

2020 Regular Session

HOUSE BILL NO. 179

BY REPRESENTATIVE MARINO

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

1 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 matters.

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:

I. DEFENDANT INFORMATION

2 NAME: _____

3 *(Last, First, MI)*

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

5 GENDER _____ Female _____ Male

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

7 RACE: _____

8 DRIVER LIC.# _____

9 ARRESTING AGENCY: _____

10 SID# (if available): _____

11 ARREST NUMBER (ATN): _____

12 AGENCY ITEM NO. _____

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

II. ARREST INFORMATION

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

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

21 3. Mover was:
22 _____ YES _____ NO Arrested, but it did not result in conviction

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

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

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

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

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

5 **NO. 1** La. Rev. Stat. Ann. § _____ : _____

6 Name of the offense _____

7 () Time expired for prosecution _____

8 (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 Program
13 and 5 years have elapsed since the
14 date of arrest.

15 () Charge dismissed

16 () Found not guilty/judgment of acquittal

17 **NO. 2** La. Rev. Stat. Ann. § _____ : _____

18 Name of the offense _____

19 () Time expired for prosecution _____

20 (MM/DD/YYYY)

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

23 () Pre-trial Diversion Program.

24 () Charge dismissed

25 () Found not guilty/judgment of acquittal

26 **NO. 3** La. Rev. Stat. Ann. § _____ : _____

27 Name of the offense _____

28 () Time expired for prosecution _____

29 (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

6 ___ Yes ___ No **MISDEMEANOR CONVICTIONS**

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.

19 ___ Yes ___ No **FELONY CONVICTIONS**

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. § _____ : _____

26 () Conviction set aside/dismissed ___/___/___

27 pursuant to C.Cr.P. Art. 893(E) (MM/DD/YYYY)

28 () More than 10 years have passed

29 since completion of sentence

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

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 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.~~

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

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City, State, ZIP Code

Telephone Number

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

1 THE MOTION IS DENIED for No(s). ____, , , , _____ for the following
2 reasons (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.

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

- 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.
- 11 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 all agencies are ordered to expunge the record of arrest/conviction and
- 25 any photographs, fingerprints, or any other such information of any kind
- 26 maintained in connection with the Arrest(s)/Conviction(s) in the above-
- 27 captioned matter, which record shall be confidential and no longer
- 28 considered a public record, nor be available to other persons except a
- 29 prosecutor, member of a law enforcement agency, or a judge who may

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: ____ Female ____ Male

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

28 RACE: _____

1 DRIVER LIC.# _____
2 ARRESTING AGENCY: _____
3 SID# (if available): _____
4 ARREST NUMBER (ATN): _____
5 AGENCY ITEM NUMBER: _____
6 ARREST DATE: ____/____/____ (MM/DD/YY)
7 **THUS ORDERED AND SIGNED** this ____ day of _____, 20____
8 at _____, Louisiana.

9 _____
10 JUDGE

11 **PLEASE SERVE:**

- 12 1. District Attorney: _____
- 13 2. Arresting Agency: _____
- 14 3. Parish Sheriff: _____
- 15 4. Louisiana Bureau of Criminal Identification and Information _____
- 16 5. Attorney for Defendant (or defendant) _____
- 17 6. Clerk of Court _____

18 Section 2. Code of Criminal Procedure Article 978(E)(1)(d) is hereby repealed in
19 its entirety.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 179 Engrossed 2020 Regular Session Marino

Abstract: Relative to the expungement of certain crimes after a cleansing period, removes the requirement that a person be employed for a period of 10 consecutive years.

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, unless otherwise authorized by present law.

Present law 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:

- (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.

Proposed law 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))