

Regular Session, 2013

SENATE BILL NO. 112

BY SENATOR GALLOT AND REPRESENTATIVES LOPINTO AND ARMES

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

CRIMINAL PROCEDURE. Provides procedure for expungement of certain criminal records. (gov sig)

1 AN ACT

2 To amend and reenact Code of Criminal Procedure Article 893(E)(1)(a) and 894(B)(1) and

3 to enact Code of Criminal Procedure Articles 930.10 through 930.19, relative to

4 expungement; to provide a procedure for the expungement of certain criminal

5 records; to provide definitions; to provide exceptions; to provide penalties; and to

6 provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. Code of Criminal Procedure Article 893(E)(1)(a) and 894(B)(1) are

9 hereby amended and reenacted and Code of Criminal Procedure Articles 930.10 through

10 930.19 are hereby enacted to read as follows:

11 Art. 893. Suspension and deferral of sentence and probation in felony cases

12 * * *

13 E.(1)(a) When it appears that the best interest of the public and of the

14 defendant will be served, the court may defer, ~~in whole or in part, the imposition~~ the

15 execution of a sentence of imprisonment after conviction of a first offense

16 noncapital felony under the conditions set forth in this Paragraph. When a conviction

17 is entered under this Paragraph, the court may defer the ~~imposition~~ execution of a

1 sentence **of imprisonment** and place the defendant on probation under the
2 supervision of the division of probation and parole.

3 * * *

4 Art. 894. Suspension and deferral of sentence; probation in misdemeanor cases

5 * * *

6 B.(1) When the imposition **execution** of a sentence **of imprisonment** has
7 been deferred by the court, as authorized by this Article, and the court finds at the
8 conclusion of the period of deferral that the defendant has not been convicted of any
9 other offense during the period of the deferred sentence, and that no criminal charge
10 is pending against him, the court may set the conviction aside and dismiss the
11 prosecution. However, prior to setting aside any conviction and dismissing the
12 prosecution for any charge for operating a vehicle while intoxicated, the court shall
13 require proof in the form of a certified letter from the Department of Public Safety
14 and Corrections, office of motor vehicles, that the requirements of Paragraph A(5)
15 of this Article have been complied with.

16 * * *

17 **Art. 930.10. Expunging and sealing records; definition**

18 **"Expunge and seal a record" means to remove a record of arrest,**
19 **photographs, fingerprints, disposition, or any other such information of any**
20 **kind from public access, but does not mean to destroy the record.**

21 **Art. 930.11. Effect of expunged and sealed record of arrest or conviction**

22 **A. An expunged and sealed record of arrest or conviction, including any**
23 **incident reports, photographs, fingerprints, disposition, or any other such**
24 **information of any kind, shall be confidential and no longer considered to be a**
25 **public record, nor be made available to any person or other entity, except:**

26 **(1) To a member of a law enforcement or criminal justice agency,**
27 **prosecutor, or judge, who shall request such information in writing, certifying**
28 **that the request is for the purpose of investigating, prosecuting, or enforcing**
29 **criminal law.**

1 **(2) On order of a court of competent jurisdiction for good cause shown**
2 **or as otherwise authorized by law.**

3 **B. Except as to those persons and other entities set forth in Subsection**
4 **A of this Article, no person whose record of arrest or conviction has been**
5 **expunged and sealed shall be required to disclose to any person or other entity**
6 **that he was arrested or convicted of the subject offense, or that the record of the**
7 **arrest or conviction has been expunged and sealed.**

8 **Art. 930.12. Motion to expunge and seal record of arrest**

9 **A. Any person, other than an offender in the custody of the Department**
10 **of Public Safety and Corrections, may file a motion to expunge and seal a record**
11 **of his arrest for a felony or misdemeanor if any of the following apply:**

12 **(1) The person was not prosecuted for the offense for which he was**
13 **arrested and the limitations on the institution of prosecution have barred the**
14 **prosecution of the offense.**

15 **(2) The district attorney for any reason declined to prosecute the offense**
16 **for which the person was arrested, including the person's completion of a**
17 **diversion program.**

18 **(3) Prosecution was instituted and such proceedings have been finally**
19 **disposed of by dismissal, sustaining of a motion to quash, or acquittal.**

