HLS 20RS-783 ENGROSSED

2020 Regular Session

HOUSE BILL NO. 241

1

BY REPRESENTATIVE JAMES

CRIMINAL/RECORDS: Provides relative to expungement of records

2 To amend and reenact Code of Criminal Procedure Articles 975 and 992 and to repeal Code 3 of Criminal Procedure Articles 977(D) and 978(D), relative to expungements; to 4 provide relative to the number of expungements a person may obtain in a certain 5 period of time; to provide relative to the authority of certain persons to file for an 6 expungement while incarcerated; and to provide for related matters. 7 Be it enacted by the Legislature of Louisiana: 8 Section 1. Code of Criminal Procedure Articles 975 and 992 are hereby amended 9 and reenacted to read as follows: 10 Art. 975. Individuals incarcerated; ineligible to file motion to expunge records 11 Notwithstanding any other provision of law to the contrary, a A person in the 12 physical custody of the Department of Public Safety and Corrections, or incarcerated 13 in any correctional facility serving a sentence at hard labor shall not be permitted to 14 file a motion to expunge a record of an arrest which did not result in a conviction or 15 to expunge a record of an arrest and conviction of a misdemeanor or felony offense. 16

AN ACT

1	Art. 992	2. Or	der 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	Conside	ering	the Motion for Expungement	
11		The l	nearing conducted and evidence adduced herein, OR	
12		Affid	lavits of No Opposition filed,	
13	IT IS O	IT IS ORDERED, ADJUDGED AND DECREED		
14		THE	MOTION IS DENIED for No(s), , , , for the following	
15		reaso	ons (check all that apply):	
16			More than five years have not elapsed since Mover completed the	
17			misdemeanor conviction sentence.	
18			More than ten years have not elapsed since Mover completed the	
19			felony conviction sentence.	
20			Mover was convicted of one of the following ineligible felony	
21			offenses:	
22			A violation of the Uniform Controlled Dangerous Substances Law	
23			which is ineligible to be expunged.	
24			An offense currently listed as a sex offense that requires registration	
25			pursuant to R.S. 15:540 et seq., at the time the Motion was filed,	
26			regardless of whether the duty to register was ever imposed.	
27			An offense defined or enumerated as a "crime of violence" pursuant	
28			to R.S. 14:2(B) at the time the Motion was filed.	

1		The arrest and conviction being sought to have expunged is for
2		operating a motor vehicle while intoxicated and a copy of the proof
3		from the Department of Public Safety and Corrections, office of
4		motor vehicles, is not attached as required by C.Cr.P. Art. 984(A).
5		Mover has had another record of misdemeanor conviction expunged
6		during the previous five-year period.
7		The record of arrest and conviction which Mover seeks to have
8		expunged is for operating a motor vehicle while intoxicated and
9		Mover has had another record of arrest and misdemeanor conviction
10		expunged during the previous ten-year period.
1	п—	Mover has had another record of felony conviction expunged during
12		the previous fifteen-year period.
13		Mover was convicted of a misdemeanor which arose from
14		circumstances involving a sex offense as defined in R.S. 15:541.
15		Mover was convicted of misdemeanor offense of domestic abuse
16		battery which was not dismissed pursuant to C.Cr.P. Art. 894(B).
17		Mover did not complete pretrial diversion.
18		The charges against the mover were not dismissed or refused.
19		Mover's felony conviction was not set aside and dismissed pursuant
20		to C.Cr.P. Art. 893(E).
21		Mover's felony conviction was not set aside and dismissed pursuant
22		to C.Cr.P. Art. 894(B).
23		Mover completed a DWI pretrial diversion program, but five years
24		have not elapsed since the mover's date of arrest.
25		Mover's conviction for felony carnal knowledge of a juvenile is not
26		defined as misdemeanor carnal knowledge of a juvenile had the
27		mover been convicted on or after August 15, 2001.
28		Mover has not been employed for ten consecutive years as required
29		by C.Cr.P. Art. 978(E)(1)(d).

Page 3 of 7

1		Mover was not convicted of a crime that would be eligible for
2		expungement as required by C.Cr.P. Art. 978(E)(1).
3		Mover has criminal charges pending against him.
4		Mover was convicted of a criminal offense during the ten-year
5		period.
6		Denial for any other reason provided by law with attached reasons for
7		denial.
8		THE MOTION IS HEREBY GRANTED for No(s).
9	and al	l agencies are ordered to expunge the record of arrest/conviction and
10	any pl	notographs, fingerprints, or any other such information of any kind
11	mainta	ained in connection with the Arrest(s)/Conviction(s) in the above-
12	captio	ned matter, which record shall be confidential and no longer
13	consid	lered a public record, nor be available to other persons except a
14	prosec	cutor, member of a law enforcement agency, or a judge who may
15	reques	st such information in writing certifying that such request is for the
16	purpos	se of prosecuting, investigating, or enforcing the criminal law, for the
17	purpos	se of any other statutorily defined law enforcement or administrative
18	duties	, or for the purpose of the requirements of sex offender registration and
19	notific	eation pursuant to the provisions of R.S. 15:541 et seq. or upon an order
20	of this	s Court to any other person for good cause shown, or as otherwise
21	author	ized by law.
22		THE MOTION IS HEREBY GRANTED FOR EXPUNGEMENT
23	BY REDACT	TION If the record includes more than one individual and the mover
24	is entitled to	expungement by redaction pursuant to Code of Criminal Procedure
25	Article 985, f	for No(s) and all agencies are ordered to expunge the
26	record of arre	est/conviction and any photographs, fingerprints, or any other such
27	information o	f any kind maintained in relation to the Arrest(s)/Conviction(s) in the
28	above-caption	ned matter as they relate to the mover only. The record shall be
29	confidential a	and no longer considered a public record, nor be available to other

