

Regular Session, 2014

HOUSE BILL NO. 55

BY REPRESENTATIVES LOPINTO, ADAMS, ARMES, BADON, WESLEY BISHOP, BROWN, BURRELL, DIXON, GAINES, GUILLORY, HAZEL, HODGES, HONORE, HOWARD, KATRINA JACKSON, JEFFERSON, TERRY LANDRY, MORENO, JIM MORRIS, NORTON, PYLANT, SMITH, AND WOODRUFF 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 995, 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

1 arrest or conviction record; to provide for the interim expungement of certain arrests
2 from criminal history records; and to provide for related matters.

3 Be it enacted by the Legislature of Louisiana:

4 Section 1. Title XXXIV of the Code of Criminal Procedure, comprised of Articles
5 971 through 995, is hereby enacted to read as follows:

6 Art. 971. Legislative findings

7 The legislature hereby finds and declares the following:

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

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

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

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

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

28 (6) It is the intention of the legislature that this Title will provide
29 opportunities to break the cycle of criminal recidivism, increase public safety, and

1 assist the growing population of criminal offenders reentering the community to
2 establish a self-sustaining life through opportunities in employment.

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

6 Art. 972. Definitions

7 As used in this Title:

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

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

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

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

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

25 (1) To a member of a law enforcement or criminal justice agency or
26 prosecutor who shall request that information in writing, certifying that the request
27 is for the purpose of investigating, prosecuting, or enforcing criminal law, for the
28 purpose of any other statutorily defined law enforcement or administrative duties,

1 or for the purposes of the requirements of sex offender registration and notification
2 pursuant to the provisions of R.S. 15:541 et seq.

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

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

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

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

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

27 D. Nothing in this Article shall limit or impair the authority under law to
28 consider prior arrests or convictions that have been expunged in pursuing
29 prosecution under multiple offender provisions or impede the investigation of any

1 law enforcement official seeking to ascertain or confirm the qualifications of any
2 person for any privilege or license authorized by law.

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

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

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

9 A. A private third-party entity that compiles and disseminates criminal
10 history information for compensation shall not disseminate any information in its
11 possession regarding an arrest, conviction, or other disposition after it has received
12 notice of an issuance of a court order to expunge the record of any such arrest or
13 conviction.

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. The person obtaining the expungement shall send notice of the order of
22 expungement by registered or certified mail with return receipt requested and the
23 private third party shall not require a certified or courtesy copy of the order and
24 judgment of expunging of the record.

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

1 E. Whoever violates any provisions of this Article shall be punished by a
2 fine of not more than two hundred fifty dollars, imprisonment for not more than
3 ninety days, or both, if the conviction is for a first violation. Convictions for second
4 and subsequent violations shall be punished by a fine of not more than five hundred
5 dollars, imprisonment for not more than six months, or both.

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

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

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

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

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

19 (2) The district attorney for any reason declined to prosecute any offense
20 arising out of that arrest.

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

23 Art. 977. Motion to expunge a record of arrest and conviction of a misdemeanor
24 offense

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

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

1 (2) More than five years have elapsed since the person completed any
2 sentence, deferred adjudication, or period of probation or parole, the person has not
3 been convicted of any felony offense during the five-year period, and has no criminal
4 charge pending against him. The motion filed pursuant to this Subparagraph shall
5 include a certification obtained from the district attorney which verifies that, to his
6 knowledge, the applicant has no felony convictions during the five-year period and
7 no pending felony charges under a bill of information or indictment.

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

11 C. No person shall be entitled to expungement of a record if either of the
12 following occur:

13 (1) The misdemeanor conviction arose from circumstances involving a sex
14 offense as defined in R.S. 15:541, except that an interim expungement shall be
15 available as authorized by the provisions of Code of Criminal Procedure Article
16 985.1.

17 (2) The misdemeanor conviction was for domestic abuse battery, which was
18 not dismissed pursuant to Code of Criminal Procedure Article 894(B).

19 D.(1) Expungement of a record of arrest and conviction of a misdemeanor
20 offense shall occur only once with respect to any person during a five-year period,
21 unless the person was sentenced pursuant to Code of Criminal Procedure Article
22 894(B).

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

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

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

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

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

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

16 (1) A crime of violence as defined by or enumerated in R.S. 14:2(B).