20 **B. The person filing the motion to expunge and seal a record of arrest**
21 **shall serve the district attorney, the arresting law enforcement agency, and the**
22 **Department of Public Safety and Corrections with a copy of the motion.**

23 **Art. 930.13. Contradictory hearing on motion to expunge and seal record of**
24 **arrest**

25 **A. Any person or other entity set forth in Code of Criminal Procedure**
26 **Article 930.12(B) who objects to the granting of a motion to expunge and seal**
27 **a record of arrest shall file an objection thereto within thirty days from the date**
28 **of service of the motion, setting forth the grounds for such objection. If no**
29 **objection is filed within thirty days from the date of service of the motion, or the**

1 district attorney files a response to the motion acknowledging that the motion
2 should be granted, then the motion shall be granted.

3 B. If a contradictory hearing is required, the person filing the motion to
4 expunge and seal a record of arrest shall establish by a preponderance of the
5 evidence that he is entitled to a judgment ordering the expungement and sealing
6 of the record.

7 Art. 930.14. Judgment granting motion to expunge and seal a record of arrest

8 A judgment ordering that a record of arrest be expunged and sealed
9 shall be executed by the district attorney. The judgment does not affect any of
10 those persons or other entities set forth in Code of Criminal Procedure Article
11 930.12(B) who have not been served with the motion to expunge and seal the
12 record of arrest.

13 Art. 930.15. Motion to expunge and seal record of conviction

14 A. Any person, other than an offender in the custody of the Department
15 of Public Safety and Corrections, may file a motion to expunge and seal his
16 record of arrest and conviction of a misdemeanor offense if any of the following
17 apply:

18 (1) The conviction was set aside and the prosecution was dismissed
19 pursuant to Code of Criminal Procedure Article 894(B).

20 (2)(a) More than five years have elapsed since the person completed any
21 sentence, paid any fine or costs, and completed successfully any period of
22 probation imposed by the court based on the conviction, the person has not been
23 convicted of any other offense during the five year period, and has no criminal
24 charge pending against him.

25 (b) Prior to the time a defendant petitions the court to expunge and seal
26 the record of any arrest and conviction for operating a vehicle while intoxicated,
27 he shall request that the clerk of court mail to the Department of Public Safety
28 and Corrections, office of motor vehicles, a certified copy of the record of the
29 conviction, proof that the requirements set forth in Code of Criminal Procedure

1 Article 556.1 have been met if the defendant entered a plea of guilty or nolo
2 contendere, and fingerprints of the defendant, which shall include the
3 defendant's date of birth, social security number, and driver's license number.
4 Proof in the form of a certified letter from the Department of Public Safety,
5 office of motor vehicles, that the requirements of this Subparagraph have been
6 complied with shall be attached to the motion to expunge and seal the record of
7 arrest and conviction of a misdemeanor offense.

8 B. An expungement and sealing of a record of arrest and conviction of
9 a misdemeanor shall occur only once with respect to any person during a five-
10 year period, except that an expungement and sealing of a record of arrest and
11 conviction of operating a vehicle while intoxicated shall occur only once with
12 respect to any person during a ten-year period.

13 C. A person, other than an offender in the custody of the Department of
14 Public Safety and Corrections, may file a motion to expunge and seal his record
15 of arrest and conviction of a felony, other than an offense or attempted offense
16 defined as a crime of violence by R.S. 14:2 that is punishable by a term of
17 imprisonment of more than five years, or a sex offense as defined by R.S. 15:541
18 in which the victim was under the age of eighteen years, or a violation of the
19 Uniform Controlled Dangerous Substance Law (R.S. 40:961 et seq.) that is
20 punishable by a term of imprisonment of more than five years, if any of the
21 following apply:

22 (1) The conviction was set aside and the prosecution was dismissed
23 pursuant to Code of Criminal Procedure Article 894(B).

24 (2) More than ten years have elapsed since the person completed any
25 sentence, paid any fine or costs, and completed successfully any period of
26 probation imposed by the court based on the conviction, the person has not been
27 convicted of any other offense during the ten year period, and has no criminal
28 charge pending against him.

29 D. An expungement and sealing of a record of arrest and conviction of

1 a felony shall occur only once with respect to any person during a fifteen-year
2 period.

3 E. A motion to expunge and seal a record of arrest and conviction shall
4 include a sworn verification that the allegations contained in the motion are true
5 and correct and that the mover has no pending misdemeanor or felony charge
6 against him under a bill of information or indictment.

