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

SB 220 Original	DIGEST 2020 Regular Session	Barrow
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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))