

2020 Regular Session

SENATE BILL NO. 220

BY SENATOR BARROW

CRIMINAL PROCEDURE. Provides relative to expungement. (8/1/20)

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AN ACT

To amend and reenact Code of Criminal Procedure Article 977(A)(2) and (C), 978(A)(2) and (3), the introductory paragraph of (B), (B)(4), and (D), 989, 992, and 993, to enact Code of Criminal Procedure Article 983(F)(6), and to repeal Code of Criminal Procedure Article 977(D) and 978(E), relative to expungement; to shorten the cleansing period for expungement of misdemeanor and felony offenses; to make certain offenses eligible for expungement; to provide relative to costs of expungement; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Code of Criminal Procedure Article 977(A)(2) and (C), 978(A)(2) and (3), the introductory paragraph of (B), (B)(4), and (D), 989, 992, and 993 are hereby amended and reenacted and Code of Criminal Procedure Article 983(F)(6) is hereby enacted to read as follows:

Art. 977. Motion to expunge a record of arrest and conviction of a misdemeanor offense

A. A person may file a motion to expunge his record of arrest and conviction of a misdemeanor offense if either of the following apply:

* * *

(2) More than ~~five~~ two 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~~ two-year period, and has no felony charge pending against him. The motion filed pursuant to this Subparagraph shall include a certification obtained from the district attorney which verifies that to his knowledge the applicant has no felony convictions during the ~~five-year~~ two-year period and no pending felony charges under a bill of information or indictment.

* * *

C. ~~No person shall be entitled to expungement of a record under any of the following circumstances:~~ A person may file a motion to expunge his record of arrest and conviction for the commission or attempted commission of any of the following offenses if more than fifteen years have elapsed since the person completed any sentence, deferred adjudication, or period of probation or parole based on the conviction, and the person has not been convicted of any other criminal offense during the fifteen-year period, and has no criminal charges pending against him, provided that the motion filed pursuant to this Subsection shall include a certification obtained from the district attorney which verifies that, to his knowledge, the applicant has no convictions during the fifteen-year period and no pending charges under a bill of information or indictment:

(1) ~~The~~ A misdemeanor conviction ~~that~~ that arose from circumstances involving or ~~that~~ that is the result of an arrest for a sex offense as defined in R.S. 15:541, except that an interim expungement shall be available as authorized by the provisions of Article 985.1 of this Code.

(2) ~~The~~ A misdemeanor conviction ~~was~~ for domestic abuse battery.

(3) ~~The~~ A misdemeanor conviction ~~was~~ for stalking (R.S. 14:40.2).

* * *

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

1 A. Except as provided in Paragraph B of this Article, a person may file a
2 motion to expunge his record of arrest and conviction of a felony offense if any of
3 the following apply:

4 * * *

5 (2) More than ~~ten~~ five years have elapsed since the person completed any
6 sentence, deferred adjudication, or period of probation or parole based on the felony
7 conviction, and the person has not been convicted of any other criminal offense
8 during the ~~ten-year~~ five-year period, and has no criminal charge pending against
9 him. The motion filed pursuant to this Subparagraph shall include a certification
10 obtained from the district attorney which verifies that, to his knowledge, the
11 applicant has no convictions during the ~~ten-year~~ five-year period and no pending
12 charges under a bill of information or indictment.

13 (3) The person has been granted a pardon by the governor or is entitled
14 to a first offender pardon for the offense pursuant to Article IV, Section 5(E)(1), of
15 the Constitution of Louisiana, provided that the offense is not defined as a crime of
16 violence pursuant to R.S. 14:2(B) or a sex offense pursuant to R.S. 15:541.

17 B. ~~No expungement shall be granted nor shall a person be permitted to file~~
18 ~~a motion to expunge the record of arrest and conviction of a felony offense if the~~
19 ~~person was convicted of~~ A person may file a motion to expunge his record of
20 arrest and conviction for the commission or attempted commission of any of the
21 following offenses if more than fifteen years have elapsed since the person
22 completed any sentence, deferred adjudication, or period of probation or parole
23 based on the conviction, and the person has not been convicted of any other
24 criminal offense during the fifteen-year period, and has no criminal charges
25 pending against him, provided that the motion filed pursuant to this Subsection
26 shall include a certification obtained from the district attorney which verifies
27 that, to his knowledge, the applicant has no convictions during the fifteen-year
28 period and no pending charges under a bill of information or indictment:

29 * * *

1 (4) ~~The conviction was for domestic~~ **Domestic** abuse battery.

