

Regular Session, 2014

HOUSE BILL NO. 55

BY REPRESENTATIVES LOPINTO, ARMES, WESLEY BISHOP, DIXON,
JEFFERSON, MORENO, JIM MORRIS, AND SMITH AND SENATORS
GALLOT, MARTINY, MILLS, AND MORRELL

CRIMINAL/PROCEDURE: Revises provisions of law regarding expungement

1 AN ACT

2 To enact Title XXXIV of the Code of Criminal Procedure, to be comprised of Articles 971
3 through 993, and to repeal R.S. 44:9, relative to expungement; to provide for the
4 effect of expunged records; to provide for definitions; to authorize the expungement
5 of certain felony conviction records; to prohibit the dissemination of expunged
6 records by third parties; to provide penalties for the unlawful dissemination of
7 expunged records by third parties; to provide for legislative findings; to provide for
8 applicability; to provide for procedures for obtaining an expungement; to provide for
9 filing of motions to obtain an expungement; to provide for service of motions for
10 expungement; to provide for service of judgments of expungement; to authorize the
11 expungement of conviction records after a certain period of time has elapsed; to
12 provide for eligibility to obtain an expungement; to delete provisions of law referring
13 to destruction of arrest or conviction records; to provide for the assessment of certain
14 fees for expungement; to provide that certain fees are nonrefundable; to provide for
15 expungement by redaction of records; to provide for uniform forms for
16 expungement; to provide for the exemption of certain fees in certain circumstances;
17 to provide for a judgment granting an expungement; to provide for contradictory
18 hearings; to prohibit incarcerated individuals from filing a motion to expunge an
19 arrest or conviction record; and to provide for related matters.

1 Be it enacted by the Legislature of Louisiana:

2 Section 1. Title XXXIV of the Code of Criminal Procedure, comprised of Articles
3 971 through 993, is hereby enacted to read as follows:

4 Art. 971. Legislative findings

5 The legislature hereby finds and declares the following:

6 (1) Louisiana law provides for the expungement of certain arrest and
7 conviction records under limited circumstances. Obtaining an expungement of these
8 records allows for the removal of a record from public access but does not result in
9 the destruction of the record.

10 (2) An expunged record is confidential, but remains available for use by law
11 enforcement agencies, criminal justice agencies, and other statutorily defined
12 agencies.

13 (3) Following the passage of the Maritime Transportation Act of 2002, all
14 individuals who wish to work at ports or on vessels regulated by this Act are required
15 to obtain a Transportation Worker Identification Credential (TWIC). Obtaining a
16 TWIC card requires a criminal history check and clearance which cannot be obtained
17 without either a clean record or an expunged record with respect to certain offenses.

18 (4) The inability to obtain an expungement can prevent certain individuals
19 from obtaining gainful employment.

20 (5) The need for employment must be balanced appropriately against the
21 desire for public safety. Nothing in this Title shall be construed to limit or impair in
22 any way the subsequent use of any expunged record of arrest or conviction in any
23 lawful manner by law enforcement, law enforcement agencies, prosecutors, or
24 judges, including its use as a predicate offense or for the provisions of the Habitual
25 Offender Law.

26 (6) It is the intention of the legislature that this Title will provide
27 opportunities to break the cycle of criminal recidivism, increase public safety, and
28 assist the growing population of criminal offenders reentering the community to
29 establish a self-sustaining life through opportunities in employment.

1 (7) In balancing the legitimate needs of law enforcement agencies and the
2 desire to afford employment opportunities to all Louisiana citizens, the Louisiana
3 Legislature enacts the provisions of this Title within the Code of Criminal Procedure.

4 Art. 972. Definitions

5 As used in this Title:

6 (1) "Expunge a record" means to remove a record of arrest or conviction,
7 photographs, fingerprints, disposition, or any other information of any kind from
8 public access pursuant to the provisions of this Title. "Expunge a record" does not
9 mean destruction of the record.

10 (2) "Expungement by redaction" provides for the expungement of records
11 of a person who is arrested or convicted with other persons who are not entitled to
12 expungement and involves the removal of the name or any other identifying
13 information of the person entitled to the expungement and otherwise retains the
14 records of the incident as they relate to the other persons.

15 (3) "Records" includes any incident reports, photographs, fingerprints,
16 disposition, or any other such information of any kind in relation to a single arrest
17 event in the possession of the clerk of court, any criminal justice agency, and local
18 and state law enforcement agencies but shall not include DNA records.

19 Art. 973. Effect of expunged record of arrest or conviction

20 A. An expunged record of arrest or conviction shall be confidential and no
21 longer considered to be a public record and shall not be made available to any person
22 or other entity except for the following:

23 (1) To a member of a law enforcement or criminal justice agency or
24 prosecutor who shall request that information in writing, certifying that the request
25 is for the purpose of investigating, prosecuting, or enforcing criminal law, for the
26 purpose of any other statutorily defined law enforcement or administrative duties,
27 or for the purposes of the requirements of sex offender registration and notification
28 pursuant to the provisions of R.S. 15:541 et seq.

1 (2) On order of a court of competent jurisdiction and after a contradictory
2 hearing for good cause shown.

3 (3) To the person whose record has been expunged or his counsel.

4 (4) Upon written request therefor and on a confidential basis, the information
5 contained in an expunged record may be released to the following entities that shall
6 maintain the confidentiality of such record: the Office of Financial Institutions, the
7 Louisiana State Board of Medical Examiners, the Louisiana State Board of Nursing,
8 the Louisiana State Board of Dentistry, the Louisiana State Board of Examiners of
9 Psychologists, the Louisiana Board of Pharmacy, the Louisiana State Board of Social
10 Work Examiners, the Emergency Medical Services Certification Commission,
11 Louisiana Attorney Disciplinary Board, Office of Disciplinary Counsel, the
12 Louisiana Supreme Court Committee on Bar Admissions, the Louisiana Department
13 of Insurance, the Louisiana Licensed Professional Counselors Board of Examiners,
14 or any person or entity requesting a record of all criminal arrests and convictions
15 pursuant to R.S. 15:587.1, or as otherwise provided by statute.