1	persons except a prosecutor, member of a law enforcement agency, or a judge who
2	may request such information in writing certifying that such request is for the
3	purpose of prosecuting, investigating, or enforcing the criminal law, for the purpose
4	of any other statutorily defined law enforcement or administrative duties, or for the
5	purpose of the requirements of sex offender registration and notification pursuant to
6	the provisions of R.S. 15:541 et seq. or upon an order of this Court to any other
7	person for good cause shown, or as otherwise authorized by law.
8	NAME:
9	(Last, First, MI)
10	DOB:/(MM/DD/YY)
11	GENDER: FemaleMale
12	SSN (last 4 digits): XXX-XX
13	RACE:
14	DRIVER LIC.#
15	ARRESTING AGENCY:
16	SID# (if available):
17	ARREST NUMBER (ATN):
18	AGENCY ITEM NUMBER:
19	ARREST DATE:/(MM/DD/YY)
20	THUS ORDERED AND SIGNED this day of, 20
21	at, Louisiana.
22	
23	JUDGE
24	PLEASE SERVE:
25	1. District Attorney:
26	2. Arresting Agency:
27	3. Parish Sheriff:
28	4. Louisiana Bureau of Criminal Identification and Information

ENGROSSED HB NO. 241

1	5.	Attorney for Defendant (or defendant)
2	6.	Clerk of Court
3	Section	on 2. Code of Criminal Procedure Articles 977(D) and 978(D) are hereby
4	repealed in th	eir entirety.

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 241 Engrossed

2020 Regular Session

James

Abstract: Provides relative to the limitation on the number of expungements a person may obtain in a certain period of time and the prohibition on persons who are incarcerated from filing a motion for an expungement.

<u>Present law</u> (C.Cr.P. Art. 977) provides that a person may file a motion to expunge his record of arrest and conviction of certain **misdemeanor offenses** if the conviction was set aside and the prosecution was dismissed pursuant to <u>present law</u> (C.Cr.P. Art. 894) or more than five years have elapsed since the person completed any sentence, deferred adjudication, or period of probation or parole, and the person has not been convicted of any felony offense during the five-year period and has no felony charge pending against him.

<u>Present law</u> (C.Cr.P. Art. 978) provides that a person may file a motion to expunge his record of arrest and conviction of certain **felony offenses** if the conviction was set aside and the prosecution was dismissed pursuant to <u>present law</u> (C.Cr.P. Art. 893); more than ten 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 ten-year period and has no criminal charge pending against him; or the person is entitled to a first offender pardon for the offense, provided that the offense is not defined as a crime of violence or a sex offense.

<u>Present law</u> (C.Cr.P. Art. 977(D)) provides that the expungement of a record of arrest and conviction of a **misdemeanor offense** shall occur only once with respect to any person during a five-year period, except under certain circumstances. <u>Present law</u> further provides that the expungement of a record of arrest and conviction of a **misdemeanor DWI offense** shall occur only once with respect to any person during a ten-year period.

<u>Present law</u> (C.Cr.P. Art. 978(D)) provides that the expungement of a record of arrest and conviction of a **felony offense** shall occur only once with respect to any person during a 15-year period, except under certain circumstances.

<u>Proposed law</u> does all of the following:

- (1) Repeals the <u>present law</u> (C.Cr.P. Art. 977(D)) limitation on obtaining an expungement once every five years for an arrest and conviction of a **misdemeanor offense** and once every ten years for a **misdemeanor DWI offense**.
- (2) Repeals the <u>present law</u> (C.Cr.P. Art. 978(D)) limitation on obtaining an expungement once every 15 years for an arrest and conviction of a **felony offense**.

<u>Present law</u> (C.Cr.P. Art. 975) provides that any person in the custody of the Dept. of Public Safety and Corrections or incarcerated in any correctional facility shall not be permitted to

Page 6 of 7

CODING: Words in struck through type are deletions from existing law; words <u>underscored</u> are additions.

file a motion to expunge a record of arrest which did not result in a conviction or to expunge a record of an arrest and conviction of a misdemeanor or a felony offense.

<u>Proposed law</u> amends <u>present law</u> to limit the <u>present law</u> prohibition to only those persons who are in the physical custody of the Dept. of Public Safety and Corrections and serving a sentence at hard labor.

<u>Present law</u> provides for forms that are required to be used for motions seeking an expungement and for orders granting or denying expungement.

<u>Proposed law</u> amends the <u>present law</u> forms to conform with changes made in <u>proposed law</u>.

(Amends C.Cr.P. Arts. 975 and 992; Repeals C.Cr.P. Arts. 977(D) and 978(D))