

2015 Regular Session

HOUSE BILL NO. 284

BY REPRESENTATIVE LOPINTO AND SENATOR GALLOT

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

CRIMINAL/PROCEDURE: Amends provisions of law regarding expungement

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AN ACT

To amend and reenact Code of Criminal Procedure Articles 976, 977(C)(introductory paragraph) and (1), 978(B)(1) and (3), 979, 980(C) and (D), 984(C), 988, 989, and 992 and to enact Code of Criminal Procedure Articles 894.5, 977(C)(3), 984(D), 986(C), and 996, relative to expungement; to provide for a time limitation for an expungement for an arrest for operating a vehicle while intoxicated involving the use of a pretrial diversion program; to provide for the eligibility to expunge certain convictions; to prohibit the expungement of a record of arrest and conviction for misdemeanor stalking; to provide with respect to the expungement of arrest and conviction records of certain felony convictions of violations of the Uniformed Controlled Dangerous Substances Act; to provide for the service of expungement motions through United States mail; to provide with respect to time periods for objecting to a motion to expunge records; to amend procedures involving the expungement of records for violations of the operation of a motor vehicle while intoxicated; to provide with respect to the forms required for expungements; to provide for the amendment of forms to include names of the appropriate court ordering the expungement of records; to amend expungement forms to provide a fee waiver for juvenile drug court participants; to provide forms for expungement by redaction; to provide forms for submission of data to the Department of Public Safety and Corrections, office of motor vehicles, regarding driving while intoxicated offenses; to provide for applicability; to provide for time limitations to make an objection to an expungement and the setting of a contradictory hearing regarding an objection; and to provide for related matters.

1 Be it enacted by the Legislature of Louisiana:

2 Section 1. Code of Criminal Procedure Articles 976, 977(C)(introductory paragraph)  
3 and (1), 978(B)(1) and (3), 979, 980(C) and (D), 984(C), 988, 989, and 992 are hereby  
4 amended and reenacted and Code of Criminal Procedure Articles 977(C)(3), 984(D), 986(C),  
5 and 996 are hereby enacted to read as follows:

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

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

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

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

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

17 B. Pursuant to R.S. 15:578.1, no person arrested for a violation of R.S. 14:98  
18 (operating a vehicle while intoxicated) or a parish or municipal ordinance that  
19 prohibits operating a vehicle while intoxicated, impaired, or while under the  
20 influence of alcohol, drugs, or any controlled dangerous substance, and placed by the  
21 prosecuting authority into a pretrial diversion program, shall be entitled to an  
22 expungement of the record until five years have elapsed since the date of arrest for  
23 that offense.

24 C. The motion to expunge a record of arrest that did not result in a  
25 conviction of a misdemeanor or felony offense shall be served pursuant to the  
26 provisions of Code of Criminal Procedure Article 979.

27 Art. 977. Motion to expunge a record of arrest and conviction of a misdemeanor  
28 offense

29 \* \* \*

1 C. No person shall be entitled to expungement of a record under ~~either~~ any  
2 of the following circumstances:

3 (1) The misdemeanor conviction arose from circumstances involving or is  
4 the result of an arrest for a sex offense as defined in R.S. 15:541, except that an  
5 interim expungement shall be available as authorized by the provisions of Article  
6 985.1 of this Code.

7 \* \* \*

8 (3) The misdemeanor conviction was for stalking (R.S. 14:40.2).

9 \* \* \*

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

11 \* \* \*

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

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

18 \* \* \*

19 (3) ~~Unless otherwise permissible under Article 893(E) of this Code, a~~ A  
20 violation of the Uniform Controlled Dangerous Substances Law, except for any of  
21 the following which may be expunged pursuant to the provisions of this Title: ~~that~~  
22 a

23 (a) A conviction for possession of a controlled dangerous substance as  
24 provided for in R.S. 40:966(C), 967(C), 968(C), or 969(C), or 970(C). ~~or a~~

25 (b) A conviction for possession of a controlled dangerous substance with the  
26 intent to distribute ~~may be expunged pursuant to the provisions of this Title.~~

27 (c) A conviction for a violation of the Uniform Controlled Dangerous  
28 Substances Law which is punishable by a term of imprisonment for a term of not  
29 more than five years.



1 records. The court cost provided by this Paragraph shall be submitted to the  
2 department regardless of whether the clerk of court is submitting this matter to the  
3 department pursuant to Paragraph B or D of this Article.