16 B. Except as to those persons and other entities set forth in Paragraph A of
17 this Article, no person whose record of arrest or conviction has been expunged shall
18 be required to disclose to any person that he was arrested or convicted of the subject
19 offense, or that the record of the arrest or conviction has been expunged.

20 C. Nothing in this Article shall be construed to limit or impair in any way the
21 subsequent use of any expunged record of arrest or conviction by a law enforcement
22 agency, criminal justice agency, or prosecutor including its use as a predicate
23 offense, for purposes of the habitual offender law, or as otherwise authorized by law.

24 D. Nothing in this Article shall limit or impair the authority under law to
25 consider prior arrests or convictions that have been expunged in pursuing
26 prosecution under multiple offender provisions or impede the investigation of any
27 law enforcement official seeking to ascertain or confirm the qualifications of any
28 person for any privilege or license authorized by law.

1 E. Anyone who violates the provisions of this Article shall be subject to
2 contempt proceedings.

3 F. Nothing in this Article shall be construed to relieve a person who is
4 required to register and provide notice as a child predator or sex offender of any
5 obligations and responsibilities provided in R.S. 15:541 et seq.

6 Art. 974. Dissemination of expunged records by third parties; court order

7 A. A private third-party entity that compiles and disseminates criminal
8 history information for compensation shall not disseminate any information in its
9 possession regarding an arrest, conviction, or other disposition after it has received
10 notice of an issuance of a court order to expunge the record of any such arrest or
11 conviction. The notice shall be served by registered or certified mail with return
12 receipt requested and shall not require a certified or courtesy copy of the order and
13 judgment ordering the expungement of the record.

14 B. Unless a private third-party entity that compiles and disseminates criminal
15 history information is regulated by the Fair Credit Reporting Act (15 U.S.C. 1681 et
16 seq.) or the Gramm-Leach-Bliley Act (15 U.S.C. 6801-6809), it shall not disseminate
17 any criminal history information in its possession regarding an arrest, conviction, or
18 other disposition for which an order to expunge the record has been issued, after it
19 has received notice of an issuance of a court order to expunge a record of any arrest
20 or conviction.

21 C. A private third-party entity that disseminates criminal history information
22 in violation of this Article may be liable for any damages, court costs, and attorney
23 fees that are incurred by the person as a result of the violation who is the subject of
24 that information.

25 D. Whoever violates any provisions of this Article shall be punished by a
26 fine of not more than two hundred fifty dollars, imprisonment for not more than
27 ninety days, or both, if the conviction is for a first violation. Convictions for second
28 and subsequent violations shall be punished by a fine of not more than five hundred
29 dollars, imprisonment for not more than six months, or both.

1 Art. 975. Individuals incarcerated in the custody of the Department of Public Safety
2 and Corrections; ineligible to file motion to expunge records

3 Notwithstanding any other provision of law to the contrary, a person in the
4 custody of the Department of Public Safety and Corrections, or incarcerated in any
5 correctional facility shall not be permitted to file a motion to expunge a record of an
6 arrest which did not result in a conviction or to expunge a record of an arrest and
7 conviction of a misdemeanor or felony offense.

8 Art. 976. Motion to expunge record of arrest that did not result in a conviction

9 A person may file a motion to expunge a record of his arrest for a felony or
10 misdemeanor offense that did not result in a conviction if any of the following apply:

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

14 (2) The district attorney for any reason declined to prosecute the offense for
15 which the person was arrested.

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

18 Art. 977. Motion to expunge a record of arrest and conviction of a misdemeanor
19 offense

20 A. A person may file a motion to expunge his record of arrest and conviction
21 of a misdemeanor offense if either of the following apply:

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

24 (2) More than five years have elapsed since the person completed any
25 sentence, deferred adjudication, or period of probation or parole, the person has not
26 been convicted of any offense during the five-year period, and has no criminal
27 charge pending against him. The motion filed pursuant to this Subparagraph shall
28 include a certification obtained from the district attorney which verifies that, to his

1 knowledge, the applicant has no convictions during the five-year period and no
2 pending charges under a bill of information or indictment.

3 B. The motion to expunge a record of arrest and conviction of a
4 misdemeanor offense shall be served pursuant to the provisions of Code of Criminal
5 Procedure Article 979.

6 C. No person shall be entitled to expungement of a record if the
7 misdemeanor conviction was for a sex offense as defined in R.S. 15:541 or for
8 domestic abuse battery which was not dismissed pursuant to Code of Criminal
9 Procedure Article 894(B).

10 D.(1) Expungement of a record of arrest and conviction of a misdemeanor
11 offense shall occur only once with respect to any person during a five-year period.

12 (2) Expungement of a record of arrest and conviction of a misdemeanor
13 offense of operating a vehicle while intoxicated shall occur only once with respect
14 to any person during a ten-year period.

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

16 A. Except as provided in Paragraph B of this Article, a person may file a
17 motion to expunge his record of arrest and conviction of a felony offense if either of
18 the following apply:

19 (1) The conviction was set aside and the prosecution was dismissed pursuant
20 to Code of Criminal Procedure Article 893(E).

21 (2) More than ten years have elapsed since the person completed any
22 sentence, deferred adjudication, or period of probation or parole based on the felony
23 conviction, the person has not been convicted of any other criminal offense during
24 the ten-year period, and has no criminal charge pending against him. The motion
25 filed pursuant to this Subparagraph shall include a certification obtained from the
26 district attorney which verifies that, to his knowledge, the applicant has no
27 convictions during the ten-year period and no pending charges under a bill of
28 information or indictment.

1 B. No expungement shall be granted nor shall a person be permitted to file
2 a motion to expunge the record of arrest and conviction of a felony offense if the
3 person was convicted of the commission or attempted commission of any of the
4 following offenses unless otherwise permissible under Code of Criminal Procedure
5 Article 893(E):

6 (1) A crime of violence as defined by R.S. 14:2(B).