2 * * *

3 D. Expungement of a record of arrest and conviction of a felony offense shall
4 occur only once with respect to any person during a fifteen-year period. The
5 limitation provided in this Paragraph shall not apply to a person who is seeking the
6 expungement of his record of arrest and conviction for a conviction that was set aside
7 and the prosecution dismissed pursuant to Article 893(E).

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

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

17 (b) The person has not been convicted of any other criminal offense during
18 the ~~ten-year~~ **five-year** period.

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

20 (d) The person has been employed for a period of ~~ten~~ **five** consecutive years.

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

26 * * *

27 Art. 983. Costs of expungement of a record; fees; collection; exemptions;
28 disbursements

29 * * *

1 F. An applicant for the expungement of a record shall not be required to pay
 2 any fee to the clerk of court, the Louisiana Bureau of Criminal Identification and
 3 Information, sheriff, the district attorney, or any other agency to obtain or execute
 4 an order of a court of competent jurisdiction to expunge the arrest from the
 5 individual's arrest record if a certification obtained from the district attorney is
 6 presented to the clerk of court which verifies that the applicant has no felony
 7 convictions and no pending felony charges under a bill of information or indictment
 8 and at least one of the following applies:

* * *

10 **(6) The applicant has been granted a pardon by the governor or is**
 11 **entitled to a first offender pardon pursuant to Article IV, Section 5(E)(1), of the**
 12 **Constitution of Louisiana.**

* * *

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

"STATE OF LOUISIANA

JUDICIAL DISTRICT FOR THE PARISH OF

19 No.: _____

Division: " _____ "

21 State of Louisiana

22 vs.

MOTION FOR EXPUNGEMENT

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

29 **I. DEFENDANT INFORMATION**

31 NAME: _____

32 (Last, First, MI)

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

2

3 GENDER _____ Female _____ Male

4

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

6

7 RACE: _____

8

9 DRIVER LIC.# _____

10

11 ARRESTING AGENCY: _____

12

13 SID# (if available): _____

14

15 ARREST NUMBER (ATN): _____

16

17 AGENCY ITEM NUMBER: _____

18

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

21

22 **II. ARREST INFORMATION**

23

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

25

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

28

29 3. Mover was:

30

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

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

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

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

37

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

3
4 Yes No **ARRESTS THAT DID NOT RESULT IN CONVICTION**

5
6 **NO. 1** La. Rev. Stat. Ann. § _____ : _____
7 Name of the offense _____
8 () Time expired for prosecution _____
9 (MM/DD/YYYY)
10 () Not prosecuted for any offense
11 arising out of this charge.
12 () Pre-trial Diversion Program.
13 () DWI Pre-Trial Diversion Program
14 and 5 years have elapsed since the
15 date of arrest.
16 () Charge dismissed
17 () Found not guilty/judgment of acquittal

18
19 **NO. 2** La. Rev. Stat. Ann. § _____ : _____
20 Name of the offense _____
21 () Time expired for prosecution _____
22 (MM/DD/YYYY)
23 () Not prosecuted for any
24 offense arising out of this charge.
25 () Pre-trial Diversion Program.
26 () Charge dismissed
27 () Found not guilty/judgment of acquittal

28 **NO. 3** La. Rev. Stat. Ann. § _____ : _____
29 Name of the offense _____
30 () Time expired for prosecution _____
31 (MM/DD/YYYY)
32 () Not prosecuted for any offense
33 arising out of this charge.
34 () Pre-trial Diversion Program.
35 () Charge dismissed
36 () Found not guilty/judgment of acquittal

37

1 ___ Yes ___ No **MISDEMEANOR CONVICTIONS**

2
3 **NO. 1** La. Rev. Stat. Ann. § _____ : _____

4 Name of the offense _____

5 () Conviction set aside/dismissed _____ / _____ / _____
6 pursuant to C.Cr.P. Art. 894(B) (MM/DD/YYYY)

7 () More than 5 ~~2~~ years have passed
8 since completion of sentence.

