
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)