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

22 (b) Any person who was convicted of carnal knowledge of a juvenile (R.S.
23 14:80) prior to August 15, 2001, is eligible for an expungement pursuant to the
24 provisions of this Title if the offense for which the offender was convicted would be
25 defined as misdemeanor carnal knowledge of a juvenile (R.S. 14:80.1) had the
26 offender been convicted on or after August 15, 2001. The burden is on the mover
27 to establish that the elements of the offense of conviction are equivalent to the
28 current definition of misdemeanor carnal knowledge of a juvenile as defined by R.S.
29 14:80.1. A copy of the order waiving the sex offender registration and notification

1 requirements issued pursuant to the provisions of R.S. 15:542(F) shall be sufficient
2 to meet this burden.

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

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

11 D. Expungement of a record of arrest and conviction of a felony offense
12 shall occur only once with respect to any person during a fifteen-year period.

13 Art. 979. Service of motion to expunge a record

14 The clerk of court shall serve notice of the motion of expungement by mail
15 or electronic mail upon the following entities:

16 (1) The district attorney.

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

18 (3) The arresting law enforcement agency.

19 Art. 980. Contradictory hearing

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

23 B.(1) Except as provided in Subparagraph (2) of this Paragraph, an objecting
24 party shall file an affidavit of response with reasons for the objection in the record
25 with service to the defendant within thirty days from the date of service of the
26 motion and specifically state the grounds for the objection.

27 (2) If the Louisiana Bureau of Criminal Identification and Information
28 objects to the granting of the motion to expunge a record, it shall file an affidavit of
29 response with reasons for the objection in the record with service to the defendant

1 within one hundred and twenty days from the date of the service of the motion until
2 August 1, 2015. On August 1, 2015, and thereafter, if the Louisiana Bureau of
3 Criminal Identification and Information objects to the granting of the motion to
4 expunge a record, it shall file an affidavit of response with reasons for the objection
5 in the record with service to the defendant within sixty days from the date of the
6 service of the motion.

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

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

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

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

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

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

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

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

26 The clerk of court shall serve the order and judgment of expungement of a
27 record upon all of the following entities:

28 (1) The district attorney.

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

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

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

3 (5) The arresting agency.

4 Art. 983. Costs of expungement of a record; fees; collection; exemptions;
5 disbursements

6 A. Except as provided for in Code of Criminal Procedure Articles 894 and
7 984, the total cost to obtain a court order expunging a record shall not exceed five
8 hundred fifty dollars.

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

11 (1) The Louisiana Bureau of Criminal Identification and Information may
12 charge a processing fee of two hundred fifty dollars for the expungement of any
13 record of arrest when ordered to do so by the court in compliance with the provisions
14 of this Title.

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

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

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

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

25 D. The clerk shall immediately direct the collected processing fees as
26 follows:

27 (1) The clerk shall direct the collected processing fee provided for in
28 Subparagraph (B)(1) of this Article to the Louisiana Bureau of Criminal

1 Identification and Information, and the processing fee amount shall be deposited
2 immediately upon receipt into the Criminal Identification and Information Fund.

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

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

9 F. An applicant for the expungement of a record shall not be required to pay
10 any fee to the clerk of court, the Louisiana Bureau of Criminal Identification and
11 Information, sheriff, the district attorney, or any other agency to obtain or execute
12 an order of a court of competent jurisdiction to expunge the arrest from the
13 individual's arrest record if a certification obtained from the district attorney is
14 presented to the clerk of court which verifies that the applicant has no felony
15 convictions and no pending felony charges under a bill of information or indictment
16 and at least one of the following applies:

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

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

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

26 (4) The applicant has been determined to be factually innocent and entitled
27 to compensation for a wrongful conviction pursuant to the provisions of R.S.
28 15:572.8.

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

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

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

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

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

17 (2) Fingerprints of the defendant.

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

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

24 Art. 985. Expungement by redaction of records with references to multiple
25 individuals

26 A. If a record includes the name of more than one individual and one or
27 more of the individuals is entitled to an expungement of an arrest or conviction
28 pursuant to the provisions of this Title, any individual entitled to an expungement

1 may petition the court to have records related to the arrest or conviction of the
2 individual expunged by redaction.

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

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

12 Art. 985.1. Interim motion to expunge a felony arrest from criminal history in
13 certain cases resulting in a misdemeanor conviction

14 A. A person may file an interim motion to expunge a felony arrest from his
15 criminal history when that original arrest results in a conviction for a misdemeanor.
16 In such cases, only the original felony arrest may be expunged.

17 B. The interim motion to expunge an arrest from criminal history is separate
18 and distinct from an expungement of a final conviction pursuant to Code of Criminal
19 Procedure Articles 976, 977, and 978.