9
10 **NO. 2** La. Rev. Stat. Ann. § _____ : _____

11 Name of the offense _____

12 () Conviction set aside/dismissed _____ / _____ / _____
13 pursuant to C.Cr.P. Art. 894(B) (MM/DD/YYYY)

14 () More than 5 ~~2~~ years have passed
15 since completion of sentence.

16
17 ___ Yes ___ No **FELONY CONVICTIONS**

18
19 **NO. 1** La. Rev. Stat. Ann. § _____ : _____

20 () Conviction set aside/dismissed _____ / _____ / _____
21 pursuant to C.Cr.P. Art. 893(E) (MM/DD/YYYY)

22 () More than ~~10~~ 5 years have passed
23 since completion of sentence

24
25 **NO. 2** La. Rev. Stat. Ann. § _____ : _____

26 () Conviction set aside/dismissed _____ / _____ / _____
27 pursuant to C.Cr.P. Art. 893(E) (MM/DD/YYYY)

28 () More than ~~10~~ 5 years have passed
29 since completion of sentence

30
31 ___ Yes ___ No **OPERATING A MOTOR VEHICLE WHILE INTOXICATED**
32 **CONVICTIONS**

33

34 Mover has attached the following:

35
36 () A copy of the proof from the Department of Public Safety and Corrections, office of
37 motor vehicles, that it has received from the clerk of court a certified copy of the

1 record of the plea, fingerprints of the defendant, and proof of the requirements set forth
2 in C.Cr.P. Art. 556, which shall include the defendant's date of birth, last four digits
3 of social security number, and driver's license number
4

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

- 6
- 7 Criminal Background Check from the La. State Police/Parish Sheriff dated within the
- 8 past 60 days (required).
- 9
- 10 Bill(s) of Information (if any).
- 11
- 12 Minute entry showing final disposition of case (if any).
- 13
- 14 Certification Letter from the District Attorney for fee waiver (if eligible).
- 15
- 16 Certification Letter from the District Attorney verifying that the applicant has no
- 17 convictions or pending applicable criminal charges in the requisite time periods.
- 18
- 19 Certification Letter from the District Attorney verifying that the charges were refused.
- 20
- 21 Certification Letter from the District Attorney verifying that the applicant did not
- 22 participate in a pretrial diversion program.
- 23
- 24 A copy of the order waiving the sex offender registration and notification
- 25 requirements.
- 26 Documentation verifying that the mover has been employed for ten consecutive years.
- 27 A copy of the court order determination of factual innocence and order of
- 28 compensation for a wrongful conviction pursuant to the provisions of R.S. 15:572.8
- 29 if applicable.
- 30

31 The Mover prays that if there is no objection timely filed by the arresting law enforcement
32 agency, the district attorney's office, or the Louisiana Bureau of Criminal Identification and Information,
33 that an order be issued herein ordering the expungement of the record of arrest and/or conviction set forth
34 above, including all photographs, fingerprints, disposition, or any other such information, which record
35 shall be confidential and no longer considered a public record, nor be made available to other persons,
36 except a prosecutor, member of a law enforcement agency, or a judge who may request such information
37 in writing, certifying that such request is for the purpose of prosecuting, investigating, or enforcing the

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

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

8 Respectfully submitted,

9
10
11 _____
12 Signature of Attorney for Mover/Defendant

13
14 _____
15 Attorney for Mover/Defendant Name

16
17 _____
18 Attorney's Bar Roll No.