7 F. Any person filing a motion to expunge and seal a record of arrest and
8 conviction shall serve the district attorney, the arresting law enforcement
9 agency, and the Department of Public Safety and Corrections with a copy of the
10 motion.

11 Art. 930.16. Contradictory hearing on a motion to expunge and seal record of
12 conviction

13 A. Any person or other entity set forth in Code of Criminal Procedure
14 Article 930.15(F) who objects to the granting of a motion to expunge and seal
15 a record of conviction shall file an objection thereto within thirty days from the
16 date of service of the motion, setting forth the grounds for such objection. If no
17 objection is filed within thirty days from the date of service of the motion, or the
18 district attorney files a response to the motion acknowledging that the motion
19 should be granted, then the motion shall be granted.

20 B. If a contradictory hearing is required, the person filing the motion to
21 expunge and seal a record of arrest and conviction shall establish by a
22 preponderance of the evidence that he is entitled to a judgment ordering the
23 expungement and sealing of the record.

24 Art. 930.17. Judgment granting motion to expunge and seal a record of
25 conviction

26 A judgment ordering that a record of arrest and conviction be expunged
27 and sealed shall be executed by the district attorney. The judgment does not
28 affect any of those persons or other entities set forth in Article 930.15(F) who
29 have not been served with the motion to expunge and seal.

1 **Art. 930.18. Petition to destroy record of arrest**

2 **A. Any person who has obtained an order expunging a record of arrest**
3 **may petition the court, alleging innocence of the offense, for an order to destroy**
4 **the record previously expunged. The petition shall be served on the district**
5 **attorney, the arresting law enforcement agency, and the custodian of the**
6 **records at least fifteen days in advance of any consideration by the court.**

7 **B. No petition to destroy a record of arrest may be considered by the**
8 **court without the express written consent of the district attorney. Such consent**
9 **may be withdrawn at any time prior to consideration of the petition by the**
10 **court.**

11 **C. Upon consideration and granting of the petition to destroy records,**
12 **the court shall order all persons and other entities, including but not limited to**
13 **law enforcement agencies, having any record of the arrest, whether on**
14 **microfilm, computer card or tape, or on any other photographic, electronic, or**
15 **mechanical method of storing data, to destroy any record, photograph,**
16 **fingerprint, or any other information of any and all kinds or description relative**
17 **to the arrest.**

18 **Art. 930.19. Dissemination of expunged and sealed records by third parties**

19 **A. A private entity third party that compiles and disseminates for**
20 **compensation criminal history information shall not disseminate any**
21 **information in its possession regarding an arrest, conviction, or other**
22 **disposition after such party has received notice that an order to expunge and**
23 **seal the record of any such arrest or conviction has been issued.**

24 **B. Unless a private entity third party that compiles and disseminates**
25 **criminal history information is regulated by the Fair Credit Reporting Act (15**
26 **U.S.C. 1681 et seq.) or the Gramm-Leach Bliley Act (15 U.S.C. 6801-6809), it**
27 **shall not disseminate any criminal history information in its possession**
28 **regarding an arrest, conviction, or other disposition for which an order to**
29 **expunge and seal the record has been issued, unless that information was**

1 originally obtained or has been updated within ninety days of the date of
2 dissemination.

3 C. A private entity third party that disseminates criminal history
4 information in violation of this Section is liable for any damages that are
5 sustained as a result of the violation by the person who is the subject of that
6 information, and a person who prevails in such action is entitled to court costs
7 and reasonable attorney fees.

8 Section 2. This Act shall become effective upon signature by the governor or, if not
9 signed by the governor, upon expiration of the time for bills to become law without signature
10 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
11 vetoed by the governor and subsequently approved by the legislature, this Act shall become
12 effective on the day following such approval.

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

DIGEST

Present law provides that when it appears that the best interest of the public and of the defendant will be served, the court may defer, in whole or in part, the imposition of sentence after conviction of a first offense noncapital felony under the conditions set forth in present law. Present law further provides that when a conviction is entered under present law, the court may defer the imposition of sentence and place the defendant on probation under the supervision of the division of probation and parole.