20 C. Except as provided in Paragraph D of this Article, an interim motion to
21 expunge a felony arrest from criminal history shall follow the same procedures and
22 fees established pursuant to the provisions of Code of Criminal Procedure Article
23 979, et seq.

24 D. An interim motion to expunge shall not be subject to the time limitations
25 provided for in Articles 977(A)(2) or 978(A)(2), and there shall be no restriction on
26 the number of interim expungements which may be granted.

27 Art. 986. Forms for the expungement of records

28 A. Only the forms provided for in Articles 987, 988, 989, 990, 991, and 992
29 shall be used for filing motions to expunge a record of an arrest which did not result

1 The mover is further identified below:

2 DOCKET NUMBER: _____

3 CHARGE: _____

4 DATE OF ARREST: _____

5 ARRESTING AGENCY: _____

6 CITY/PARISH OF ARREST: _____

7 The Mover prays that, after a contradictory hearing with the District

8 Attorney's Office, the Court order the above numbered case be set aside and that the

9 prosecution dismissed in accordance with the Code of Criminal Procedure.

10 Respectfully submitted,

11 _____

12 Signature of Attorney for Mover/Defendant

13 _____

14 Attorney for Mover/Defendant Name

15 _____

16 Attorney's Bar Roll No.

17 _____

18 Address

19 _____

20 City, State, ZIP Code

21 _____

22 Telephone Number

23 **If not represented by counsel:**

24 _____

25 Signature of Mover/Defendant

26 _____

27 Mover/Defendant Name

28 _____

29 Address

30 _____

31 City, State, ZIP Code

32 _____

33 Telephone Number

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**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 _____

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**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 _____ "

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OR

OR

The case involving the arrestee listed above was dismissed or the district attorney declined to prosecute the case prior to the time limitations prescribed in Chapter 1 of Title XVII of the Code of Criminal Procedure, and the arrestee did not participate in a pretrial diversion program.

The arrestee listed above has been determined to be factually innocent and entitled to compensation for a wrongful conviction pursuant to the provisions of R.S. 15:572.8.

District Attorney or his designee - Print Name

_____, 20____"
District Attorney or his designee - Signature Date

Art. 989. Motion for expungement forms to be used

"
STATE OF LOUISIANA
JUDICIAL DISTRICT FOR THE PARISH OF

No.: _____ Division: " _____ "

State of Louisiana

vs.

MOTION FOR EXPUNGEMENT

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

I. DEFENDANT INFORMATION

NAME: _____
(Last, First, MI)

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

GENDER _____ Female _____ Male

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

RACE: _____

DRIVER LIC.# _____

ARRESTING AGENCY: _____

SID# (if available): _____

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

1 ITEM NUMBER: _____

2 ARREST NUMBER: _____

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

6 **II. ARREST INFORMATION**

7 1. Mover was arrested on ____/____/____ (MM/DD/YYYY)

8 2. ____ YES ____ NO A supplemental sheet with arrests and/or
9 convictions is attached after page 2 of this
10 Motion.

11 3. Mover was:
12 ____ YES ____ NO Arrested, but it did not result in conviction
13 ____ YES ____ NO Convicted of and seeks to expunge a
14 misdemeanor
15 ____ YES ____ NO Convicted of and seeks to expunge a felony

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

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

20 **OFFENSE 1** La. Rev. Stat. Ann. § _____ : _____
21 Name of the offense _____
22 () Time expired for prosecution _____
23 (MM/DD/YYYY)
24 () Not prosecuted for any offense
25 arising out of this charge.
26 () Pre-trial Diversion Program.
27 () DWI Pre-Trial Diversion Program
28 and 5 years have elapsed since the
29 date of arrest.
30 () Charge dismissed
31 () Found not guilty/judgment of acquittal

32 **OFFENSE 2** La. Rev. Stat. Ann. § _____ : _____
33 Name of the offense _____
34 () Time expired for prosecution _____
35 (MM/DD/YYYY)
36 () Not prosecuted for any
37 offense arising out of this charge.
38 () Pre-trial Diversion Program.
39 () Charge dismissed
40 () Found not guilty/judgment of acquittal

41 **OFFENSE 3** La. Rev. Stat. Ann. § _____ : _____
42 Name of the offense _____
43 () Time expired for prosecution _____
44 (MM/DD/YYYY)

- 1 () Not prosecuted for any offense
- 2 arising out of this charge.
- 3 () Pre-trial Diversion Program.
- 4 () Charge dismissed
- 5 () Found not guilty/judgment of acquittal

6 ___ Yes ___ No **MISDEMEANOR CONVICTIONS**

7 **OFFENSE 1** 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 2** 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 ___ Yes ___ No **FELONY CONVICTIONS**

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

30 ___ Yes ___ No **OPERATING A MOTOR VEHICLE WHILE**
31 **INTOXICATED CONVICTIONS**

32 Mover has attached the following:

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

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

- 40 Criminal Background Check from the La. State Police/Parish Sheriff
41 dated within the past 30 days (required).
- 42 Bill(s) of Information (if any).
- 43 Minute entry showing final disposition of case (if any).