19
20 _____
21 Address

22
23 _____
24 City, State, ZIP Code

25
26 _____
27 Telephone Number

28 **If not represented by counsel:**

29
30
31 _____
32 Signature of Mover/Defendant

33
34 _____
35 Mover/Defendant Name

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37 _____
38 Address

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40 _____
41 City, State, ZIP Code

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43 _____
44 Telephone Number"

45 * * *

46 Art. 992. Order of expungement form to be used
47 STATE OF LOUISIANA
48 JUDICIAL DISTRICT FOR THE PARISH OF

49
50 No.: _____ Division: " _____ "

51 State of Louisiana
52 vs.

53
54 **ORDER OF EXPUNGEMENT OF ARREST/CONVICTION RECORD**

55 Considering the Motion for Expungement

- 56 The hearing conducted and evidence adduced herein, OR
57 Affidavits of No Opposition filed,

58 IT IS ORDERED, ADJUDGED AND DECREED

- 59 THE MOTION IS DENIED for No(s). _____ for the following reasons (check all
60 that apply):

- 61 More than ~~five~~ **two** years have not elapsed since Mover completed the misdemeanor
62 conviction sentence.
63 More than ~~ten~~ **two** years have not elapsed since Mover completed the felony
64 conviction sentence.
65 Mover was convicted of one of the following ineligible felony offenses:

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- A violation of the Uniform Controlled Dangerous Substances Law which is ineligible to be expunged.
- An offense currently listed as a sex offense that requires registration pursuant to R.S. 15:540 et seq., at the time the Motion was filed, regardless of whether the duty to register was ever imposed.
- An offense defined or enumerated as a "crime of violence" pursuant to R.S. 14:2(B) at the time the Motion was filed.
- The arrest and conviction being sought to have expunged is for operating a motor vehicle while intoxicated and a copy of the proof from the Department of Public Safety and Corrections, office of motor vehicles, is not attached as required by C.Cr.P. Art. 984(A).
- ~~Mover has had another record of misdemeanor conviction expunged during the previous five-year period.~~
- ~~The record of arrest and conviction which Mover seeks to have expunged is for operating a motor vehicle while intoxicated and Mover has had another record of arrest and misdemeanor conviction expunged during the previous ten-year period.~~
- ~~Mover has had another record of felony conviction expunged during the previous fifteen-year period.~~
- Mover was convicted of a misdemeanor which arose from circumstances involving a sex offense as defined in R.S. 15:541.
- Mover was convicted of misdemeanor offense of domestic abuse battery which was not dismissed pursuant to C.Cr.P. Art. 894(B).
- Mover did not complete pretrial diversion.
- The charges against the mover were not dismissed or refused.
- Mover's felony conviction was not set aside and dismissed pursuant to C.Cr.P. Art. 893(E).
- Mover's felony conviction was not set aside and dismissed pursuant to C.Cr.P. Art. 894(B).
- Mover completed a DWI pretrial diversion program, but five years have not elapsed since the mover's date of arrest.
- Mover's conviction for felony carnal knowledge of a juvenile is not defined as misdemeanor carnal knowledge of a juvenile had the mover been convicted on or after August 15, 2001.
- Mover has not been employed for ~~ten~~ **five** consecutive years as required by C.Cr.P. Art. 978(E)(1)(d).
- Mover was not convicted of a crime that would be eligible for expungement as required by C.Cr.P. Art. 978(E)(1).
- Mover has criminal charges pending against him.
- Mover was convicted of a criminal offense during the ~~ten-year~~ **five-year** period.
- Denial for any other reason provided by law with attached reasons for denial.
- THE MOTION IS HEREBY GRANTED** for No(s). _____ and all agencies are ordered to expunge the record of arrest/conviction and any photographs, fingerprints, or any other such information of any kind maintained in connection with the Arrest(s)/Conviction(s) in the above-captioned matter, which record shall be confidential and no longer considered a public record, nor be available to other persons except a prosecutor, member of a law enforcement agency, or a judge who may request such information in writing certifying that such request is for the purpose of prosecuting, investigating, or enforcing the criminal law, for the purpose of any other statutorily defined law enforcement or administrative duties, or for the purpose of the requirements of sex offender registration and notification pursuant to the provisions of R.S. 15:541 et seq. or upon an order of this Court to any other person for good cause shown, or as otherwise authorized by law.
- THE MOTION IS HEREBY GRANTED FOR EXPUNGEMENT BY REDACTION** If the record includes more than one individual and the mover is entitled to expungement by redaction pursuant to Code of Criminal Procedure Article 985, for No(s). _____ and all agencies are ordered to expunge the record of arrest/conviction and any photographs, fingerprints, or any other such information of any kind maintained in relation to the Arrest(s)/Conviction(s) in the above-captioned matter as they relate to the mover only. The record shall be confidential and no longer considered a public record, nor be available to other persons except a prosecutor, member of a law enforcement agency, or a judge who may request such information in writing certifying that such request is for the purpose of prosecuting, investigating, or enforcing the criminal law, for the purpose of any other statutorily defined law enforcement or administrative duties, or for the purpose of the requirements of sex offender registration and notification pursuant to the provisions of R.S. 15:541 et seq. or upon an order of this Court to any other person for good cause shown, or as otherwise authorized by law.