4 D. In lieu of forwarding the items listed in Paragraph B of this Article, the  
5 clerk of court may send a copy of the letter issued by the department pursuant to  
6 Subparagraph (B)(1) of Article 894 if the clerk had previously submitted records of  
7 the plea to the department pursuant to that Article.

8 \* \* \*

9 Art. 986. Forms for the expungement of records

10 \* \* \*

11 C. The clerk of court for any court in the state of Louisiana having criminal  
12 jurisdiction may amend any of the forms provided for in Articles 987, 988, 989, 990,  
13 991, 992, 993, 994, and 995 to provide the appropriate name of the court ordering  
14 an expungement of records.

15 \* \* \*

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

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

19 \_\_\_\_\_

20 No.: \_\_\_\_\_ Division: " \_\_\_\_\_ "

21 **State of Louisiana**

22 **vs.**

23 \_\_\_\_\_

24 **CERTIFICATION OF FEE WAIVER**

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

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DEFENDANT NAME	
DATE OF BIRTH	
SSN (last 4 digits)#	XXX-XX-
DATE OF ARREST	
DOCKET NUMBER	
CHARGE	

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

The arrestee listed above has NO FELONY CONVICTIONS.

**AND**

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

**AND**

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

**OR**

The arrestee listed above WAS NOT PROSECUTED WITHIN 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 for the arrest listed above.

**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.

**OR**

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



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

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

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

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

5 ARREST NUMBER (ATN): \_\_\_\_\_

6 AGENCY ITEM NUMBER: \_\_\_\_\_

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

10 **II. ARREST INFORMATION**

- 11 1. Mover was arrested on \_\_\_\_/\_\_\_\_/\_\_\_\_ (MM/DD/YYYY)
- 12 2. \_\_\_\_ YES \_\_\_\_ NO A supplemental sheet with arrests and/or  
 13 convictions is attached after page 2 of this  
 14 Motion.
- 15 3. Mover was:
- 16 \_\_\_\_ YES \_\_\_\_ NO Arrested, but it did not result in conviction  
 17 \_\_\_\_ YES \_\_\_\_ NO Convicted of and seeks to expunge a  
 18 misdemeanor  
 19 \_\_\_\_ YES \_\_\_\_ NO Convicted of and seeks to expunge a felony
- 20 4. Mover was booked and/or charged with the following offenses: (List each  
 21 offense booked and charged separately. Please number each item numerically  
 22 beginning with number 1. Attach a supplemental sheet, if necessary.)

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

24 <b>ITEM NO. †</b>	La. Rev. Stat. Ann.	§ _____ :
25	Name of the offense	_____
26	( ) Time expired for prosecution	_____
27		(MM/DD/YYYY)
28	( ) Not prosecuted for any offense	
29	arising out of this charge.	
30	( ) Pre-trial Diversion Program.	
31	( ) DWI Pre-Trial Diversion Program	
32	and 5 years have elapsed since the	
33	date of arrest.	
34	( ) Charge dismissed	
35	( ) Found not guilty/judgment of acquittal	





1 Mover has attached the following:

2 ( ) ~~A copy of the proof~~ certified letter of compliance in accordance with  
3 C.Cr.P. Art. 984 from the Department of Public Safety and  
4 Corrections, office of motor vehicles, that it has received from the  
5 clerk of court a certified copy of the record of the plea, fingerprints  
6 of the defendant, and proof of the requirements set forth in C.Cr.P.  
7 Art. 556, which shall include the defendant's date of birth, last four  
8 digits of social security number, and driver's license number

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

10  Criminal Background Check from the La. State Police/Parish Sheriff  
11 dated within the past 30 days (required).

12  Bill(s) of Information (if any).

13  Minute entry showing final disposition of case (if any).

14  Certification Letter from the District Attorney for fee waiver (if  
15 eligible).

16  Certification Letter from the District Attorney verifying that the  
17 applicant has no convictions or pending applicable criminal charges  
18 in the requisite time periods.

19  Certification Letter from the District Attorney verifying that the  
20 charges were refused.

21  Certification Letter from the District Attorney verifying that the  
22 applicant did not participate in a pretrial diversion program.