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

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Address

City, State, ZIP Code

Telephone Number

If not represented by counsel:

Signature of Mover/Defendant

Mover/Defendant Name

Address

City, State, ZIP Code

Telephone Number " "

Art. 990. Affidavit of response form to be used

"

STATE OF LOUISIANA
JUDICIAL DISTRICT FOR THE PARISH OF

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

State of Louisiana

vs.

AFFIDAVIT OF RESPONSE

Pursuant to Louisiana Code of Criminal Procedure Article 980, the District Attorney for the Parish of _____ acknowledges the following:

- No Opposition.** Respondent respectfully consents to waiver of the contradictory hearing.
- Opposition to the Motion of Expungement with Reasons.** Respondent respectfully requests a contradictory hearing.

OR

Pursuant to Louisiana Code of Criminal Procedure Article 980, the Louisiana Bureau of Criminal Identification and Information acknowledges the following:

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

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RULE TO SHOW CAUSE

IT IS HEREBY ORDERED,

That the District Attorney and the Louisiana Bureau of Criminal Identification and Information and the arresting law enforcement agency show cause on the _____ day of _____, 20 _____, at _____ o'clock ___m why the foregoing motion should not be granted.

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

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

JUDGE

PLEASE SERVE:

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

Art. 992. Order of expungement form to be used

"
STATE OF LOUISIANA
JUDICIAL DISTRICT FOR THE PARISH OF

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

State of Louisiana

vs.

ORDER OF EXPUNGEMENT OF ARREST/CONVICTION RECORD

Considering the Motion for Expungement

- the hearing conducted and evidence adduced herein, OR
- Affidavits of No Opposition filed,

1 IT IS ORDERED, ADJUDGED AND DECREED

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

3 More than five years have not elapsed since Mover completed the
4 misdemeanor conviction sentence.

5 More than ten years have not elapsed since Mover completed the
6 felony conviction sentence.

7 Mover was convicted of one of the following ineligible felony
8 offenses:

9 A violation of the Uniform Controlled Dangerous Substances
10 Law which is ineligible to be expunged.

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

15 An offense defined or enumerated as a "crime of violence"
16 pursuant to La. Rev. Stat. Ann. 14:2(B) at the time the
17 Motion was filed.

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

22 Mover has had another record of misdemeanor conviction expunged
23 during the previous five-year period.

24 The record of arrest and conviction which Mover seeks to have
25 expunged is for operating a motor vehicle while intoxicated and
26 Mover has had another record of arrest and misdemeanor conviction
27 expunged during the previous ten-year period.

28 Mover has had another record of felony conviction expunged during
29 the previous fifteen-year period.

30 Mover was convicted of a misdemeanor which arose from
31 circumstances involving a sex offense as defined in R.S. 15:541.

32 Mover was convicted of misdemeanor offense of domestic abuse
33 battery which was not dismissed pursuant to Code of Criminal
34 Procedure Article 894(B).

35 Mover did not complete pretrial diversion.

36 The charges against the mover were not dismissed or refused.

37 Mover's felony conviction was not set aside and dismissed pursuant
38 to Code of Criminal Procedure Article 893(E).

39 Mover's felony conviction was not set aside and dismissed pursuant
40 to Code of Criminal Procedure Article 894(B).

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 **OFFENSE** La. Rev. Stat. Ann. § _____ : _____
 20 Name of the offense _____
 21 () Conviction set aside/dismissed _____/_____/_____
 22 pursuant to C.Cr.P. Art. 894(B) (MM/DD/YYYY)
 23 () More than 5 years have passed
 24 since completion of sentence.