7 (2)(a) Notwithstanding the provisions of Code of Criminal Procedure Article
8 893, a sex offense or criminal offense against a victim who is a minor as defined by
9 R.S. 15:541 and any offense which occurred prior to June 18, 1992, that would be
10 defined as a sex offense or criminal offense against a victim who is a minor had it
11 occurred on or after June 18, 1992.

12 (b) Any person who was convicted of carnal knowledge of a juvenile (R.S.
13 14:80) prior to August 15, 2001, is eligible for an expungement pursuant to the
14 provisions of this Title if the offense for which the offender was convicted would be
15 defined as misdemeanor carnal knowledge of a juvenile (R.S. 14:80.1) had the
16 offender been convicted on or after August 15, 2001.

17 (3) A violation of the Uniform Controlled Dangerous Substances Law,
18 except that a conviction for possession of a controlled dangerous substance as
19 provided for in R.S. 40:966(C), 967(C), 968(C), or 969(C), or a conviction for
20 possession of a controlled dangerous substance with the intent to distribute may be
21 expunged pursuant to the provisions of this Title.

22 C. The motion to expunge a record of the record of arrest and conviction of
23 a felony offense shall be served pursuant to the provisions of Code of Criminal
24 Procedure Article 979.

25 D. Expungement of a record of arrest and conviction of a felony offense
26 shall occur only once with respect to any person during a fifteen-year period.
27 Art. 979. Service of motion to expunge a record

28 A. The clerk of court shall serve notice of the motion of expungement by
29 mail or electronic mail upon the following entities:

1 (1) The district attorney.

2 (2) The Louisiana Bureau of Criminal Identification and Information.

3 (3) The arresting law enforcement agency.

4 (4) The sheriff of the parish of conviction.

5 B. Motions to expunge records of convictions for driving while intoxicated
6 shall also require notice of filing and service of that motion upon the Department of
7 Public Safety and Corrections, office of motor vehicles, in addition to the entities
8 provided for in Paragraph A of this Article.

9 Art. 980. Contradictory hearing

10 A. Any entity named in Code of Criminal Procedure Article 979(A) that
11 receives notice of the motion may object to the granting of a motion to expunge a
12 record.

13 B.(1) Except as provided in Subparagraph (2) of this Paragraph, an objecting
14 party shall file an objection in the record with service to the defendant within thirty
15 days from the date of service of the motion and specifically state the grounds for the
16 objection.

17 (2) If the Louisiana Bureau of Criminal Identification and Information
18 objects to the granting of the motion to expunge a record, it shall file an objection in
19 the record with service to the defendant within sixty days from the date of the service
20 of the motion and specifically state the grounds for the objection.

21 C. The court may grant an extension of time to file an objection not to
22 exceed sixty days from the date of filing of the motion to expunge a record.

23 D. Any objection timely filed shall have a contradictory hearing.

24 E. The objecting agency must show by a preponderance of the evidence why
25 the motion of expungement should not be granted.

26 F. If no objection is filed by an agency listed under Article 979(A), the
27 defendant may waive the contradictory hearing, and the court shall grant the motion
28 to expunge the record if the court determines that the mover is entitled to the
29 expungement in accordance with law.

1 G. Any agency listed under Article 979(A) may expressly waive its time
2 period to object by filing a formal "No Opposition" into the record.

3 Art. 981. Judgment granting motion to expunge a record of arrest or conviction;
4 execution

5 A judgment ordering expungement of a record of arrest or of conviction of
6 a misdemeanor or felony offense shall be served as provided for in Code of Criminal
7 Procedure Article 982. The judgment shall not affect any persons or other entities
8 set forth in Code of Criminal Procedure Article 979(A) or 982(A) who have not been
9 served with the motion and judgment ordering the expungement of a record.

10 Art. 982. Service of order and judgment of expungement

11 A. The clerk of court shall serve the order and judgment of expungement of
12 a record upon all of the following entities:

13 (1) The district attorney.

14 (2) The Louisiana Bureau of Criminal Identification and Information.

15 (3) The Department of Public Safety and Corrections, corrections services.

16 (4) The sheriff of the parish of conviction.

17 (5) The arresting agency.

18 B. Motions to expunge convictions for driving while intoxicated shall require
19 notice of filing and service of the order and judgment of expungement upon the
20 Department of Public Safety and Corrections, office of motor vehicles.

21 Art. 983. Costs of expungement of a record; fees; collection; exemptions;
22 disbursements

23 A. Except as provided for in Code of Criminal Procedure Articles 894 and
24 984, the total cost to obtain a court order expunging a record shall not exceed five
25 hundred fifty dollars.

26 B. The nonrefundable processing fees for a court order expunging a record
27 shall be as follows:

28 (1) The Louisiana Bureau of Criminal Identification and Information may
29 charge a processing fee of two hundred fifty dollars for the expungement of any

1 record of arrest when ordered to do so by the court in compliance with the provisions
2 of this Title.

3 (2) The sheriff may charge a processing fee of fifty dollars for the
4 expungement of any record of arrest when ordered to do so by the court in
5 compliance with the provisions of this Title.

6 (3) The district attorney may charge a processing fee of fifty dollars for the
7 expungement of any record of arrest when ordered to do so by the court in
8 compliance with the provisions of this Title.

9 (4) The clerk of court may charge a processing fee not to exceed two
10 hundred dollars to cover the clerk's costs of the expungement.

11 C. The clerk of court shall collect all processing fees at the time the motion
12 for expungement is filed.

13 D.(1) The clerk shall immediately direct the collected processing fees as
14 follows:

15 (a) The clerk shall direct the collected processing fee provided for in
16 Subparagraph (B)(1) of this Article to the Louisiana Bureau of Criminal
17 Identification and Information, and the processing fee amount shall be deposited
18 immediately upon receipt into the Criminal Identification and Information Fund.