23  A copy of the order waiving the sex offender registration and  
24 notification requirements.

25 6. Mover was:

26 YES NO Arrested with another individual.

27 The Mover prays that if there is no objection timely filed by the arresting law  
28 enforcement agency, the district attorney's office, or the Louisiana Bureau of  
29 Criminal Investigation and Information, that an order be issued herein ordering the  
30 expungement of the record of arrest and/or conviction set forth above, including all  
31 photographs, fingerprints, disposition, or any other such information, which record  
32 shall be confidential and no longer considered a public record, nor be made available  
33 to other persons, except a prosecutor, member of a law enforcement agency, or a  
34 judge who may request such information in writing, certifying that such request is  
35 for the purpose of prosecuting, investigating, or enforcing the criminal law, for the  
36 purpose of any other statutorily defined law enforcement or administrative duties,

1 or for the purpose of the requirements of sex offender registration and notification  
2 pursuant to the provisions of R.S. 15:541 et seq. or as an order of this Court to any  
3 other person for good cause shown, or as otherwise authorized by law.

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

7 Respectfully submitted,

8 \_\_\_\_\_  
9 Signature of Attorney for Mover/Defendant

10 \_\_\_\_\_  
11 Attorney for Mover/Defendant Name

12 \_\_\_\_\_  
13 Attorney's Bar Roll No.

14 \_\_\_\_\_  
15 Address

16 \_\_\_\_\_  
17 City, State, ZIP Code

18 \_\_\_\_\_  
19 Telephone Number

20 **If not represented by counsel:**

21 \_\_\_\_\_  
22 Signature of Mover/Defendant

23 \_\_\_\_\_  
24 Mover/Defendant Name

25 \_\_\_\_\_  
26 Address

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

29 \_\_\_\_\_  
30 Telephone Number "

31 \_\_\_\_\_  
32 \_\_\_\_\_  
33 \* \* \*

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  The hearing conducted and evidence adduced herein, OR

12  Affidavits of No Opposition filed,

13 IT IS ORDERED, ADJUDGED AND DECREED

14  THE MOTION IS DENIED for Item(s) No.       ,       ,       ,        the following  
15 reasons (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  
23 Law which is ineligible to be expunged.

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



1            Mover's conviction for felony carnal knowledge of a juvenile is not  
2 defined as misdemeanor carnal knowledge of a juvenile had the  
3 mover been convicted on or after August 15, 2001.

4            Denial for any other reason provided by law with attached reasons for  
5 denial.

6            **THE MOTION IS HEREBY GRANTED** for Item(s) No.  
7 \_\_\_\_\_ and all agencies are ordered to expunge the record of  
8 arrest/conviction and any photographs, fingerprints, or any other such information  
9 of any kind maintained in connection with the Arrest(s)/Conviction(s) in the above-  
10 captioned matter, which record shall be confidential and no longer considered a  
11 public record, nor be available to other persons except a prosecutor, member of a law  
12 enforcement agency, or a judge who may request such information in writing  
13 certifying that such request is for the purpose of prosecuting, investigating, or  
14 enforcing the criminal law, for the purpose of any other statutorily defined law  
15 enforcement or administrative duties, or for the purpose of the requirements of sex  
16 offender registration and notification pursuant to the provisions of R.S. 15:541 et  
17 seq. or upon an order of this Court to any other person for good cause shown, or as  
18 otherwise authorized by law.

19            **THE MOTION IS HEREBY GRANTED FOR EXPUNGEMENT**  
20 **BY REDACTION** If the record includes more than one individual and the mover  
21 is entitled to expungement by redaction pursuant to Code of Criminal Procedure  
22 Article 985, for Item(s) No. \_\_\_\_\_ and all agencies are ordered to expunge  
23 the record of arrest/conviction and any photographs, fingerprints, or any other such  
24 information of any kind maintained in relation to the Arrest(s)/Conviction(s) in the  
25 above-captioned matter as they relate to the mover only. The record shall be  
26 confidential and no longer considered a public record, nor be available to other  
27 persons except a prosecutor, member of a law enforcement agency, or a judge who  
28 may request such information in writing certifying that such request is for the  
29 purpose of prosecuting, investigating, or enforcing the criminal law, for the purpose

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1 of any other statutorily defined law enforcement or administrative duties, or for the  
2 purpose of the requirements of sex offender registration and notification pursuant to  
3 the provisions of R.S. 15:541 et seq. or upon an order of this Court to any other  
4 person for good cause shown, or as otherwise authorized by law.

5 NAME: \_\_\_\_\_  
6 (Last, First, MI)

7 DOB: \_\_\_\_/\_\_\_\_/\_\_\_\_ (MM/DD/YY)

8 GENDER: \_\_\_\_ Female \_\_\_\_ Male

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

10 RACE: \_\_\_\_\_

11 DRIVER LIC.# \_\_\_\_\_

12 ARRESTING AGENCY: \_\_\_\_\_

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

14 ARREST NUMBER (ATN): \_\_\_\_\_

15 AGENCY ITEM NUMBER: \_\_\_\_\_

16 ARREST DATE: \_\_\_\_/\_\_\_\_/\_\_\_\_ (MM/DD/YY)

17 **THUS ORDERED AND SIGNED** this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_

18 at \_\_\_\_\_, Louisiana.

