HLS 22RS-23 ORIGINAL

2022 Regular Session

HOUSE BILL NO. 638

1

BY REPRESENTATIVE FREEMAN

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

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:
0	Section 1. Code of Criminal Procedure Articles 977(A)(introductory paragraph),
1	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	(3) The arrest or conviction was not for a crime of violence as defined by
2	R.S. 14:2 and was committed while the person was a victim of human trafficking as
3	defined by R.S. 14:46.2 or 46.3.
4	* * *
5	D.
6	* * *
7	(3) The court may grant an order for expungement of a record of arrest and
8	conviction without limitation and without time restrictions as long as the applicant
9	can prove that each arrest or conviction was the direct result of the person being a
10	victim of human trafficking as defined by R.S. 14:46.2 or 46.3.
11	Art. 978. Motion to expunge record of arrest and conviction of a felony offense
12	A. Except as provided in Paragraph B of this Article, a person may file a
13	motion to expunge his record of arrest and conviction of a felony offense if any of
14	the following apply:
15	* * *
16	(4) The arrest or conviction was not for a crime of violence as defined by
17	R.S. 14:2 and was committed while the person was a victim of human trafficking as
18	defined by R.S. 14:46.2 or 46.3.
19	* * *
20	D.(1) Expungement of a record of arrest and conviction of a felony offense
21	shall occur only once with respect to any person during a fifteen-year period. The
22	limitation provided in this Paragraph shall not apply to a person who is seeking the
23	expungement of his record of arrest and conviction for a conviction that was set aside
24	and the prosecution dismissed pursuant to Article 893(E).
25	(2) The court may grant an order for expungement of a record of arrest and
26	conviction without limitation and without time restrictions as long as the applicant
27	can prove that each arrest or conviction was the direct result of the person being a
28	victim of human trafficking as defined by R.S. 14:46.2 or 46.3.
29	* * *

1	Art. 979.1. Service of motion to expunge a record; victims of human trafficking
2	A. The motion filed pursuant to Articles 977(A)(3) and 978(A)(4) of this
3	Code shall be served on the district attorney that obtained the conviction for which
4	the expungement is sought. The district attorney shall have forty-five days from the
5	date of receipt of service to respond to the petition for relief.
6	B. Official documentation of the applicant's status as a victim of a human
7	trafficking offense from a federal, state, or local governmental agency shall create
8	a presumption that the applicant's participation in the offense was a result of having
9	been a victim of human trafficking as defined in R.S. 14:46.2 or 46.3, but shall not
10	be required for granting a motion under this Article.
11	C. If the opposition to the petition is not filed by the district attorney, the
12	court shall deem the petition unopposed and may grant the petition. If the petition
13	is opposed or the court otherwise deems it necessary, the court shall schedule a
14	hearing on the petition.
15	D. If the court requires a hearing, evidence of actions taken by the
16	perpetrator of human trafficking against the applicant seeking an expungement may
17	be considered, but shall not be required, as proof that the person seeking the
18	expungement was a victim of human trafficking.
19	E. The court may grant the order of expungement regardless of whether such
20	conviction was set aside and the prosecution was dismissed pursuant to Article
21	893(E) or 894(B) of this Code.
22	* * *
23	Art. 989. Motion for expungement forms to be used
24	STATE OF LOUISIANA
25	JUDICIAL DISTRICT FOR THE PARISH OF
26	
27	No.:
28	State of Louisiana
29	vs.

1						
2		MOTION	FOR EXPUNGEMENT			
3	NOW INTO COURT comes mover, who provides the court with the					
4	follo	following information in connection with this request:				
5	I.	DEFENDANT INFO	DRMATION			
6	NAM	ИЕ:				
7		(Last,	First, MI)			
8	DOB	:	//(MM/DD/YYYY)			
9	GEN	DER	FemaleMale			
10	SSN	(last 4 digits):	XXX-XX			
11	RAC	E:				
12	DRI	VER LIC.#				
13	ARR	ESTING AGENCY:				
14	SID#	(if available):				
15	ARR	EST NUMBER (ATN):				
16	AGE	NCY ITEM NO.				
17		Mover is entitled to ex	xpunge the record of his arrest/conviction pursuant to			
18	Louis	siana Code of Criminal	Procedure Article 971 et seq. and states the following			
19	in su	pport:				
20	II.	ARREST INFORMA	ATION			
21	1.	Mover was arrested or	n/(MM/DD/YYYY)			
22	2.	YES NO	A supplemental sheet with arrests and/or			
23			convictions is attached after page 2 of this			
24			Motion.			
25	3.	Mover was:				
26		YES NO	Arrested, but it did not result in conviction			
27		YES NO	Convicted of and seeks to expunge a			
28			misdemeanor			
29		YES NO	Convicted of and seeks to expunge a felony			