Proposed law provides that when it appears that the best interest of the public and of the defendant will be served, the court may defer the execution of a sentence of imprisonment after conviction of a first offense noncapital felony under the conditions set forth in proposed law. Proposed law further provides that when a conviction is entered under proposed law, the court may defer the execution of a sentence of imprisonment and place the defendant on probation under the supervision of the division of probation and parole.

Present law provides that when the imposition of sentence has been deferred by the court, as authorized by present law, and the court finds at the conclusion of the period of deferral that the defendant has not been convicted of any other offense during the period of the deferred sentence, and that no criminal charge is pending against him, the court may set the conviction aside and dismiss the prosecution.

Proposed law provides that when the execution of a sentence of imprisonment has been deferred by the court, as authorized by present law, and the court finds at the conclusion of the period of deferral that the defendant has not been convicted of any other offense during the period of the deferred sentence, and that no criminal charge is pending against him, the court may set the conviction aside and dismiss the prosecution.

Proposed law provides that "expunge and seal a record" means to remove a record of arrest, photographs, fingerprints, disposition, or any other such information of any kind from public

access, but does not mean to destroy the record.

Proposed law provides that an expunged and sealed record of arrest or conviction, including any incident reports, photographs, fingerprints, disposition, or any other such information of any kind, is confidential and no longer considered to be a public record, nor be made available to any person or other entity, except:

- (1) To a member of a law enforcement or criminal justice agency, prosecutor, or judge, who shall request such information in writing, certifying that the request is for the purpose of investigating, prosecuting, or enforcing criminal law.
- (2) On order of a court of competent jurisdiction for good cause shown or as otherwise authorized by law.

Proposed law provides that, except as to those persons and other entities set forth in proposed law, no person whose record of arrest or conviction has been expunged and sealed can be required to disclose to any person or other entity that he was arrested for or convicted of the subject offense, or that the record of the arrest and conviction has been expunged and sealed.

Proposed law provides that any person, other than an offender in the custody of the Department of Public Safety and Corrections, may file a motion to expunge and seal a record of his arrest for a felony or misdemeanor if any of the following apply:

- (1) The person was not prosecuted for the offense for which he was arrested and the limitations on the institution of prosecution have barred the prosecution of the offense.
- (2) The district attorney for any reason declined to prosecute the offense for which the person was arrested, including the person's completion of a diversion program.
- (3) Prosecution was instituted and such proceedings have been finally disposed of by dismissal, sustaining of a motion to quash, or acquittal.

Proposed law provides that the person filing the motion to expunge and seal a record of arrest must serve the district attorney, the arresting law enforcement agency, and the Department of Public Safety and Corrections with a copy of the motion.

Proposed law provides that any person or other entity set forth in proposed law who objects to the granting of a motion to expunge and seal a record of arrest must file an objection thereto within 30 days from the date of service of the motion, setting forth the grounds for such objection. Proposed law further provides that if no objection is filed within 30 days, or the district attorney files a response to the motion acknowledging that the motion should be granted, then the motion is to be granted.

Proposed law provides that if a contradictory hearing is required, the person filing the motion to expunge and seal a record of arrest must establish by a preponderance of the evidence that he is entitled to a judgment ordering the expungement and sealing of the record.

Proposed law provides that a judgment ordering that a record of arrest be expunged and sealed is to be executed by the district attorney, but that judgment does not affect any of those persons or other entities set forth in proposed law who have not been served with the motion to expunge and seal the record of arrest.

Proposed law provides that any person, other than an offender in the custody of the Department of Public Safety and Corrections, may file a motion to expunge and seal his record of arrest and conviction of a misdemeanor offense if any of the following apply:

- (1) The conviction was set aside and the prosecution was dismissed pursuant proposed law.
- (2) More than five years have elapsed since the person completed any sentence, paid any fine or costs, and completed successfully any period of probation imposed by the court based on the conviction, the person has not been convicted of any other offense during the five year period, and has no criminal charge pending against him.

Proposed law provides that prior to the time a defendant petitions the court to expunge and seal the record of any arrest and conviction for operating a vehicle while intoxicated, he must request that the clerk of court mail to the Department of Public Safety and Corrections, office of motor vehicles, a certified copy of the record of the conviction, proof that the requirements set forth in present law have been met if the defendant entered a plea of guilty or nolo contendere, and fingerprints of the defendant, which is to include the defendant's date of birth, social security number, and driver's license number. Proposed law further provides that proof in the form of a certified letter from the Department of Public Safety, office of motor vehicles, that the requirements of proposed law have been complied with is to be attached to the motion to expunge and seal the record of arrest and conviction of a misdemeanor offense.

