

2015 Regular Session

HOUSE BILL NO. 837 (Substitute for House Bill No. 100 by Representative Price)

BY REPRESENTATIVE PRICE

1 AN ACT

2 To amend and reenact Code of Criminal Procedure Articles 977(A)(introductory paragraph),  
3 978(A)(introductory paragraph) and (B)(1), and 989 and to enact Code of Criminal  
4 Procedure Articles 977(A)(3) and 978(A)(3) and (E), relative to expungement; to  
5 provide for eligibility for an expungement in cases of factual innocence; to provide  
6 for the expungement of certain crimes of violence after a cleansing period; to provide  
7 for expungement forms regarding factual innocence; and to provide for related  
8 matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. Code of Criminal Procedure Articles 977(A)(introductory paragraph),  
11 978(A)(introductory paragraph), (B)(1) and 989 are hereby amended and reenacted and Code  
12 of Criminal Procedure Articles 977(A)(3) and 978(A)(3) and (E) are hereby enacted to read  
13 as follows:

14 Art. 977. Motion to expunge a record of arrest and conviction of a misdemeanor  
15 offense

16 A. A person may file a motion to expunge his record of arrest and conviction  
17 of a misdemeanor offense if ~~either~~ any of the following apply:

18 \* \* \*

19 (3) The person was determined to be factually innocent and entitled to  
20 compensation for a wrongful conviction pursuant to the provisions of R.S. 15:572.8.

21 The person may seek to have the arrest and conviction which formed the basis for

1 the wrongful conviction expunged without the limitations or time delays imposed by  
2 the provisions of this Article or any other provision of law to the contrary.

3 \* \* \*

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

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

8 \* \* \*

9 (3) The person was determined to be factually innocent and entitled to  
10 compensation for a wrongful conviction pursuant to the provisions of R.S.  
11 15:572.8. The person may seek to have the arrest and conviction which formed  
12 the basis for the wrongful conviction expunged without the limitations or time  
13 delays imposed by the provisions of this Article or any other provision of law to  
14 the contrary.

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

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

22 \* \* \*

23 E.(1) Notwithstanding any other provision of law to the contrary, after a  
24 contradictory hearing, the court may order the expungement of the arrest and  
25 conviction records of a person pertaining to a conviction of aggravated battery,  
26 second degree battery, aggravated assault, aggravated criminal damage to  
27 property, simple robbery, purse snatching, or illegal use of weapons or dangerous  
28 instrumentalities if all of the following conditions are proven by the petitioner:

1                   (a) More than ten years have elapsed since the person completed any  
2                   sentence, deferred adjudication, or period of probation or parole based on the  
3                   felony conviction.

4                   (b) The person has not been convicted of any other criminal offense  
5                   during the ten-year period.

6                   (c) The person has no criminal charge pending against him.

7                   (d) The person has been employed for a period of ten consecutive years.

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

13                                       \*       \*       \*

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

15   **STATE OF LOUISIANA**

16   **JUDICIAL DISTRICT FOR THE PARISH OF**

17   \_\_\_\_\_

18                   No.: \_\_\_\_\_

18                   Division: " \_\_\_\_\_ "

19   **State of Louisiana**

20   **vs.**

21                   \_\_\_\_\_

22   **MOTION FOR EXPUNGEMENT**

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

25                   **I. DEFENDANT INFORMATION**

26                   NAME: \_\_\_\_\_

27   *(Last,               First,               MI)*

28                   DOB:                   \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_ (MM/DD/YYYY)

29                   GENDER                   \_\_\_\_ Female \_\_\_\_ Male

30                   SSN (last 4 digits):                   XXX-XX-\_\_\_\_\_

1 RACE: \_\_\_\_\_

2 DRIVER LIC.# \_\_\_\_\_

3 ARRESTING AGENCY: \_\_\_\_\_

4 SID# (if available): \_\_\_\_\_

5 ARREST NUMBER: \_\_\_\_\_

6 Mover is entitled to expunge the record of his arrest/conviction pursuant  
7 to Louisiana Code of Criminal Procedure Article 971 et seq. and states the  
8 following in support:

9 **II. ARREST INFORMATION**

10 1. Mover was arrested on \_\_\_\_/\_\_\_\_/\_\_\_\_ (MM/DD/YYYY)

11 2. \_\_\_\_ YES \_\_\_\_ NO A supplemental sheet with arrests and/or  
12 convictions is attached after page 2 of this  
13 Motion.

14 3. Mover was:  
15 \_\_\_\_ YES \_\_\_\_ NO Arrested, but it did not result in conviction

16 \_\_\_\_ YES \_\_\_\_ NO Convicted of and seeks to expunge a  
17 misdemeanor

18 \_\_\_\_ YES \_\_\_\_ NO Convicted of and seeks to expunge a felony

19 \_\_\_\_ YES \_\_\_\_ NO Convicted but determined to be factually  
20 innocent and entitled to compensation for  
21 a wrongful conviction pursuant to the  
22 provisions of R.S. 15:572.8.

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

26 \_\_\_\_ Yes \_\_\_\_ No **ARRESTS THAT DID NOT RESULT IN**  
27 **CONVICTION**

28 **ITEM NO. 1** La. Rev. Stat. Ann. § \_\_\_\_\_ : \_\_\_\_\_

29 Name of the offense \_\_\_\_\_

30 ( ) Time expired for prosecution \_\_\_\_\_

1 (MM/DD/YYYY)

2 ( ) Not prosecuted for any offense

3 arising out of this charge.

4 ( ) Pre-trial Diversion Program.

5 ( ) DWI Pre-Trial Diversion Program

6 and 5 years have elapsed since the

7 date of arrest.