HLS 22RS-23 **ORIGINAL** HB NO. 638 _____ YES _____ NO 1 Convicted but determined to be factually 2 innocent and entitled to compensation for a 3 wrongful conviction pursuant to the 4 provisions of R.S. 15:572.8. 5 4. Mover was booked and/or charged with the following offenses: (List each 6 offense booked and charged separately. Attach a supplemental sheet, if 7 necessary.) 8 Yes No ARRESTS THAT DID NOT RESULT IN CONVICTION 9 NO. 1 La. Rev. Stat. Ann. § _____: ____ 10 Name of the offense 11 () Time expired for prosecution 12 (MM/DD/YYYY) 13 () Not prosecuted for any offense 14 arising out of this charge. 15 () Pre-trial Diversion Program. 16 () DWI Pre-Trial Diversion Program 17 and 5 years have elapsed since the 18 date of arrest. 19 () Charge dismissed 20 () Found not guilty/judgment of acquittal § _____: ____ 21 NO. 2 La. Rev. Stat. Ann. 22 Name of the offense 23 () Time expired for prosecution 24 (MM/DD/YYYY) 25 () Not prosecuted for any 26 offense arising out of this charge. 27 () Pre-trial Diversion Program.

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() Found not guilty/judgment of acquittal

() Charge dismissed

28

29

HLS 22RS-23 **ORIGINAL** HB NO. 638 1 § _____: ____ NO. 3 La. Rev. Stat. Ann. 2 Name of the offense 3 () Time expired for prosecution 4 (MM/DD/YYYY) 5 () Not prosecuted for any offense 6 arising out of this charge. 7 () Pre-trial Diversion Program. 8 () Charge dismissed 9 () Found not guilty/judgment of acquittal ____ Yes ____ No MISDEMEANOR CONVICTIONS 10 11 NO. 1 La. Rev. Stat. Ann. § _____: ____ 12 Name of the offense () Conviction set aside/dismissed / / 13 (MM/DD/YYYY) 14 pursuant to C.Cr.P. Art. 894(B) 15 () More than 5 years have passed 16 since completion of sentence. 17 () Applicant was a victim of human trafficking § _____: ____ NO. 2 La. Rev. Stat. Ann. 18 19 Name of the offense () Conviction set aside/dismissed ____/___/ 20 21 (MM/DD/YYYY) pursuant to C.Cr.P. Art. 894(B) 22 () More than 5 years have passed 23 since completion of sentence. 24 () Applicant was a victim of human trafficking

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() Conviction set aside/dismissed ____/__/___

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

() More than 10 years have passed

§ :

(MM/DD/YYYY)

Yes No FELONY CONVICTIONS

La. Rev. Stat. Ann.

25

26

27

28

29

NO. 1

	since completion of sentence
	() Applicant was a victim of human trafficking
NO. 2	La. Rev. Stat. Ann. § :
	() Conviction set aside/dismissed//
	pursuant to C.Cr.P. Art. 893(E) (MM/DD/YYYY)
	() More than 10 years have passed
	since completion of sentence
	() Applicant was a victim of human trafficking
Yes	No OPERATING A MOTOR VEHICLE WHILE
	INTOXICATED CONVICTIONS
Mover has at	ttached the following:
()	A copy of the proof from the Department of Public Safety and
	Corrections, office of motor vehicles, that it has received from the
	clerk of court a certified copy of the record of the plea, fingerprints
	of the defendant, and proof of the requirements set forth in C.Cr.P.
	Art. 556, which shall include the defendant's date of birth, last four
	digits of social security number, and driver's license number
5. Mover ha	as attached to this Motion the following pertinent documents:
	Criminal Background Check from the La. State Police/Parish Sheriff
	dated within the past 60 days (required).
	Bill(s) of Information (if any).
	Minute entry showing final disposition of case (if any).
	Certification Letter from the District Attorney for fee waiver (if
	eligible).
	Certification Letter from the District Attorney verifying that the
	applicant has no convictions or pending applicable criminal charges
	in the requisite time periods.
	Certification Letter from the District Attorney verifying that the
	charges were refused.