NAME: _____
(Last, First, MI)

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

GENDER: ____ Female ____ Male

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

RACE: _____

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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 _____

Art.993. Supplemental forms to be used

SUPPLEMENTAL SHEET

	Yes ____	No ____	ARRESTS THAT DID NOT RESULT IN CONVICTION
NO. ____			La. Rev. Stat. Ann. § _____ : _____
			Name of the offense _____
			() Time expired for prosecution _____ / ____ / ____ (MM/DD/YYYY)
			() Charge refused by DA - not prosecuted.
			() Pre-trial Diversion Program.
			() Charge dismissed
			() Found not guilty/judgment of acquittal
NO. ____			La. Rev. Stat. Ann. § _____ : _____
			Name of the offense _____
			() Time expired for prosecution _____ / ____ / ____ (MM/DD/YYYY)
			() Charge refused by DA - not prosecuted.
			() Pre-trial Diversion Program.
			() Charge dismissed
			() Found not guilty/judgment of acquittal
NO. ____			La. Rev. Stat. Ann. § _____ : _____
			Name of the offense _____
			() Time expired for prosecution _____ / ____ / ____ (MM/DD/YYYY)
			() Charge refused by DA - not prosecuted.
			() Pre-trial Diversion Program.

1 () Charge dismissed
 2 () Found not guilty/judgment of acquittal
 3 **NO.** ____ La. Rev. Stat. Ann. § _____ : _____
 4 Name of the offense _____
 5 () Time expired for prosecution _____
 6 (MM/DD/YYYY)

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 8 () Charge refused by DA - not prosecuted.
 9 () Pre-trial Diversion Program.
 10 () Charge dismissed
 11 () Found not guilty/judgment of acquittal
 12 **NO.** ____ La. Rev. Stat. Ann. § _____ : _____
 13 Name of the offense _____
 14 () Time expired for prosecution _____
 15 (MM/DD/YYYY)

16
 17 () Charge refused by DA - not prosecuted.
 18 () Pre-trial Diversion Program.
 19 () Charge dismissed
 20 () Found not guilty/judgment of acquittal

21 **SUPPLEMENTAL SHEET**
 22 **MISDEMEANOR CONVICTIONS**
 23 **Yes** **No**
 24 **NO.** ____ La. Rev. Stat. Ann. § _____ : _____
 25 Name of the offense _____
 26 () Conviction set aside/dismissed _____
 27 (MM/DD/YYYY)

28 pursuant to C.Cr.P. Art. 894(B)
 29 () More than **5 2** years have passed
 30 since completion of sentence.
 31 **NO.** ____ La. Rev. Stat. Ann. § _____ : _____
 32 Name of the offense _____
 33 () Conviction set aside/dismissed _____
 34 (MM/DD/YYYY)

35 pursuant to C.Cr.P. Art. 894(B)
 36 () More than **5 2** years have passed
 37 since completion of sentence.
 38 **NO.** ____ La. Rev. Stat. Ann. § _____ : _____
 39 Name of the offense _____
 40 () Conviction set aside/dismissed _____
 41 (MM/DD/YYYY)

42 pursuant to C.Cr.P. Art. 894(B)
 43 () More than **5 2** years have passed
 44 since completion of sentence.
 45 **NO.** ____ La. Rev. Stat. Ann. § _____ : _____
 46 Name of the offense _____
 47 () Conviction set aside/dismissed _____
 48 (MM/DD/YYYY)

49 pursuant to C.Cr.P. Art. 894(B)
 50 () More than **5 2** years have passed
 51 since completion of sentence.
 52 **NO.** ____ La. Rev. Stat. Ann. § _____ : _____
 53 Name of the offense _____

54 () Conviction set aside/dismissed _____
 55 (MM/DD/YYYY)
 56 pursuant to C.Cr.P. Art. 894(B)
 57 () More than **5 2** years have passed
 58 since completion of sentence.