25 **SUPPLEMENTAL SHEET**

26 ____ Yes ____ No **FELONY CONVICTIONS**

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

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

1 **MOTION FOR INTERIM EXPUNGEMENT**

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

4 **I. DEFENDANT INFORMATION**

5 NAME: _____
6 (Last, First, MI)

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

8 GENDER _____ Female _____ Male

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

10 RACE: _____

11 DRIVER LIC.# _____

12 ARRESTING AGENCY: _____

13 SID# (if available): _____

14 ITEM NUMBER: _____

15 ARREST NUMBER: _____

16 Mover is entitled to expunge the entry of the felony charge(s) of his arrest
17 pursuant to Louisiana Code of Criminal Procedure Article 985.1 and states the
18 following in support:

19 **II. ARREST INFORMATION**

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

21 2. _____ YES _____ NO A supplemental sheet with arrests and/or
22 convictions is attached after page 2 of this
23 Motion.

24 3. Mover was:
25 _____ YES _____ NO Arrested for a felony offense.
26 _____ YES _____ NO Convicted of a misdemeanor arising out of
27 that felony offense.

28
29 4. Mover was booked and/or charged with the following offenses: (List each
30 offense booked and charged separately. Attach a supplemental sheet, if
31 necessary.)

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City, State, ZIP Code

Telephone Number "

Art. 995. Order of interim expungement form to be used

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

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

State of Louisiana

vs.

ORDER OF EXPUNGEMENT OF INTERIM ARREST RECORD

Considering the Motion for Expungement

- The hearing conducted and evidence adduced herein, OR
- Affidavits of No Opposition filed,

IT IS ORDERED, ADJUDGED AND DECREED

- THE MOTION IS DENIED for the following reasons (check all that apply):
 - Mover was not arrested for a felony.
 - Mover was not convicted of a misdemeanor offense.

THE MOTION IS HEREBY GRANTED and the Louisiana Bureau of Criminal Identification and Information is hereby ordered to expunge the entry of the felony charge(s) contained in the criminal history of the above-named for the following felony charge(s):

La. R.S. _____ : _____
 Name of Offense _____
 La. R.S. _____ : _____
 Name of Offense _____

IT IS FURTHER ORDERED that the Clerk of Court, District Attorney and arresting agency expunge the entry of the felony charge(s) from any public indices of the above-named on the above enumerated charge(s).

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

JUDGE

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

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

5 Section 4. The Louisiana State Law Institute is hereby directed to delete any
6 references to R.S. 44:9 in Louisiana law and to make any necessary changes to Louisiana
7 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 a conviction of a felony 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 La. Bureau of Criminal Identification and Information 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.
- (13) Provides for an interim expungement of a felony arrest when that original arrest results in a conviction for a misdemeanor. Provides that these expungements are not subject to the cleansing period and are unlimited. Prohibits the expungement of misdemeanor convictions arising from the felony arrest.

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.

Proposed law retains present law and makes the fees nonrefundable.

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

Present law provides that an applicant for expungement does not have to pay any fees for an expungement if a certification obtained from the district attorney is presented to the clerk of court which verifies that the applicant has no felony convictions and no pending felony charges under a bill of information or indictment and at least one of the following applies:

- (1) The applicant was acquitted, after trial, of all charges derived from the arrest, including any lesser and included offense.
- (2) The district attorney consents, and the case against the applicant was dismissed or the district attorney declined to prosecute the case prior to the time limitations provided for in present law, and the applicant did not participate in a pretrial diversion program.
- (3) The applicant was arrested and was never prosecuted within the time limitations provided for in present law and did not participate in a pretrial diversion program.

Proposed law retains the provisions of present law and adds an additional circumstance for the exemption of expungement fees when the applicant has been determined to be factually innocent and entitled to compensation for a wrongful conviction pursuant to present law.

(Adds C.Cr.P. Arts. 971-995; Repeals R.S. 44:9)

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Administration of Criminal Justice to the original bill.

1. Made numerous technical changes to the proposed law forms to provide that the provisions of law were consistent with the language of the forms.
2. Required the person seeking the expungement to send the notice of the order of the expungement to any private third party disseminating criminal history information.
3. Provided that the five-year cleansing period for misdemeanor convictions applied to five years without a felony conviction. Reinstated present law regarding expungement of misdemeanor convictions.
4. Provided for interim expungements of felony arrests which result in convictions of misdemeanor offenses.
5. Prohibited the expungement of certain offenses arising out of felony arrests.
6. Granted the La. Bureau of Criminal Identification and Information 120 days to object to a motion to expunge a record for one year. On or after Aug. 1, 2015, this period is reduced to 60 days.
7. Added an additional circumstance for the exemption of expungement fees when the applicant has been determined to be factually innocent and entitled to compensation for a wrongful conviction pursuant to present law.