

2022 Regular Session

HOUSE BILL NO. 638

BY REPRESENTATIVE FREEMAN

CRIMINAL/RECORDS: Provides relative to the expungement of records for victims of human trafficking

1 AN ACT

2 To amend and reenact Code of Criminal Procedure Articles 977(A)(introductory paragraph),
3 978(D), 989, 992, and 993 and to enact Code of Criminal Procedure Articles
4 977(A)(3) and (D)(3), 978(A)(4), and 979.1, relative to expungement; to provide
5 relative to motions to expunge records of arrest and convictions of misdemeanor and
6 felony offenses; to provide relative to arrest and convictions committed by a victim
7 of human trafficking; to provide relative to the procedures for motions to expunge
8 records of victims of human trafficking; and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. Code of Criminal Procedure Articles 977(A)(introductory paragraph),
11 978(D), 989, 992, and 993 are hereby amended and reenacted and Code of Criminal
12 Procedure Articles 977(A)(3) and (D)(3), 978(A)(4), and 979.1 are hereby enacted to read
13 as follows:

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

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

18 * * *

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

MOTION FOR EXPUNGEMENT

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

I. DEFENDANT INFORMATION

NAME: _____

(Last, First, MI)

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

GENDER _____ Female _____ Male

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

RACE: _____

DRIVER LIC.# _____

ARRESTING AGENCY: _____

SID# (if available): _____

ARREST NUMBER (ATN): _____

AGENCY ITEM NO. _____

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

II. ARREST INFORMATION

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

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

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

1 since completion of sentence

2 () Applicant was a victim of human trafficking

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

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

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

6 () More than 10 years have passed

7 since completion of sentence

8 () Applicant was a victim of human trafficking

9 ____ Yes ____ No **OPERATING A MOTOR VEHICLE WHILE**

10 **INTOXICATED CONVICTIONS**

11 Mover has attached the following:

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

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

19 Criminal Background Check from the La. State Police/Parish Sheriff
20 dated within the past 60 days (required).

21 Bill(s) of Information (if any).

22 Minute entry showing final disposition of case (if any).

23 Certification Letter from the District Attorney for fee waiver (if
24 eligible).

25 Certification Letter from the District Attorney verifying that the
26 applicant has no convictions or pending applicable criminal charges
27 in the requisite time periods.

28 Certification Letter from the District Attorney verifying that the
29 charges were refused.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

Signature of Attorney for Mover/Defendant

Attorney for Mover/Defendant Name

Attorney's Bar Roll No.

Address

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

THE MOTION IS DENIED for No(s). ____, , , , _____ for the following reasons (check all that apply):

- More than five years have not elapsed since Mover completed the misdemeanor conviction sentence.
- More than ten years have not elapsed since Mover completed the felony conviction sentence.
- Mover was not a victim of human trafficking as defined in R.S. 14:46.2 or 46.3.
- Mover was convicted of one of the following ineligible felony offenses:
 - 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).

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

5 NAME: _____

6 (Last, First, MI)

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

8 GENDER: ____ Female ____ Male

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

10 RACE: _____

11 DRIVER LIC.# _____

12 ARRESTING AGENCY: _____

13 SID# (if available): _____

14 ARREST NUMBER (ATN): _____

15 AGENCY ITEM NUMBER: _____

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

17 **THUS ORDERED AND SIGNED** this ____ day of _____, 20____

18 at _____, Louisiana.

19 _____

20 JUDGE

21 **PLEASE SERVE:**

22 1. District Attorney: _____

23 2. Arresting Agency: _____

24 3. Parish Sheriff: _____

25 4. Louisiana Bureau of Criminal Identification and Information _____

26 5. Attorney for Defendant (or defendant) _____

27 6. Clerk of Court _____

28 Art. 993. Supplemental forms to be used

29 **SUPPLEMENTAL SHEET**

1 () Charge refused by DA - not prosecuted.

2 () Pre-trial Diversion Program.

3 () Charge dismissed

4 () Found not guilty/judgment of acquittal

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

6 Name of the offense _____

7 () Time expired for prosecution ____ / ____ / ____

8 (MM/DD/YYYY)

9 () Charge refused by DA - not prosecuted.

10 () Pre-trial Diversion Program.

11 () Charge dismissed

12 () Found not guilty/judgment of acquittal

13 **NO.** ____ La. Rev. Stat. Ann. § _____ : _____

14 Name of the offense _____

15 () Time expired for prosecution ____ / ____ / ____

16 (MM/DD/YYYY)

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 ____ **Yes** ____ **No** **MISDEMEANOR CONVICTIONS**

23 **NO.** ____ La. Rev. Stat. Ann. § _____ : _____

24 Name of the offense _____

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

26 (MM/DD/YYYY)

27 pursuant to C.Cr.P. Art. 894(B)

28 () More than 5 years have passed

29 since completion of sentence.