59
 60 **NO.** ____ La. Rev. Stat. Ann. § _____ : _____
 61 Name of the offense _____
 62 () Conviction set aside/dismissed _____

63 (MM/DD/YYYY)

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

() More than ~~10~~ **5** years have passed
since completion of sentence

NO. ___ La. Rev. Stat. Ann. § _____ : _____

Name of the offense _____

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

() More than ~~10~~ **5** years have passed
since completion of sentence

NO. ___ La. Rev. Stat. Ann. § _____ : _____

Name of the offense _____

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

() More than ~~10~~ **5** years have passed
since completion of sentence

NO. ___ La. Rev. Stat. Ann. § _____ : _____

Name of the offense _____

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

() More than ~~10~~ **5** years have passed
since completion of sentence

NO. ___ La. Rev. Stat. Ann. § _____ : _____

Name of the offense _____

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

() More than ~~10~~ **5** years have passed
since completion of sentence

NO. ___ La. Rev. Stat. Ann. § _____ : _____

Name of the offense _____

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

() More than ~~10~~ **5** years have passed
since completion of sentence

Section 2. Code of Criminal Procedure Article 977(D) and 978(E) are hereby
repealed in their entirety.

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Alden A. Clement Jr.

DIGEST

SB 220 Original

2020 Regular Session

Barrow

Present law provides that a person may file a motion to expunge his record of arrest and conviction of a misdemeanor offense if 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 further provides that a motion filed pursuant to present law for an expungement must include a certification obtained from the district attorney that verifies that the applicant has no felony convictions during the five-year period and no pending felony charges under a bill of information or indictment.

Proposed law changes the cleansing period for a misdemeanor expungement from five years to two years and otherwise retains present law.

Present law provides that a person is not entitled to expungement of a record relative to any of the following misdemeanor offenses:

- (1) A misdemeanor conviction that arose from circumstances involving or that is the result of an arrest for a sex offense as defined in present law, except that an interim expungement is available as authorized by present law.
- (2) A misdemeanor conviction for domestic abuse battery.
- (3) A misdemeanor conviction for stalking.

Proposed law makes these present law misdemeanors eligible for expungement after 15 years have elapsed since the person completed any sentence, deferred adjudication, or period of probation or parole based on the conviction, and the person has not been convicted of any other criminal offense during the 15-year period, and has no criminal charges pending against him, provided that the motion filed pursuant to proposed law must include a certification obtained from the district attorney which verifies that the applicant has no convictions during the 15-year period and no pending charges under a bill of information or indictment.

Present law provides that expungement of a record of arrest and conviction of a misdemeanor offense can occur only once with respect to any person during a five-year period. Present law further provides that expungement of a record of arrest and conviction of a misdemeanor offense of operating a vehicle while intoxicated can occur only once with respect to any person during a 10-year period.

Proposed law deletes present law.

Present law provides that a person may file a motion to expunge his record of arrest and conviction of a felony offense 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, and has no criminal charge pending against him. Present law further provides that the motion filed pursuant to present law must include a certification obtained from the district attorney which verifies that the applicant has no convictions during the 10-year period and no pending charges under a bill of information or indictment.

Proposed law changes the cleansing period for a felony expungement from 10 years to five years and otherwise retains present law.