8 ( ) Charge dismissed

9 ( ) Found not guilty/judgment of acquittal

10 **ITEM NO. 2** La. Rev. Stat. Ann. § \_\_\_\_\_ : \_\_\_\_\_

11 Name of the offense \_\_\_\_\_

12 ( ) Time expired for prosecution \_\_\_\_\_

13 (MM/DD/YYYY)

14 ( ) Not prosecuted for any

15 offense arising out of this charge.

16 ( ) Pre-trial Diversion Program.

17 ( ) Charge dismissed

18 ( ) Found not guilty/judgment of acquittal

19 **ITEM NO. 3** La. Rev. Stat. Ann. § \_\_\_\_\_ : \_\_\_\_\_

20 Name of the offense \_\_\_\_\_

21 ( ) Time expired for prosecution \_\_\_\_\_

22 (MM/DD/YYYY)

23 ( ) Not prosecuted for any offense

24 arising out of this charge.

25 ( ) Pre-trial Diversion Program.

26 ( ) Charge dismissed

27 ( ) Found not guilty/judgment of acquittal

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       Yes        No

**MISDEMEANOR CONVICTIONS**

**ITEM NO. 1**

La. Rev. Stat. Ann.                         § \_\_\_\_\_ : \_\_\_\_\_

Name of the offense \_\_\_\_\_

( ) Conviction set aside/dismissed \_\_\_\_\_ / \_\_\_\_ / \_\_\_\_\_

pursuant to C.Cr.P. Art. 894(B) (MM/DD/YYYY)

( ) More than 5 years have passed

since completion of sentence.

**ITEM NO. 2**

La. Rev. Stat. Ann.                         § \_\_\_\_\_ : \_\_\_\_\_

Name of the offense \_\_\_\_\_

( ) Conviction set aside/dismissed \_\_\_\_\_ / \_\_\_\_ / \_\_\_\_\_

pursuant to C.Cr.P. Art. 894(B) (MM/DD/YYYY)

( ) More than 5 years have passed

since completion of sentence.

       Yes        No

**FELONY CONVICTIONS**

**ITEM NO. 1**

La. Rev. Stat. Ann.                         § \_\_\_\_\_ : \_\_\_\_\_

( ) Conviction set aside/dismissed \_\_\_\_\_ / \_\_\_\_ / \_\_\_\_\_

pursuant to C.Cr.P. Art. 893(E) (MM/DD/YYYY)

( ) More than 10 years have passed

since completion of sentence

**ITEM NO. 2**

La. Rev. Stat. Ann.                         § \_\_\_\_\_ : \_\_\_\_\_

( ) Conviction set aside/dismissed \_\_\_\_\_ / \_\_\_\_ / \_\_\_\_\_

pursuant to C.Cr.P. Art. 893(E) (MM/DD/YYYY)

( ) More than 10 years have passed

since completion of sentence

1           \_\_\_ Yes \_\_\_ No   **OPERATING A MOTOR VEHICLE WHILE**  
2   **INTOXICATED CONVICTIONS**

3           Mover has attached the following:

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

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

- 12                      Criminal Background Check from the La. State Police/Parish  
13   Sheriff dated within the past 30 days (required).
- 14                      Bill(s) of Information (if any).
- 15                      Minute entry showing final disposition of case (if any).
- 16                      Certification Letter from the District Attorney for fee waiver (if  
17   eligible).
- 18                      Certification Letter from the District Attorney verifying that the  
19   applicant has no convictions or pending applicable criminal  
20   charges in the requisite time periods.
- 21                      Certification Letter from the District Attorney verifying that the  
22   charges were refused.
- 23                      Certification Letter from the District Attorney verifying that the  
24   applicant did not participate in a pretrial diversion program.
- 25                      A copy of the order waiving the sex offender registration and  
26   notification requirements.
- 27                      A copy of the court order determination of factual innocence and  
28   order of compensation for a wrongful conviction pursuant to the  
29   provisions of R.S. 15:572.8 if applicable.

1           The Mover prays that if there is no objection timely filed by the arresting  
2           law enforcement agency, the district attorney's office, or the Louisiana Bureau of  
3           Criminal Investigation and Information, that an order be issued herein ordering  
4           the expungement of the record of arrest and/or conviction set forth above,  
5           including all photographs, fingerprints, disposition, or any other such information,  
6           which record shall be confidential and no longer considered a public record, nor  
7           be made available to other persons, except a prosecutor, member of a law  
8           enforcement agency, or a judge who may request such information in writing,  
9           certifying that such request is for the purpose of prosecuting, investigating, or  
10          enforcing the criminal law, for the purpose of any other statutorily defined law  
11          enforcement or administrative duties, or for the purpose of the requirements of sex  
12          offender registration and notification pursuant to the provisions of R.S. 15:541 et  
13          seq. or as an order of this Court to any other person for good cause shown, or as  
14          otherwise authorized by law.

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

18   Respectfully submitted,

19   \_\_\_\_\_  
20   Signature of Attorney for  
21   Mover/Defendant

22   \_\_\_\_\_  
23   Mover/Defendant Name

24   \_\_\_\_\_  
25   Attorney's Bar Roll No.

26   \_\_\_\_\_  
27   Address

28   \_\_\_\_\_  
29   City, State, ZIP Code

30   \_\_\_\_\_  
31   Telephone Number  
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**If not represented by counsel:**

\_\_\_\_\_  
Signature of Mover/Defendant

\_\_\_\_\_  
Mover/Defendant Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State, ZIP Code

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
SPEAKER OF THE HOUSE OF REPRESENTATIVES

\_\_\_\_\_  
PRESIDENT OF THE SENATE

\_\_\_\_\_  
GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_