19 (b) The clerk shall direct the collected processing fees provided for in
20 Subparagraphs (B)(2) and (3) of this Article to the sheriff and the district attorney,
21 and the processing fee amount shall be remitted immediately upon receipt in equal
22 proportions to the office of the district attorney and the sheriff's general fund.

23 E. The processing fees provided for by this Article are nonrefundable and
24 shall not be returned even if the court does not grant the motion for expungement.

25 F. An applicant for the expungement of a record shall not be required to pay
26 any fee to the clerk of court, the Louisiana Bureau of Criminal Identification and
27 Information, sheriff, the district attorney, or any other agency to obtain or execute
28 an order of a court of competent jurisdiction to expunge the arrest from the
29 individual's arrest record if a certification obtained from the district attorney is

1 presented to the clerk of court which verifies that the applicant has no felony
2 convictions and no pending felony charges under a bill of information or indictment
3 and at least one of the following applies:

4 (1) The applicant was acquitted, after trial, of all charges derived from the
5 arrest, including any lesser and included offense.

6 (2) The district attorney consents, and the case against the applicant was
7 dismissed or the district attorney declined to prosecute the case prior to the time
8 limitations prescribed in Chapter 1 of Title XVII of the Code of Criminal Procedure,
9 and the applicant did not participate in a pretrial diversion program.

10 (3) The applicant was arrested and was never prosecuted within the time
11 limitations prescribed in Chapter 1 of Title XVII of the Code of Criminal Procedure
12 and did not participate in a pretrial diversion program.

13 G. Notwithstanding any other provision of law to the contrary, a juvenile
14 who has successfully completed any juvenile drug court program operated by a court
15 of this state shall be exempt from payment of the processing fees otherwise
16 authorized by this Article.

17 Art. 984. Additional requirements for the expungement of records involving the
18 operation of a vehicle while intoxicated; additional fee

19 A. A person convicted of operating a vehicle while intoxicated shall be
20 required to supplement the motions required in this Title with proof in the form of
21 a certified letter from the Department of Public Safety and Corrections, office of
22 motor vehicles, that the requirements of this Article have been complied with shall
23 be attached to the motion to expunge the record of arrest and conviction for operating
24 a vehicle while intoxicated.

25 B. The court shall order the clerk of court to mail to the Department of
26 Public Safety and Corrections, office of motor vehicles, all of the following as
27 provided by the defendant:

28 (1) A certified copy of the record of the plea of guilty or nolo contendere.

29 (2) Fingerprints of the defendant.

1 (3) Proof of the requirements as set forth in Code of Criminal Procedure
2 Article 556 or 556.1 which shall include the defendant's date of birth, social security
3 number, and driver's license number.

4 C. An additional fifty dollar court cost shall be assessed at this time against
5 the defendant and paid to the Department of Public Safety and Corrections, office of
6 motor vehicles, for the costs of storage and retrieval of the records.

7 Art. 985. Expungement by redaction of records with references to multiple
8 individuals

9 A. If a record includes the name of more than one individual and one or
10 more of the individuals is entitled to an expungement of an arrest or conviction
11 pursuant to the provisions of this Title, any individual entitled to an expungement
12 may petition the court to have records related to the arrest or conviction of the
13 individual expunged by redaction.

14 B. If the court grants the expungement by redaction, the name of the
15 individual and all other identifying information regarding the individual granted the
16 expungement by redaction shall be redacted from all records regarding the arrest and
17 conviction. The redacted records shall be available for public access.

18 C. The clerk of court shall not be liable for any damages resulting to any
19 person or entity as a consequence of expunging or redacting or for the failure to
20 expunge or redact any record where the expungement order does not specifically
21 identify all locations of the records to be expunged or specify the information to be
22 redacted.

23 Art. 986. Forms for the expungement of records

24 A. Only the forms provided for in Articles 987, 988, 989, 990, 991, and 992
25 shall be used for filing motions to expunge a record of an arrest which did not result
26 in a conviction or for the expungement of a record of an arrest and conviction of a
27 misdemeanor or felony offense.

28 B. Supplemental forms may be added to any petition as long as they adhere
29 to the form provided for in Article 993.

1 Art. 987. Motion to set aside conviction and dismiss prosecution; rule to show
2 cause; order of dismissal forms to be used

3 **STATE OF LOUISIANA**
4 **JUDICIAL DISTRICT FOR THE PARISH OF**

5 _____

6 **No.:** _____ **Division: " _____ "**

7 **State of Louisiana**
8 **vs.**

9 _____

10 **MOTION TO SET ASIDE CONVICTION AND**
11 **DISMISS PROSECUTION**

12 NOW INTO HONORABLE COURT, comes
13 G Defendant, OR
14 G Defendant through undersigned Counsel,
15 who moves that the conviction pursuant to Louisiana Code of Criminal Procedure
16 G 894(B) Misdemeanors, OR
17 G 893(E) Felonies
18 in the above numbered case be set aside and the prosecution dismissed in accordance
19 with the Code of Criminal Procedure in that the period of the deferred sentence has
20 run without the petitioner having been arrested for any other felony offense.

21 The mover is further identified below:

22 DOCKET NUMBER: _____

23 CHARGE: _____

24 DATE OF ARREST: _____

25 ARRESTING AGENCY: _____

26 CITY/PARISH OF ARREST: _____

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18

**STATE OF LOUISIANA
JUDICIAL DISTRICT FOR THE PARISH OF**

No.: _____

Division: " _____ "

State of Louisiana

vs.

RULE TO SHOW CAUSE

IT IS HEREBY ORDERED, that the District Attorney show cause on the _____ day of _____, 20 _____, at _____ o'clock __m why the foregoing motion should not be granted.

THUS ORDERED AND SIGNED this _____ day of _____, 20 _____ at _____, Louisiana, _____.

JUDGE

PLEASE SERVE:

1. District Attorney: _____
2. Attorney for Defendant and/or Defendant _____

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20

**STATE OF LOUISIANA
JUDICIAL DISTRICT FOR THE PARISH OF**

No.: _____ **Division:** " _____ "

State of Louisiana

vs.