Proposed law provides that an expungement and sealing of a record of arrest and conviction of a misdemeanor can occur only once with respect to any person during a five-year period, except that an expungement and sealing of a record of arrest and conviction of operating a vehicle while intoxicated can occur only once with respect to any person during a ten-year period.

Proposed law provides that a person, other than an offender in the custody of the Department of Public Safety and Corrections, may file a motion to expunge and seal his record of arrest and conviction of a felony, other than an offense or attempted offense defined as a crime of violence by present law that is punishable by a term of imprisonment of more than five years, or a sex offense as defined by present law in which the victim was under the age of 18 years, or a violation of the Uniform Controlled Dangerous Substance Law that is punishable by a term of imprisonment of more than five years, if any of the following apply:

- (1) The conviction was set aside and the prosecution was dismissed pursuant to proposed law.
- (2) More than ten years have elapsed since the person completed any sentence, paid any fine or costs, and completed successfully any period of probation imposed by the court based on the conviction, the person has not been convicted of any other offense during the ten-year period, and has no criminal charge pending against him.

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

Proposed law provides that a motion to expunge and seal a record of arrest and conviction must include a sworn verification that the allegations contained in the motion are true and correct and that the mover has no pending misdemeanor or felony charge against him under a bill of information or indictment.

Proposed law provides that any person filing a motion to expunge and seal a record of arrest and conviction must serve the district attorney, the arresting law enforcement agency, and the Department of Public Safety and Corrections with a copy of the motion.

Proposed law provides that any person or other entity set forth in proposed law who objects to the granting of a motion to expunge and seal a record of conviction must file an objection thereto within 30 days from the date of service of the motion, setting forth the grounds for such objection. Proposed law further provides that if no objection is filed within 30 days

from the date of service of the motion, or the district attorney files a response to the motion acknowledging that the motion should be granted, then the motion is to be granted.

Proposed law provides that if a contradictory hearing is required, the person filing the motion to expunge and seal a record of arrest and conviction must establish by a preponderance of the evidence that he is entitled to a judgment ordering the expungement and sealing of the record.

Proposed law provides that a judgment ordering that a record of arrest and conviction be expunged and sealed is to be executed by the district attorney, and the judgment does not affect any of those persons set forth in proposed law who have not been served with the motion.

Proposed law provides that any person who has obtained an order expunging a record of arrest may petition the court, alleging innocence of the offense, for an order to destroy the record previously expunged. Proposed law further provides that the petition must be served on the district attorney, the arresting law enforcement agency, and the custodian of the records at least 15 days in advance of any consideration by the court.

Proposed law provides that no petition to destroy a record of arrest may be considered by the court without the express written consent of the district attorney, and that such consent may be withdrawn at any time prior to consideration by the court.

Proposed law provides that upon consideration and granting of the petition to destroy records, the court is to order all persons and entities, including but not limited to law enforcement agencies, having any record of the arrest, whether on microfilm, computer card or tape, or on any other photographic, electronic, or mechanical method of storing data, to destroy any record, photograph, fingerprint, or any other information of any and all kinds or description relative to the arrest.

Proposed law provides that a private entity third party that compiles and disseminates for compensation criminal history information cannot disseminate any information in its possession regarding an arrest, conviction, or other disposition after such party has received notice that an order to expunge and seal the record of any such arrest or conviction has been issued.

Proposed law provides that, unless a private entity third party that compiles and disseminates criminal history information is regulated by present law (the Fair Credit Reporting Act or the Gramm-Leach Bliley Act), it cannot disseminate any criminal history information in its possession regarding an arrest, conviction, or other disposition for which an order to expunge and seal the record has been issued, unless that information was originally obtained or has been updated within 90 days of the date of dissemination.

Proposed law provides that a private entity third party that disseminates criminal history information in violation of proposed law is liable for any damages that are sustained as a result of the violation by the person who is the subject of that information, and a person who prevails in such action is entitled to court costs and reasonable attorney fees.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Amends C.Cr.P. Art. 893(E)(1)(a) and 894(B)(1); adds C.Cr.P. Art. 930.10 - 930.19)