1		Certification Letter from the District Attorney verifying that the		
2		applicant did not participate in a pretrial diversion program.		
3		A copy of the order waiving the sex offender registration and		
4		notification requirements.		
5		Documentation verifying that the mover has been employed for ten		
6		consecutive years.		
7		Documentation verifying that the applicant was a victim of human		
8		trafficking as defined in R.S. 14:46.2 or 46.3.		
9		A copy of the court order determination of factual innocence and		
10		order of compensation for a wrongful conviction pursuant to the		
11		provisions of R.S. 15:572.8 if applicable.		
12	The M	lover prays that if there is no objection timely filed by the arresting law		
13	enforcement	agency, the district attorney's office, or the Louisiana Bureau of		
14	Criminal Iden	Criminal Identification and Information, that an order be issued herein ordering the		
15	expungement	expungement of the record of arrest and/or conviction set forth above, including all		
16	photographs,	photographs, fingerprints, disposition, or any other such information, which record		
17	shall be confid	dential and no longer considered a public record, nor be made available		
18	to other perso	ons, except a prosecutor, member of a law enforcement agency, or a		
19	judge who ma	ay request such information in writing, certifying that such request is		
20	for the purpos	se of prosecuting, investigating, or enforcing the criminal law, for the		
21	purpose of an	y other statutorily defined law enforcement or administrative duties,		
22	or for the pur	or for the purpose of the requirements of sex offender registration and notification		
23	pursuant to th	pursuant to the provisions of R.S. 15:541 et seq. or as an order of this Court to any		
24	other person t	for good cause shown, or as otherwise authorized by law.		
25	If an "	Affidavit of No Opposition" by each agency named herein is attached		
26	hereto and ma	ade a part hereof, Defendant requests that no contradictory hearing be		
27	required and	the Motion be granted ex parte.		
28		Respectfully submitted,		
29				

Signature of Attorney for Mover/Defendant
Attorney for Mover/Defendant Name
Attorney's Bar Roll No.
Address
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
* *
Division: "
Louisiana
* Art. 992. Order of expungement for STATE OF JUDICIAL DISTRICT No.: No.: State of

1			VS.	
2	_			
3	ORDER OF EXPUNGEMENT OF ARREST/CONVICTION RECORD			
4	Cons	Considering the Motion for Expungement		
5		The l	hearing conducted and evidence adduced herein, OR	
6		Affic	lavits of No Opposition filed,	
7	IT IS	ORDE	RED, ADJUDGED AND DECREED	
8		THE	MOTION IS DENIED for No(s), , , , for the following	
9		reasc	ons (check all that apply):	
10			More than five years have not elapsed since Mover completed the	
11			misdemeanor conviction sentence.	
12			More than ten years have not elapsed since Mover completed the	
13			felony conviction sentence.	
14			Mover was not a victim of human trafficking as defined in R.S.	
15			14:46.2 or 46.3.	
16			Mover was convicted of one of the following ineligible felony	
17			offenses:	
18			A violation of the Uniform Controlled Dangerous Substances Law	
19			which is ineligible to be expunged.	
20			An offense currently listed as a sex offense that requires registration	
21			pursuant to R.S. 15:540 et seq., at the time the Motion was filed,	
22			regardless of whether the duty to register was ever imposed.	
23			An offense defined or enumerated as a "crime of violence" pursuant	
24			to R.S. 14:2(B) at the time the Motion was filed.	
25			The arrest and conviction being sought to have expunged is for	
26			operating a motor vehicle while intoxicated and a copy of the proof	
27			from the Department of Public Safety and Corrections, office of	
28			motor vehicles, is not attached as required by C.Cr.P. Art. 984(A).	

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1	Mover has had another record of misdemeanor conviction expunged
2	during the previous five-year period.
3	The record of arrest and conviction which Mover seeks to have
4	expunged is for operating a motor vehicle while intoxicated and
5	Mover has had another record of arrest and misdemeanor conviction
6	expunged during the previous ten-year period.
7	Mover has had another record of felony conviction expunged during
8	the previous fifteen-year period.
9	Mover was convicted of a misdemeanor which arose from
10	circumstances involving a sex offense as defined in R.S. 15:541.
11	Mover was convicted of misdemeanor offense of domestic abuse
12	battery which was not dismissed pursuant to C.Cr.P. Art. 894(B).
13	Mover did not complete pretrial diversion.
14	The charges against the mover were not dismissed or refused.
15	Mover's felony conviction was not set aside and dismissed pursuant
16	to C.Cr.P. Art. 893(E).
17	Mover's felony conviction was not set aside and dismissed pursuant
18	to C.Cr.P. Art. 894(B).
19	Mover completed a DWI pretrial diversion program, but five years
20	have not elapsed since the mover's date of arrest.
21	Mover's conviction for felony carnal knowledge of a juvenile is not
22	defined as misdemeanor carnal knowledge of a juvenile had the
23	mover been convicted on or after August 15, 2001.
24	Mover has not been employed for ten consecutive years as required
25	by C.Cr.P. Art. 978(E)(1)(d).
26	Mover was not convicted of a crime that would be eligible for
27	expungement as required by C.Cr.P. Art. 978(E)(1).
28	Mover has criminal charges pending against him.

