

2015 Regular Session

HOUSE BILL NO. 100

BY REPRESENTATIVE PRICE

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

CRIMINAL/PROCEDURE: Provides with respect to the expungement and destruction of criminal records

1 AN ACT

2 To amend and reenact Code of Criminal Procedure Article 978(B)(1) and to enact Code of  
3 Criminal Procedure Articles 978(E), 983(F)(5), and 985.2, relative to expungement;  
4 to provide for the expungement of certain crimes of violence after a cleansing period;  
5 to provide for an exemption from the payment of costs for certain types of  
6 expungement; to provide for the destruction of misdemeanor and felony arrest  
7 records under certain circumstances; and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. Code of Criminal Procedure Article 978(B)(1) is hereby amended and  
10 reenacted and Code of Criminal Procedure Articles 978(E), 983(F)(5), and 985.2 are hereby  
11 enacted to read as follows:

12 Art. 978. Motion to expunge record of arrest and conviction of a felony offense

13 \* \* \*

14 B. No expungement shall be granted nor shall a person be permitted to file  
15 a motion to expunge the record of arrest and conviction of a felony offense if the  
16 person was convicted of the commission or attempted commission of any of the  
17 following offenses:

18 (1) ~~Unless otherwise permissible under Article 893(E) of this Code, a~~ A  
19 crime of violence as defined by or enumerated in R.S. 14:2(B), unless otherwise

1 permissible under Article 893(E) of this Code or as provided in Paragraph E of this  
2 Article.

3 \* \* \*

4 E.(1) Notwithstanding any other provision of law to the contrary, a person  
5 convicted of one of the following crimes of violence may file a motion to expunge  
6 his record of arrest and conviction if more than ten years have elapsed since the  
7 person completed any sentence, deferred adjudication, or period of probation or  
8 parole based on the felony conviction, and the person has not been convicted of any  
9 other criminal offense during the ten-year period, has no criminal charge pending  
10 against him, and has been employed for a period of ten consecutive years:

11 (a) Aggravated battery.

12 (b) Second degree battery.

13 (c) Aggravated assault.

14 (d) Aggravated criminal damage to property.

15 (e) Simple robbery.

16 (f) Purse snatching.

17 (g) Illegal use of weapons or dangerous instrumentalities.

18 (2) The motion filed pursuant to this Paragraph shall include a certification  
19 from the district attorney which verifies that, to his knowledge, the applicant has no  
20 convictions during the ten-year period and no pending charges under a bill of  
21 information or indictment. The motion shall be heard by contradictory hearing as  
22 provided by Article 980.

23 \* \* \*

24 Art. 983. Costs of expungement of a record; fees; collection; exemptions;  
25 disbursements

26 \* \* \*

27 F. An applicant for the expungement of a record shall not be required to pay  
28 any fee to the clerk of court, the Louisiana Bureau of Criminal Identification and  
29 Information, sheriff, the district attorney, or any other agency to obtain or execute

1 an order of a court of competent jurisdiction to expunge the arrest from the  
2 individual's arrest record if a certification obtained from the district attorney is  
3 presented to the clerk of court which verifies that the applicant has no felony  
4 convictions and no pending felony charges under a bill of information or indictment  
5 and at least one of the following applies:

6 \* \* \*

7 (5) The applicant was granted a motion to expunge pursuant to Article 985.2.

8 \* \* \*

9 Art. 985.2. Destruction of misdemeanor and felony arrest records

10 A. A person may file a motion to expunge and destroy a misdemeanor or  
11 felony arrest from his criminal history alleging actual innocence when:

12 (1) The district attorney and arresting agency agree by written consent, and  
13 the case against the applicant was dismissed or the district attorney declined to  
14 prosecute the case prior to the time limitations prescribed in Chapter 1 of Title XVII  
15 of the Code of Criminal Procedure, and the applicant did not participate in a pretrial  
16 diversion program.

17 (2) The petition must be served on the custodian of such records at least  
18 fifteen days in advance of any consideration by the court.

19 (3) Either the district attorney or sheriff may withdraw written consent at any  
20 time prior to consideration by the court, which shall result in dismissal of the  
21 petition.

22 (4) Upon consideration of the petition to destroy the record of arrest, the  
23 court shall order all agencies and law enforcement offices having any record of the  
24 arrest, whether on microfilm, computer card or tape, or other photographic,  
25 electronic, or mechanical method of storing data, to destroy any record of arrest,  
26 photograph, fingerprint, or any other information of any and all kinds or descriptions.

27 (5) Any such order may include a requirement that the custodian of records  
28 file a sworn affidavit attesting that the records have been destroyed and that no  
29 notations or references will or might lead to the inference that any record ever was

1        on file with any agency or law enforcement office. The original of this affidavit shall  
 2        be kept by the court ordering the affidavit, and a copy shall be retained by the affiant  
 3        agency or law enforcement office which shall not be a public record and shall not be  
 4        open for public inspection but rather shall be kept under lock and key and maintained  
 5        only for internal recordkeeping purposes to preserve the integrity of the files of the  
 6        agency or law enforcement office and shall not be used for any investigative purpose.

## 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 100 Original

2015 Regular Session

Price

**Abstract:** Provides for the destruction of misdemeanor and felony arrest records and provides for the expungement of certain crimes of violence following a 10-year cleansing period.

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.

Proposed law changes present law to allow for the expungement of aggravated battery, second degree battery, aggravated assault, aggravated criminal damage to property, simple robbery, purse snatching, and illegal use of weapons or dangerous instrumentalities if 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, has no criminal charge pending against him, and has been employed for a period of 10 consecutive years.

Present law provides for the expungement of a misdemeanor arrest which does not result in a conviction, but does not authorize the destruction of any criminal records.

Proposed law provides for the destruction of misdemeanor and felony arrest records which did not result in a conviction if the district attorney consents to the destruction and the destruction is ordered by the court following a contradictory hearing.

Present law authorizes that applicants requesting an expungement do not have to pay fees for an expungement.

Proposed law retains present law and also exempts costs associated with the expungement of and destruction to the misdemeanor or felony records of persons alleging actual innocence.

(Amends C.Cr.P. Art. 978(B)(1); Adds C.Cr.P. Arts. 978(E), 983(F)(5), and 985.2)