1 Name of the offense _____

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

3 (MM/DD/YYYY)

4 pursuant to C.Cr.P. Art. 894(B)

5 () More than 5 years have passed

6 since completion of sentence.

7 () Applicant was a victim of human trafficking

8 **SUPPLEMENTAL SHEET**

9 Yes No **FELONY CONVICTIONS**

10 **NO.** La. Rev. Stat. Ann. § :

11 Name of the offense _____

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

13 (MM/DD/YYYY)

14 pursuant to C.Cr.P. Art. 893(E)

15 () More than 10 years have passed

16 since completion of sentence

17 () Applicant was a victim of human trafficking

18 **NO.** La. Rev. Stat. Ann. § :

19 Name of the offense _____

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

21 (MM/DD/YYYY)

22 pursuant to C.Cr.P. Art. 893(E)

23 () More than 10 years have passed

24 since completion of sentence

25 () Applicant was a victim of human trafficking

26 **NO.** La. Rev. Stat. Ann. § :

27 Name of the offense _____

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

1 (MM/DD/YYYY)

2 pursuant to C.Cr.P. Art. 893(E)

3 () More than 10 years have passed

4 since completion of sentence

5 () Applicant was a victim of human trafficking

6 NO. ____ La. Rev. Stat. Ann. § _____ : _____

7 Name of the offense _____

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

9 (MM/DD/YYYY)

10 pursuant to C.Cr.P. Art. 893(E)

11 () More than 10 years have passed

12 since completion of sentence

13 () Applicant was a victim of human trafficking

14 NO. ____ La. Rev. Stat. Ann. § _____ : _____

15 Name of the offense _____

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

17 (MM/DD/YYYY)

18 pursuant to C.Cr.P. Art. 893(E)

19 () More than 10 years have passed

20 since completion of sentence

21 () Applicant was a victim of human trafficking

22 NO. ____ La. Rev. Stat. Ann. § _____ : _____

23 Name of the offense _____

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

25 (MM/DD/YYYY)

26 pursuant to C.Cr.P. Art. 893(E)

27 () More than 10 years have passed

28 since completion of sentence

29 () Applicant was a victim of human trafficking

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 638 Original

2022 Regular Session

Freeman

Abstract: Provides relative to the expungement of records for victims of human trafficking and provides relative to procedures for motions to expunge records of human trafficking victims.

Present law (C.Cr.P. Art. 977(A)) provides that person may file a motion to expunge his record of arrest and conviction of a **misdemeanor offense** if either of the following apply:

- (1) The conviction was set aside and the prosecution was dismissed pursuant to present law (C.Cr.P. Art. 894(B)).
- (2) 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 (C.Cr.P. Art. 978(A)) provides that a person may file a motion to expunge his record of arrest and conviction of certain **felony offenses** if any of the following apply:

- (1) The conviction was set aside and the prosecution was dismissed pursuant to present law (C.Cr.P. Art. 893).
- (2) 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.
- (3) The person is entitled to a first offender pardon for the offense, provided that the offense is not defined as a crime of violence or a sex offense.

Proposed law adds an additional ground to present law (C.Cr.P. Arts. 977(A) and 978(A)) for which a person may be entitled to an expungement when the arrest or conviction was not for a crime of violence and was committed while the person was a victim of human trafficking as defined by present law (R.S. 14:46.2 or 46.3).

Proposed law provides that the motion filed pursuant to proposed law shall be served on the district attorney that obtained the conviction for which the expungement is sought. The district attorney shall have 45 days from the date of receipt of service to respond to the petition for relief. Official documentation of the applicant's status as a victim of a human trafficking offense from a federal, state, or local governmental agency shall create a presumption that the applicant's participation in the offense was a result of having been a victim of human trafficking, but shall not be required for granting a motion under proposed law. If the court requires a hearing, evidence of actions taken by the perpetrator of human trafficking against the applicant seeking an expungement may be considered, but shall not be required as proof that the person seeking the expungement was a victim of human trafficking.

Proposed law further provides that if the opposition to petition is not filed by the district attorney, the court shall deem the petition unopposed and may grant the petition. If the petition is opposed or the court otherwise deems it necessary, the court shall schedule a

hearing on the petition. The court may grant the order of expungement regardless of whether such conviction was set aside and the prosecution was dismissed pursuant to present law.

Proposed law amends the present law forms to conform with changes made in proposed law.

(Amends C.Cr.P. Arts. 977(A)(intro. para.), 978(D), 989, 992, and 993; Adds C.Cr.P. Arts. 977(A)(3) and (D)(3), 978(A)(4), and 979.1)