Present law provides that a person is not entitled to expungement of a record relative to any of the following felony offenses:

- (1) A crime of violence as defined by present law.
- (2) A sex offense or a criminal offense against a victim who is a minor as each term is defined by present law, or any offense that occurred prior to 6/18/92 that would be defined as a sex offense or a criminal offense against a victim who is a minor had it occurred on or after 6/18/92. However, any person who was convicted of carnal knowledge of a juvenile prior to 8/15/01, is eligible for an expungement if the offense for which the offender was convicted would be defined as misdemeanor carnal knowledge of a juvenile had the offender been convicted on or after 8/15/01, and the burden is on the mover to establish that the elements of the offense of conviction are equivalent to the current definition of misdemeanor carnal knowledge of a juvenile as defined by present law. Present law provides that the order waiving the sex offender registration and notification requirements issued pursuant to present law is sufficient to meet this burden.
- (3) A violation of the Uniform Controlled Dangerous Substances Law, except for any of the following
 - (a) A conviction for possession of certain controlled dangerous substances.
 - (b) A conviction for possession of a controlled dangerous substance with the intent to distribute.
 - (c) A conviction for a violation of the Uniform Controlled Dangerous Substances Law which is punishable by a term of imprisonment of not more than five years.
 - (d) A conviction for a violation of the Uniform Controlled Dangerous Substances Law which may be expunged pursuant to present law under certain circumstances.
 - (e) A conviction for a violation of the Uniform Controlled Dangerous Substances Law for which the person is entitled to a first offender pardon pursuant to present constitution.
- (4) Domestic abuse battery.

Proposed law makes these present law felonies eligible for expungement after 15 years have elapsed since the person completed any sentence, deferred adjudication, or period of probation or parole based on the conviction, and the person has not been convicted of any other criminal offense during the 15-year period, and has no criminal charges pending against him, provided that the motion filed pursuant to proposed law must include a certification obtained from the district attorney which verifies that the applicant has no convictions during the 15-year period and no pending charges under a bill of information or indictment. Proposed law otherwise retains present law.

Present law provides that expungement of a record of arrest and conviction of a felony offense can occur only once with respect to any person during a 15-year period.

Proposed law deletes present law.

Present law provides that after a contradictory hearing, the court may order the expungement of the arrest and conviction records of a person pertaining to a conviction 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 conditions are proven by the petitioner:

- (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.
- (3) The person has no criminal charge pending against him.
- (4) The person has been employed for a period of 10 consecutive years.

Present law further provides that a motion filed pursuant present law must include a certification from the district attorney which verifies that the applicant has no convictions during the 10-year period and no pending charges under a bill of information or indictment, and that the motion is to be heard by contradictory hearing.

Proposed law changes the cleansing period for the enumerated offenses and the required period of employment from 10 years to five years. Proposed law otherwise retains present law.

Present law provides that an applicant for the expungement of a record is not required to pay any fee to the clerk of court, the La. Bureau of Criminal Identification and Information, sheriff, the district attorney, or any other agency to obtain or execute an order of a court of competent jurisdiction to expunge the arrest from the individual's arrest record 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 prescribed in present law, and the applicant did not participate in a pretrial diversion program.
- (3) The applicant was arrested and was not prosecuted within the time limitations prescribed in present law and did not participate in a pretrial diversion program.
- (4) The applicant was determined to be factually innocent and entitled to compensation for a wrongful conviction pursuant to present law.
- (5) Concerning the arrest record which the applicant seeks to expunge, the applicant was determined by the district attorney to be a victim of unauthorized use of "access card," identity theft, access device fraud, or a violation of any other crime involving the unlawful use of the identity or personal information of the applicant.

Proposed law retains present law and adds the following to the list of exemptions from expungement fees:

- (1) The applicant has been granted a pardon by the governor or is entitled to a first offender pardon pursuant to present constitution.

Present law provides forms for the motion for expungement and the order of expungement.

Proposed law makes changes to these forms to reflect changes to expungement provided for by proposed law. Proposed law otherwise retains present law.

Effective August 1, 2020.

(Amends C.Cr.P. Art. 977(A)(2) and (C), 978(A)(2) and (3), (B)(intro para), (B)(4), and (D), 989, 992, and 993; adds C.Cr.P. Art. 983(F)(6); repeals C.Cr.P. Art. 977(D) and 978(E))