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

1	of any other statutorily defined law enforcement or administrative duties, or	r 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	Y es No	ARRESTS THAT DID NOT RES	SULT IN CONVICTION
2	NO	La. Rev. Stat. Ann.	§:
3		Name of the offense	
4		() Time expired for prosecution	/
5			(MM/DD/YYYY)
6		() Charge refused by DA - not pro	osecuted.
7		() Pre-trial Diversion Program.	
8		() Charge dismissed	
9		() Found not guilty/judgment of a	cquittal
10	NO	La. Rev. Stat. Ann.	§:
11		Name of the offense	
12		() Time expired for prosecution	//
13			(MM/DD/YYYY)
14		() Charge refused by DA - not pro	osecuted.
15		() Pre-trial Diversion Program.	
16		() Charge dismissed	
17		() Found not guilty/judgment of a	cquittal
18	NO	La. Rev. Stat. Ann.	§:
19		Name of the offense	
20		() Time expired for prosecution	/
21			(MM/DD/YYYY)
22		() Charge refused by DA - not pro	osecuted.
23		() Pre-trial Diversion Program.	
24		() Charge dismissed	
25		() Found not guilty/judgment of a	cquittal
26	NO	La. Rev. Stat. Ann.	§:
27		Name of the offense	
28		() Time expired for prosecution	//
29			(MM/DD/YYYY)

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() More than 5 years have passed

since completion of sentence.

28

29

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1		() Applicant was a victim of human trafficking
2	NO	La. Rev. Stat. Ann. §::
3		Name of the offense
4		() Conviction set aside/dismissed//
5		(MM/DD/YYYY)
6		pursuant to C.Cr.P. Art. 894(B)
7		() More than 5 years have passed
8		since completion of sentence.
9		() Applicant was a victim of human trafficking
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. 894(B)
15		() More than 5 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. 894(B)
23		() More than 5 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//
29		(MM/DD/YYYY)

HLS 22RS-23 **ORIGINAL** HB NO. 638 1 pursuant to C.Cr.P. Art. 894(B) 2 () More than 5 years have passed 3 since completion of sentence. 4 () Applicant was a victim of human trafficking 5 La. Rev. Stat. Ann. § _____: ____ NO. ___ 6 Name of the offense ____/___/ 7 () Conviction set aside/dismissed 8 (MM/DD/YYYY) 9 pursuant to C.Cr.P. Art. 894(B) () More than 5 years have passed since completion of sentence. () Applicant was a victim of human trafficking § _____: ____ NO. La. Rev. Stat. Ann. Name of the offense () Conviction set aside/dismissed ____/___ (MM/DD/YYYY) pursuant to C.Cr.P. Art. 894(B) () More than 5 years have passed since completion of sentence. () Applicant was a victim of human trafficking § _____: ____ NO. ___ La. Rev. Stat. Ann.

10 11 12 13 14 15 16 17 18 19 20 21 22 Name of the offense () Conviction set aside/dismissed ____/___/ 23 24 (MM/DD/YYYY) 25 pursuant to C.Cr.P. Art. 894(B) 26 () More than 5 years have passed 27 since completion of sentence. 28 () Applicant was a victim of human trafficking § _____: ____ 29 NO. ___ La. Rev. Stat. Ann.

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 (MM/DD/YYYY) 13 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 § _____: ____ NO. 18 La. Rev. Stat. Ann. 19 Name of the offense () Conviction set aside/dismissed ____/___/ 20 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 () Applicant was a victim of human trafficking 25 26 NO. ___ La. Rev. Stat. Ann. § _____: ____ 27 Name of the offense () Conviction set aside/dismissed ____/___/ 28

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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

1	NO	La. Rev. Stat. Ann. §::
2		Name of the offense
3		() Conviction set aside/dismissed//
4		(MM/DD/YYYY)
5		pursuant to C.Cr.P. Art. 893(E)
6		() More than 10 years have passed
7		since completion of sentence
8		() Applicant was a victim of human trafficking
9	NO	La. Rev. Stat. Ann. §::
10		Name of the offense
11		() Conviction set aside/dismissed//
12		(MM/DD/YYYY)
13		pursuant to C.Cr.P. Art. 893(E)
14		() More than 10 years have passed
15		since completion of sentence
16		() Applicant was a victim of human trafficking
17	NO	La. Rev. Stat. Ann. §::
18		Name of the offense
19		() Conviction set aside/dismissed//
20		(MM/DD/YYYY)
21		pursuant to C.Cr.P. Art. 893(E)
22		() More than 10 years have passed
23		since completion of sentence
24		() 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.

<u>Present law</u> (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 <u>present</u> <u>law</u> (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.

<u>Present law</u> (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 <u>present</u> <u>law</u> (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.

<u>Proposed law</u> adds an additional ground to <u>present law</u> (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 <u>present law</u> (R.S. 14:46.2 or 46.3).

<u>Proposed law</u> provides that the motion filed pursuant to <u>proposed law</u> 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 <u>proposed law</u>. 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.

<u>Proposed law</u> 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

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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.

<u>Proposed law</u> amends the <u>present law</u> forms to conform with changes made in <u>proposed law</u>.

(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)