with arrests and/or
19				convictions	s is attached after page 2 of this
20				Motion.	
21	3.	Mover was:			
22		YES	NO	Arrested, b	out it did not result in conviction
23		YES	NO	Convicted	d of and seeks to expunge a
24				misdemear	nor
25		YES	NO	Convicted	of and seeks to expunge a felony
26		YES	NO	Convicted	but determined to be factually
27				innocent ar	nd entitled to compensation for a
28				wrongful	conviction pursuant to the
29				provisions	of R.S. 15:572.8.

1	4. Mo	ver was booked and/or charged with the follow	wing off	enses: (List each
2	offe	ense booked and charged separately. Attach	a supple	emental sheet, if
3	nece	essary.)		
4	Yes_	No ARRESTS THAT DID NOT RES	SULT IN	N CONVICTION
5	NO. 1	La. Rev. Stat. Ann.	§	:
6		Name of the offense		
7		() Time expired for prosecution		
8			(1	MM/DD/YYYY)
9		() Not prosecuted for any offense		
10		arising out of this charge.		
11		() Pre-trial Diversion Program.		
12		() DWI Pre-Trial Diversion Progr	am	
13		and 5 years have elapsed since	the	
14		date of arrest.		
15		() Charge dismissed		
16		() Found not guilty/judgment of a	cquittal	
17	NO. 2	La. Rev. Stat. Ann.	§	::
18		Name of the offense		
19		() Time expired for prosecution		
20			(1	MM/DD/YYYY)
21		() Not prosecuted for any		
22		offense arising out of this charg	ge.	
23		() Pre-trial Diversion Program.		
24		() Charge dismissed		
25		() Found not guilty/judgment of a	cquittal	
26	NO. 3	La. Rev. Stat. Ann.	§	:
27		Name of the offense		
28		() Time expired for prosecution		
29			Ω	MM/DD/YYYY)

1 () Not prosecuted for any offense 2 arising out of this charge. 3 () Pre-trial Diversion Program. 4 () Charge dismissed 5 () Found not guilty/judgment of acquittal Yes No MISDEMEANOR CONVICTIONS 6 7 NO. 1 La. Rev. Stat. Ann. § _____: ____ 8 Name of the offense ____/____ 9 () Conviction set aside/dismissed 10 pursuant to C.Cr.P. Art. 894(B) (MM/DD/YYYY) 11 () More than 5 years have passed 12 since completion of sentence. 13 NO. 2 La. Rev. Stat. Ann. § _____: ____ 14 Name of the offense 15 () Conviction set aside/dismissed ____/___ 16 pursuant to C.Cr.P. Art. 894(B) (MM/DD/YYYY) 17 () More than 5 years have passed 18 since completion of sentence. ____ Yes ____ No FELONY CONVICTIONS 19 § _____: ____ 20 NO. 1 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 25 NO. 2 La. Rev. Stat. Ann. § _____: ____ () Conviction set aside/dismissed ____/__/___ 26 27 pursuant to C.Cr.P. Art. 893(E) (MM/DD/YYYY) 28 () More than 10 years have passed

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since completion of sentence

1	Yes	No OPERATING A MOTOR VEHICLE WHILE
2		INTOXICATED CONVICTIONS
3	Mover has at	ached 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 ha	attached to this Motion the following pertinent documents:
11		Criminal Background Check from the La. State Police/Parish Sheriff
12		dated within the past 60 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.
26		Documentation verifying that the mover has been employed for ten
27		consecutive years.

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1	☐ A copy of the court order determination of factual innocence and
2	order of compensation for a wrongful conviction pursuant to the
3	provisions of R.S. 15:572.8 if applicable.
4	The Mover prays that if there is no objection timely filed by the arresting law
5	enforcement agency, the district attorney's office, or the Louisiana Bureau of
6	Criminal Identification and Information, that an order be issued herein ordering the
7	expungement of the record of arrest and/or conviction set forth above, including all
8	photographs, fingerprints, disposition, or any other such information, which record
9	shall be confidential and no longer considered a public record, nor be made available
10	to other persons, except a prosecutor, member of a law enforcement agency, or a
11	judge who may request such information in writing, certifying that such request is
12	for the purpose of prosecuting, investigating, or enforcing the criminal law, for the
13	purpose of any other statutorily defined law enforcement or administrative duties,
14	or for the purpose of the requirements of sex offender registration and notification
15	pursuant to the provisions of R.S. 15:541 et seq. or as an order of this Court to any
16	other person for good cause shown, or as otherwise authorized by law.
17	If an "Affidavit of No Opposition" by each agency named herein is attached
18	hereto and made a part hereof, Defendant requests that no contradictory hearing be
19	required and the Motion be granted ex parte.
20	Respectfully submitted,
21	
22	Signature of Attorney for Mover/Defendant
23	
24	Attorney for Mover/Defendant Name
25	
26	Attorney's Bar Roll No.
27	
28	Address
29	

1	
2	City, State, ZIP Code
3	
4	Telephone Number
5	If not represented by counsel:
6	
7	Signature of Mover/Defendant
8	
9	Mover/Defendant Name
0	
1	Address
2	
3	City, State, ZIP Code
4	Talaukana Nyyushan
5	Telephone Number * * *
7	Art. 992. Order of expungement form to be used
8	STATE OF LOUISIANA
9	JUDICIAL DISTRICT FOR THE PARISH OF
0	
1	No.: Division: ""
2	State of Louisiana
3	vs.
4	
5	ORDER OF EXPUNGEMENT OF ARREST/CONVICTION RECORD
6	Considering the Motion for Expungement
7	☐ The hearing conducted and evidence adduced herein, OR
8	☐ Affidavits of No Opposition filed,
9	IT IS ORDERED, ADJUDGED AND DECREED