ORDER OF DISMISSAL

Considering the Motion to Set Aside Conviction and Dismiss Prosecution, the hearing conducted on the representation of the State of Louisiana of its consent hereto, and that there is no opposition for any good cause appearing herein;

IT IS ORDERED, ADJUDGED AND DECREED that this conviction is set aside and the prosecution dismissed for purposes of expungement.

THUS ORDERED AND SIGNED this _____ day of _____, 20____
_____ at _____, Louisiana, this _____ day of _____, 20_____.

JUDGE

PLEASE SERVE:

1. District Attorney: _____
2. Attorney for Defendant and/or Defendant _____ "

1 Art. 988. Motion for fee exemption form to be used

2 "
3 **STATE OF LOUISIANA**
4 **JUDICIAL DISTRICT FOR THE PARISH OF**

5 _____
6 No.: _____ Division: " _____ "

7 **State of Louisiana**

8 **vs.**

9 **CERTIFICATION OF FEE WAIVER**

10 *To be completed by defendant and submitted to the District Attorney's Office prior*
11 *to filing. Append completed form to Motion of Expungement at filing only if eligible.*

| | |
|--------------------------|--|
| 12 DEFENDANT NAME | |
| 13 DATE OF BIRTH | |
| 14 SSN# | |
| 15 DATE OF ARREST | |
| 16 DOCKET NUMBER | |
| 17 CHARGE | |

18 In accordance with Louisiana Code of Criminal Procedure Article 983, the Office of
19 the District Attorney has reviewed the available databases and determined that
20 *(Check all that apply. To be completed by authorized personnel from the District*
21 *Attorney's Office and returned within 15 days to defendant.):*

22 G The arrestee listed above has NO FELONY CONVICTIONS.

23 **AND**

24 G The arrestee listed above has NO PENDING FELONY CHARGES UNDER
25 A BILL OF INDICTMENT OR INFORMATION.

26 **AND**

27 G The arrestee listed above WAS ACQUITTED after trial of all charges
28 derived from the arrest listed above, including any lesser and included
29 offense.

30 **OR**

31 G The arrestee listed above WAS NOT PROSECUTED WITHIN THE TIME
32 LIMITATIONS prescribed in Chapter 1 of the Title XVII of the Code of
33 Criminal Procedure for the arrest listed above.

34 _____
35 Investigator Print Name

36 _____, 20____"
37 Investigator Signature Date

1 Art. 989. Motion for expungement forms to be used

2 " **STATE OF LOUISIANA**
3 **JUDICIAL DISTRICT FOR THE PARISH OF**

4 _____

5 No.: _____ Division: " _____ "

6 **State of Louisiana**

7 **vs.**

8 _____

9 **MOTION FOR EXPUNGEMENT**

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

12 **I. DEFENDANT INFORMATION**

13 NAME: _____
14 (Last, First, MI)

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

16 GENDER _____ Female _____ Male

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

18 RACE: _____

19 DRIVER LIC.# _____

20 ARRESTING AGENCY: _____

21 SID# (if available): _____

22 ITEM NUMBER: _____

23 ARREST NUMBER: _____

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

27 **II. ARREST INFORMATION**

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

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

1 3. Mover was:
2 ____ YES ____ NO Arrested, but it did not result in conviction
3 ____ YES ____ NO Convicted of and seeks to expunge a
4 misdemeanor
5 ____ YES ____ NO Convicted of and seeks to expunge a felony

6 4. Mover was booked and/or charged with the following offenses: (List each
7 offense booked and charged separately. Attach a supplemental sheet, if
8 necessary.)

9 ____ Yes ____ No **ARRESTS THAT DID NOT RESULT IN CONVICTION**

10 **OFFENSE 1** La. Rev. Stat. Ann. § _____ : _____
11 Name of the offense _____
12 () Time expired for prosecution _____
13 (MM/DD/YYYY)
14 () Charge refused by DA -
15 not prosecuted?
16 () Pre-trial Diversion Program?
17 () Charge dismissed
18 () Found not guilty/judgment of acquittal

19 **OFFENSE 2** La. Rev. Stat. Ann. § _____ : _____
20 Name of the offense _____
21 () Time expired for prosecution _____
22 (MM/DD/YYYY)
23 () Charge refused by DA -
24 not prosecuted?
25 () Pre-trial Diversion Program?
26 () Charge dismissed
27 () Found not guilty/judgment of acquittal

28 **OFFENSE 3** La. Rev. Stat. Ann. § _____ : _____
29 Name of the offense _____
30 () Time expired for prosecution _____
31 (MM/DD/YYYY)
32 () Charge refused by DA -
33 not prosecuted?
34 () Pre-trial Diversion Program?
35 () Charge dismissed
36 () Found not guilty/judgment of acquittal

37 ____ Yes ____ No **MISDEMEANOR CONVICTIONS**

38 **OFFENSE 1** La. Rev. Stat. Ann. § _____ : _____
39 Name of the offense _____
40 () Conviction set aside/dismissed _____/_____/_____
41 pursuant to C.Cr.P. Art. 894(B) (MM/DD/YYYY)
42 () More than 5 years have passed
43 since completion of sentence?

44 **OFFENSE 2** La. Rev. Stat. Ann. § _____ : _____
45 Name of the offense _____
46 () Conviction set aside/dismissed _____/_____/_____
47 pursuant to C.Cr.P. Art. 894(B) (MM/DD/YYYY)
48 () More than 5 years have passed
49 since completion of sentence?