19 \_\_\_\_\_  
20 JUDGE

21 **PLEASE SERVE:**

22 1. District Attorney: \_\_\_\_\_

23 2. Arresting Agency: \_\_\_\_\_

24 3. Parish Sheriff: \_\_\_\_\_

25 4. Louisiana Bureau of Criminal Identification and Information \_\_\_\_\_

26 5. Attorney for Defendant (or defendant) \_\_\_\_\_

27 6. Clerk of Court \_\_\_\_\_"

28 \* \* \*

1 Art. 996. Submission of expungement records to office of motor vehicles; forms to  
2 be used

3 TRANSMITTAL OF RECORDS FOR EXPUNGEMENT OF DWI  
4 PURSUANT TO C.Cr.P. Art. 984

5 \_\_\_\_\_  
6 \_\_\_\_\_  
7 \_\_\_\_\_

8 \_\_\_\_\_  
9 DATE

10 OFFICE OF MOTOR VEHICLES  
11 P.O. BOX 64886  
12 BATON ROUGE, LA 70896

13 NAME \_\_\_\_\_ DRIVERS LICENSE# \_\_\_\_\_

14 DATE OF BIRTH: \_\_\_\_\_ OFFENSE DATE: \_\_\_\_\_

15 SS# \_\_\_\_\_ DOCKET NO: \_\_\_\_\_

16 TICKET NO: \_\_\_\_\_

17  Attached is a certified copy of the court minutes, original/certified copy of  
18 fingerprints and proof of the requirements as set forth in the Code of  
19 Criminal Procedure Article 556.1. Additionally, a \$50.00 money order or  
20 certified funds made payable to the office of motor vehicles, in reference to  
21 the above named defendant is attached; or

22  Attached is a copy of the certified letter received from office of motor  
23 vehicles indicating that all of the required documents were previously filed  
24 in conjunction with the requirements of Article 894 and are on file.  
25 Additionally, a \$50.00 money order or certified funds made payable to the  
26 office of motor vehicles is attached.

27 NOTE: Do not use this form to submit records of a DWI plea pursuant to Code of  
28 Criminal Procedure Article 894(A)(5).

29 Section 2. Code of Criminal Procedure Article 894.5 is hereby enacted to read as  
30 follows:

31 Art. 894.5. Submission of DWI - Code of Criminal Procedure Article 894 Plea  
32 Records to office of motor vehicles; forms to be used

33 TRANSMITTAL OF RECORDS OF DWI PLEA FOR ARTICLE 894

34 \_\_\_\_\_  
35 \_\_\_\_\_  
36 \_\_\_\_\_

37 \_\_\_\_\_  
38 DATE

39 OFFICE OF MOTOR VEHICLES  
40 P.O. BOX 64886  
41 BATON ROUGE, LA 70896





Present law provides that the court shall order the clerk of court to mail to DPS&C, office of motor vehicles, a certified copy of the record of the guilty plea, fingerprints, and proof of eligibility to make the plea when records involve DWI violations.

Proposed law provides that when a defendant who has entered a plea pursuant to present law in a DWI case seeks an expungement, the clerk of court may send a copy of a letter issued by DPS&C in lieu of sending the documents and fingerprints again, if the clerk had previously sent those documents at the time of the plea.

Proposed law authorizes the clerk of court to change the statutory forms to provide for the appropriate name of the court ordering the expungement.

Present law provides that juveniles who successfully participate in a drug court program are exempt from expungement fees.

Proposed law retains this provision of present law and amends form provisions to include participation in drug court programs as eligible for a fee exemption.

Proposed law makes changes to form provisions to make them consistent with present law and to provide for additional identification information and clarity to form language.

(Amends C.Cr.P. Arts. 976, 977(C)(intro. para.) and (1), 978(B)(1) and (3), 979, 980(C) and (D), 984(C), 988, 989, and 992; Adds C.Cr.P. Arts. 894.5, 977(C)(3), 984(D), 986(C), and 996)

#### Summary of Amendments Adopted by House

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

1. Provide that when service is made by U.S. Mail, a certificate of service shall be filed in the record indicating the date the motion was placed in the mail.
2. Make technical changes to expungement forms.
3. Make changes to permissible CDS violations which can be expunged.