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1	THE N	MOTION IS DENIED for No(s), , , , for the following
2	reason	s (check all that apply):
3		More than five years have not elapsed since Mover completed the
4		misdemeanor conviction sentence.
5		More than ten years have not elapsed since Mover completed the
6		felony conviction sentence.
7		Mover was convicted of one of the following ineligible felony
8		offenses:
9		A violation of the Uniform Controlled Dangerous Substances Law
10		which is ineligible to be expunged.
11		An offense currently listed as a sex offense that requires registration
12		pursuant to R.S. 15:540 et seq., at the time the Motion was filed,
13		regardless of whether the duty to register was ever imposed.
14		An offense defined or enumerated as a "crime of violence" pursuant
15		to R.S. 14:2(B) at the time the Motion was filed.
16		The arrest and conviction being sought to have expunged is for
17		operating a motor vehicle while intoxicated and a copy of the proof
18		from the Department of Public Safety and Corrections, office of
19		motor vehicles, is not attached as required by C.Cr.P. Art. 984(A).
20		Mover has had another record of misdemeanor conviction expunged
21		during the previous five-year period.
22		The record of arrest and conviction which Mover seeks to have
23		expunged is for operating a motor vehicle while intoxicated and
24		Mover has had another record of arrest and misdemeanor conviction
25		expunged during the previous ten-year period.
26		Mover has had another record of felony conviction expunged during
27		the previous fifteen-year period.
28		Mover was convicted of a misdemeanor which arose from
29		circumstances involving a sex offense as defined in R.S. 15:541.

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1		Mover was convicted of misdemeanor offense of domestic abuse
2		battery which was not dismissed pursuant to C.Cr.P. Art. 894(B).
3		Mover did not complete pretrial diversion.
4		The charges against the mover were not dismissed or refused.
5		Mover's felony conviction was not set aside and dismissed pursuant
6		to C.Cr.P. Art. 893(E).
7		Mover's felony conviction was not set aside and dismissed pursuant
8		to C.Cr.P. Art. 894(B).
9		Mover completed a DWI pretrial diversion program, but five years
10		have not elapsed since the mover's date of arrest.
1		Mover's conviction for felony carnal knowledge of a juvenile is not
12		defined as misdemeanor carnal knowledge of a juvenile had the
13		mover been convicted on or after August 15, 2001.
14		Mover has not been employed for ten consecutive years as required
15		by C.Cr.P. Art. 978(E)(1)(d).
16		Mover was not convicted of a crime that would be eligible for
17		expungement as required by C.Cr.P. Art. 978(E)(1).
18		Mover has criminal charges pending against him.
19		Mover was convicted of a criminal offense during the ten-year
20		period.
21		Denial for any other reason provided by law with attached reasons for
22		denial.
23		THE MOTION IS HEREBY GRANTED for No(s)
24	and al	ll agencies are ordered to expunge the record of arrest/conviction and
25	any p	hotographs, fingerprints, or any other such information of any kind
26	maint	ained in connection with the Arrest(s)/Conviction(s) in the above-
27	captio	oned matter, which record shall be confidential and no longer
28	consid	dered a public record, nor be available to other persons except a
29	prosec	cutor, member of a law enforcement agency, or a judge who may

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

Marino

	DRIVER LIC.#	
	ARRESTING AGENCY:	
	SID# (if available):	
	ARREST NUMBER (ATN):	
	AGENCY ITEM NUMBER:	
	ARREST DATE:/(MM/DD/YY)	
	THUS ORDERED AND SIGNED this day of	, 20
	at, Louisiana.	
	JUDGE	
	PLEASE SERVE:	
	1. District Attorney:	
	2. Arresting Agency:	
	3. Parish Sheriff:	
	4. Louisiana Bureau of Criminal Identification and Information_	
	5. Attorney for Defendant (or defendant)	
	6. Clerk of Court	
	Section 2. Code of Criminal Procedure Article 978(E)(1)(d) is hereby	y repealed in
its	s entirety.	
	DIGEST	
of	ne digest printed below was prepared by House Legislative Services. It constitutes the legislative instrument. The keyword, one-liner, abstract, and digest do not not of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:1]	ot constitute

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Abstract: Relative to the expungement of certain crimes after a cleansing period, removes the requirement that a person be employed for a period of ten consecutive years.

<u>Present law</u> 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, unless otherwise authorized by <u>present law</u>.

<u>Present law</u> allows for the expungement of aggravated battery, second degree battery, aggravated criminal damage to property, simple robbery, purse snatching, or illegal use of weapons or dangerous instrumentalities if all of the following are proven by the petitioner:

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CODING: Words in struck through type are deletions from existing law; words <u>underscored</u> are additions.

- (1) 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.
- (2) The person has not been convicted of any other criminal offense during the 10-year period.
- (3) The person has no criminal charge pending against him.
- (4) The person has been employed for a period of 10 consecutive years.

<u>Proposed law</u> removes the requirement that the person be employed for a period of 10 consecutive years.

(Amends C.Cr.P. Arts. 989 and 992; Repeals C.Cr.P. Art. 978(E)(1)(d))