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1 ___ Yes ___ No **FELONY CONVICTIONS**

2 **OFFENSE 1** La. Rev. Stat. Ann. § _____ : _____
3 () Conviction set aside/dismissed _____/_____/_____
4 pursuant to C.Cr.P. Art. 893(E) (MM/DD/YYYY)
5 () More than 10 years have passed
6 since completion of sentence

7 **OFFENSE 2** La. Rev. Stat. Ann. § _____ : _____
8 () Conviction set aside/dismissed _____/_____/_____
9 pursuant to C.Cr.P. Art. 893(E) (MM/DD/YYYY)
10 () More than 10 years have passed
11 since completion of sentence

12 ___ Yes ___ No **OPERATING A MOTOR VEHICLE WHILE**
13 **INTOXICATED CONVICTIONS**

14 Mover has attached the following:

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

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

- 22 G Criminal Background Check from the La. State Police/Parish Sheriff
- 23 dated within the past 30 days (required).
- 24 G Bill(s) of Information (if any).
- 25 G Minute entry showing final disposition of case (if any).
- 26 G Certification Letter from the District Attorney for fee waiver (if
- 27 eligible).

28 The Mover prays that a Rule to Show Cause be issued herein setting a
29 contradictory hearing with the arresting law enforcement agency, the District
30 Attorney's Office, and Louisiana Bureau of Criminal Identification and Information,
31 why an order should not be granted expunging the record of arrest and/or conviction
32 set forth above, including all photographs, fingerprints, disposition, or any other such
33 information, which record shall be confidential and no longer considered a public
34 record, nor be made available to other persons, except a prosecutor, member of a law
35 enforcement agency, or a judge who may request such information in writing,
36 certifying that such request is for the purpose of prosecuting, investigating, or

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1 enforcing the criminal law, or as an order of this Court to any other person for good
2 cause shown, or as otherwise authorized by law.

3 If an "Affidavit of No Opposition" by each agency named herein is attached
4 hereto and made a part hereof, Defendant requests that no contradictory hearing be
5 required and the Motion be granted ex parte.

6 Respectfully submitted,

7 _____
8 Signature of Attorney for Mover/Defendant

9 _____
10 Attorney for Mover/Defendant Name

11 _____
12 Attorney's Bar Roll No.

13 _____
14 Address

15 _____
16 City, State, ZIP Code

17 _____
18 Telephone Number

19 **If not represented by counsel:**

20 _____
21 Signature of Mover/Defendant

22 _____
23 Mover/Defendant Name

24 _____
25 Address

26 _____
27 City, State, ZIP Code

28 _____
29 Telephone Number "

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1 Art. 990. Affidavit of response form to be used

2 " **STATE OF LOUISIANA**
3 **JUDICIAL DISTRICT FOR THE PARISH OF**
4 _____

5 **No.:** _____ **Division:** " _____ "

6 **State of Louisiana**

7 **vs.**

8 _____

9 **AFFIDAVIT OF RESPONSE**

10 Pursuant to Louisiana Code of Criminal Procedure Article 980, the District

11 Attorney for the Parish of _____ acknowledges the following:

12 G **No Opposition.** Respondent respectfully consents to waiver of the
13 contradictory hearing.

14 G **Opposition to the Motion of Expungement with Reasons.** Respondent
15 respectfully requests a contradictory hearing.

16 **OR**

17 Pursuant to Louisiana Code of Criminal Procedure Article 980, the Louisiana

18 Bureau of Criminal Identification and Information acknowledges the following:

19 G **No Opposition.** Respondent respectfully consents to waiver of the
20 contradictory hearing.

21 G **Opposition to the Motion of Expungement with Reasons.** Respondent
22 respectfully requests a contradictory hearing.

23 Respectfully submitted,

24 _____
25 Signature of Attorney

26 _____
27 Attorney's Bar Roll No.

28 _____
29 Address

30 _____
31 City, State, ZIP Code

32 _____
33 Telephone Number

1 **PLEASE SERVE:**

- 2 1. District Attorney: _____
- 3 OR Louisiana Bureau of Criminal Identification and Information
- 4 2. Attorney for Defendant and/or Defendant _____"

5 Art. 991. Rule to show cause form to be used

6 "
STATE OF LOUISIANA
JUDICIAL DISTRICT FOR THE PARISH OF
 8 _____

9 **No.:** _____ **Division:** " _____"

10 **State of Louisiana**

11 **vs.**

12 _____

13 **RULE TO SHOW CAUSE**

14 **IT IS HEREBY ORDERED,**

15 G That the District Attorney and the Louisiana Bureau of Criminal
 16 Identification and Information show cause on the _____ day of
 17 _____, 20 _____, at _____ o'clock __m why the
 18 foregoing motion should not be granted.

19 G **NO CONTRADICTORY HEARING SHALL BE REQUIRED** as
 20 evidenced by the "Affidavit of No Opposition" executed by each agency
 21 named herein and attached to the Motion for Expungement.

22 **THUS ORDERED AND SIGNED** this ____ day of _____,
 23 20 ____ at _____, Louisiana, _____.

24 _____
 25 JUDGE

26 **PLEASE SERVE:**

- 27 1. District Attorney: _____
- 28 2. Louisiana Bureau of Criminal Identification and Information
- 29 3. Department of Public Safety, office of motor vehicles (DWI ONLY)
- 30 4. Attorney for Defendant and/or Defendant _____"

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1 Art. 992. Order of expungement form to be used

2 " **STATE OF LOUISIANA**
3 **JUDICIAL DISTRICT FOR THE PARISH OF**
4 _____

5 **No.:** _____ **Division: " _____ "**

6 **State of Louisiana**

7 **vs.**

8 _____

9 **ORDER OF EXPUNGEMENT OF ARREST/CONVICTION RECORD**

10 Considering the Motion for Expungement

11 G the hearing conducted and evidence adduced herein, OR

12 G Affidavits of No Opposition filed,

13 IT IS ORDERED, ADJUDGED AND DECREED

14 G THE MOTION IS DENIED for the following reasons (check all that apply):

15 G More than five years have not elapsed since Mover completed the
16 misdemeanor conviction sentence.

17 G More than ten years have not elapsed since Mover completed the
18 felony conviction sentence.

19 G Mover was convicted of one of the following ineligible felony
20 offenses:

21 G Distribution of a controlled dangerous substance.

22 G An offense currently listed as a sex offense that requires
23 registration pursuant to La. Rev. Stat. Ann. 15:540 et seq., at
24 the time the Motion was filed, regardless of whether the duty
25 to register was ever imposed.

26 G An offense defined as a "crime of violence" pursuant to La.
27 Rev. Stat. Ann. 14:2(B) at the time the Motion was filed.

28 G The arrest and conviction being sought to have expunged is for
29 operating a motor vehicle while intoxicated and a copy of the proof
30 from the Department of Public Safety and Corrections, office of
31 motor vehicles, is not attached as required by C.Cr.P. Art. 984(A).

32 G Mover has had another record of misdemeanor conviction expunged
33 during the previous five-year period.

34 G The record of arrest and conviction which Mover seeks to have
35 expunged is for operating a motor vehicle while intoxicated and
36 Mover has had another record of arrest and misdemeanor conviction
37 expunged during the previous ten-year period.

1 G Mover has had another record of felony conviction expunged during
2 the previous fifteen-year period.

3 G **THE MOTION IS HEREBY GRANTED** and all agencies are
4 ordered to expunge the record of arrest/conviction and any photographs, fingerprints,
5 or any other such information of any kind maintained in connection with the
6 Arrest(s)/Conviction(s) in the above-captioned matter, which record shall be
7 confidential and no longer considered a public record, nor be available to other
8 persons except a prosecutor, member of a law enforcement agency, or a judge who
9 may request such information in writing certifying that such request is for the
10 purpose of prosecuting, investigating, or enforcing the criminal law, or upon an order
11 of this Court to any other person for good cause shown, or as otherwise authorized
12 by law.

13 NAME: _____
14 (Last, First, MI)

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

16 GENDER: ____ Female ____ Male

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

18 RACE: _____

19 DRIVER LIC.# _____

20 ARRESTING AGENCY: _____

21 SID# (if available): _____

22 ITEM NUMBER: _____

23 ARREST NUMBER: _____

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

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

26 ____ at _____, Louisiana, this ____ day of _____, 20 ____.

27 _____
28 JUDGE

29 **PLEASE SERVE:**

- 30 1. District Attorney: _____
- 31 2. Arresting Agency: _____
- 32 3. Local Police (if not arresting agency): _____

- 1 4. Parish Sheriff: _____
- 2 5. Louisiana Bureau of Criminal Identification and Information
- 3 6. (If DWI) Department of Public Safety, office of motor vehicles
- 4 7. Attorney for Defendant (if any): _____
- 5 8. Defendant: _____"

6 Art. 993. Supplemental forms to be used

7 " **SUPPLEMENTAL SHEET**

8 Yes No **ARRESTS THAT DID NOT RESULT IN CONVICTION**

9 **OFFENSE** La. Rev. Stat. Ann. § _____ : _____
 10 Name of the offense _____
 11 () Time expired for prosecution _____/_____/_____
 12 (MM/DD/YYYY)
 13 () Charge refused by DA - not prosecuted?
 14 () Pre-trial Diversion Program?
 15 () Charge dismissed
 16 () Found not guilty/judgment of acquittal

17 **OFFENSE** La. Rev. Stat. Ann. § _____ : _____
 18 Name of the offense _____
 19 () Time expired for prosecution _____/_____/_____
 20 (MM/DD/YYYY)
 21 () Charge refused by DA - not prosecuted?
 22 () Pre-trial Diversion Program?
 23 () Charge dismissed
 24 () Found not guilty/judgment of acquittal

25 **OFFENSE** La. Rev. Stat. Ann. § _____ : _____
 26 Name of the offense _____
 27 () Time expired for prosecution _____/_____/_____
 28 (MM/DD/YYYY)
 29 () Charge refused by DA - not prosecuted?
 30 () Pre-trial Diversion Program?
 31 () Charge dismissed
 32 () Found not guilty/judgment of acquittal

33 **OFFENSE** La. Rev. Stat. Ann. § _____ : _____
 34 Name of the offense _____
 35 () Time expired for prosecution _____/_____/_____
 36 (MM/DD/YYYY)
 37 () Charge refused by DA - not prosecuted?
 38 () Pre-trial Diversion Program?
 39 () Charge dismissed
 40 () Found not guilty/judgment of acquittal

41 **OFFENSE** La. Rev. Stat. Ann. § _____ : _____
 42 Name of the offense _____
 43 () Time expired for prosecution _____/_____/_____
 44 (MM/DD/YYYY)
 45 () Charge refused by DA - not prosecuted?
 46 () Pre-trial Diversion Program?
 47 () Charge dismissed
 48 () Found not guilty/judgment of acquittal

1 **OFFENSE** La. Rev. Stat. Ann. § _____ : _____
 2 Name of the offense _____
 3 () Conviction set aside/dismissed _____/_____/_____
 4 pursuant to C.Cr.P. Art. 894(B) (MM/DD/YYYY)
 5 () More than 5 years have passed
 6 since completion of sentence?

7 **OFFENSE** La. Rev. Stat. Ann. § _____ : _____
 8 Name of the offense _____
 9 () Conviction set aside/dismissed _____/_____/_____
 10 pursuant to C.Cr.P. Art. 894(B) (MM/DD/YYYY)
 11 () More than 5 years have passed
 12 since completion of sentence?

13 **OFFENSE** La. Rev. Stat. Ann. § _____ : _____
 14 Name of the offense _____
 15 () Conviction set aside/dismissed _____/_____/_____
 16 pursuant to C.Cr.P. Art. 894(B) (MM/DD/YYYY)
 17 () More than 5 years have passed
 18 since completion of sentence?

19 **SUPPLEMENTAL SHEET**

20 ___ Yes ___ No **FELONY CONVICTIONS**

21 **OFFENSE** La. Rev. Stat. Ann. § _____ : _____
 22 Name of the offense _____
 23 () Conviction set aside/dismissed _____/_____/_____
 24 pursuant to C.Cr.P. Art. 893(E) (MM/DD/YYYY)
 25 () More than 10 years have passed
 26 since completion of sentence

27 **OFFENSE** La. Rev. Stat. Ann. § _____ : _____
 28 Name of the offense _____
 29 () Conviction set aside/dismissed _____/_____/_____
 30 pursuant to C.Cr.P. Art. 893(E) (MM/DD/YYYY)
 31 () More than 10 years have passed
 32 since completion of sentence

33 **OFFENSE** La. Rev. Stat. Ann. § _____ : _____
 34 Name of the offense _____
 35 () Conviction set aside/dismissed _____/_____/_____
 36 pursuant to C.Cr.P. Art. 893(E) (MM/DD/YYYY)
 37 () More than 10 years have passed
 38 since completion of sentence

39 **OFFENSE** La. Rev. Stat. Ann. § _____ : _____
 40 Name of the offense _____
 41 () Conviction set aside/dismissed _____/_____/_____
 42 pursuant to C.Cr.P. Art. 893(E) (MM/DD/YYYY)
 43 () More than 10 years have passed
 44 since completion of sentence

45 **OFFENSE** La. Rev. Stat. Ann. § _____ : _____
 46 Name of the offense _____
 47 () Conviction set aside/dismissed _____/_____/_____
 48 pursuant to C.Cr.P. Art. 893(E) (MM/DD/YYYY)
 49 () More than 10 years have passed
 50 since completion of sentence

| | | | |
|----|----------------|------------------------------------|-------------------|
| 1 | OFFENSE | La. Rev. Stat. Ann. | § _____ : _____ |
| 2 | | Name of the offense | _____ |
| 3 | | () Conviction set aside/dismissed | _____/_____/_____ |
| 4 | | pursuant to C.Cr.P. Art. 893(E) | (MM/DD/YYYY) |
| 5 | | () More than 10 years have passed | |
| 6 | | since completion of sentence | |
| | | | |
| 7 | OFFENSE | La. Rev. Stat. Ann. | § _____ : _____ |
| 8 | | Name of the offense | _____ |
| 9 | | () Conviction set aside/dismissed | _____/_____/_____ |
| 10 | | pursuant to C.Cr.P. Art. 893(E) | (MM/DD/YYYY) |
| 11 | | () More than 10 years have passed | |
| 12 | | since completion of sentence | |
| | | | |
| 13 | OFFENSE | La. Rev. Stat. Ann. | § _____ : _____ |
| 14 | | Name of the offense | _____ |
| 15 | | () Conviction set aside/dismissed | _____/_____/_____ |
| 16 | | pursuant to C.Cr.P. Art. 893(E) | (MM/DD/YYYY) |
| 17 | | () More than 10 years have passed | |
| 18 | | since completion of sentence | |
| | | | |
| 19 | OFFENSE | La. Rev. Stat. Ann. | § _____ : _____ |
| 20 | | Name of the offense | _____ |
| 21 | | () Conviction set aside/dismissed | _____/_____/_____ |
| 22 | | pursuant to C.Cr.P. Art. 893(E) | (MM/DD/YYYY) |
| 23 | | () More than 10 years have passed | |
| 24 | | since completion of sentence | " |

25 Section 2. R.S. 44:9 is hereby repealed in its entirety.

26 Section 3. If any provision of this Act or the application thereof is held invalid, such
27 invalidity shall not affect other provisions or applications of this Act which can be given
28 effect without the invalid provisions or applications, and to this end, the provisions of this
29 Act are hereby declared severable.

30 Section 4. The Louisiana State Law Institute is hereby directed to delete any
31 references to R.S. 44:9 in Louisiana law and to make any necessary changes to Louisiana
32 law to reflect the provisions of this Act.

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)]

Lopinto

HB No. 55

Abstract: Rewrites the provisions of expungement law.

Present law provides for the expungement of records of arrest and misdemeanor convictions in certain circumstances.

Present law provides for the confidentiality of expunged records and authorizes access to those records by law enforcement, criminal justice agencies, and statutorily defined entities.

Proposed law retains present law.

Proposed law provides for a comprehensive revision to present law provisions, including the following major changes:

- (1) Moves expungement provisions of law from provisions regarding public records to the Code of Criminal Procedure.
- (2) Provides for statutorily defined forms to be used in motions for expungement and judgments of expungement.
- (3) Prohibits the unauthorized dissemination of expunged records by third parties and provides penalties for the unauthorized dissemination of expunged record information.
- (4) Provides for a five-year cleansing period without conviction to obtain an expungement for a misdemeanor conviction.
- (5) Provides for a ten-year cleansing period without conviction to obtain an expungement for a felony conviction.
- (6) Deletes provisions of present law authorizing the destruction of criminal records.
- (7) Provides for a limitation on the number of expungements a person may obtain.
- (8) Provides eligibility criteria to obtain an expungement.
- (9) Prohibits the expungement of crimes of violence, sex offenses, and most controlled dangerous substances violations.
- (10) Allows the expungement of a conviction for possession of a controlled dangerous substance or the possession with intent to distribute a controlled dangerous substance.
- (11) Authorizes the district attorney or the bureau to request a contradictory hearing on a motion to expunge and provides for time periods for raising objections.
- (12) Provides for an expungement by redaction of certain identifying information in the records of a person who is arrested or convicted with other offenders who are not entitled to an expungement. Provides that expungement by redaction is the removal of the name or any other identifying information of the person entitled to the expungement but otherwise retains the records of the incident as they relate to the other defendants.

Present law provides for the following fees for expungement:

- (1) The La. Bureau of Criminal Identification and Information may charge \$250.
- (2) The sheriff may charge \$50.
- (3) The district attorney may charge \$50.

Present law authorizes the clerk of court to charge an administrative fee of up to \$200.

Proposed law retains present law and makes the fees nonrefundable.

(Adds C.Cr.P. Arts. 971-993; Repeals R.S. 44:9)