ENGROSSED

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

1

AN ACT

2 To amend and reenact Code of Criminal Procedure Articles 976, 977(C)(introductory 3 paragraph) and (1), 978(B)(1) and (3), 979, 980(C) and (D), 984(C), 988, 989, and 4 992 and to enact Code of Criminal Procedure Articles 894.5, 977(C)(3), 984(D), 5 986(C), and 996, relative to expungement; to provide for a time limitation for an 6 expungement for an arrest for operating a vehicle while intoxicated involving the use 7 of a pretrial diversion program; to provide for the eligibility to expunge certain 8 convictions; to prohibit the expungement of a record of arrest and conviction for 9 misdemeanor stalking; to provide with respect to the expungement of arrest and 10 conviction records of certain felony convictions of violations of the Uniformed 11 Controlled Dangerous Substances Act; to provide for the service of expungement 12 motions through United States mail; to provide with respect to time periods for 13 objecting to a motion to expunge records; to amend procedures involving the 14 expungement of records for violations of the operation of a motor vehicle while 15 intoxicated; to provide with respect to the forms required for expungements; to 16 provide for the amendment of forms to include names of the appropriate court 17 ordering the expungement of records; to amend expungement forms to provide a fee 18 waiver for juvenile drug court participants; to provide forms for expungement by 19 redaction; to provide forms for submission of data to the Department of Public 20 Safety and Corrections, office of motor vehicles, regarding driving while intoxicated 21 offenses; to provide for applicability; to provide for time limitations to make an 22 objection to an expungement and the setting of a contradictory hearing regarding an 23 objection; and to provide for related matters.

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HLS 15RS-227

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	<u>A.</u> 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	* * *

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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 <u>A</u>
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 <u>A</u>
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	â
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	(d) A conviction for a violation of the Uniform Controlled Dangerous
2	Substances Law which may be expunged pursuant to Article 893(E).
3	* * *
4	Art. 979. Service of motion to expunge a record
5	\underline{A} . The clerk of court shall serve notice of the motion of expungement by
6	United States mail or electronically upon the following entities:
7	(1) The district attorney of the parish of conviction.
8	(2) The Louisiana Bureau of Criminal Identification and Information.
9	(3) The arresting law enforcement agency.
10	B. When service is made by United States mail, a certificate of service shall
11	be filed into the record indicating the date the motion was placed in the United States
12	mail for service.
13	Art. 980. Contradictory hearing
14	* * *
15	C. The court may grant an extension of time to file an objection not to
16	exceed sixty days from the date of service of the motion to expunge a record thirty
17	days from the expiration of the original sixty days for a party to object.
18	D. Any objection timely filed shall have a contradictory hearing. If an
19	objection is timely filed, the district attorney , shall file a motion and order setting the
20	matter or an objecting party shall request that the matter be set for a contradictory
21	hearing. A notice of hearing shall be served on the defendant and those persons
22	provided for in Article 979 of this Code.
23	* * *
24	Art. 984. Additional requirements for the expungement of records involving the
25	operation of a vehicle while intoxicated; additional fee
26	* * *
27	C. An additional fifty dollar fifty-dollar court cost shall be assessed at this
28	time against the defendant and paid to the Department of Public Safety and
29	Corrections, office of motor vehicles, for the costs of storage and retrieval of the

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.

1	DEF	ENDANT NAME
2	DAT	'E OF BIRTH
3	SSN	(last 4 digits)# XXX-XX-
4	DAT	'E OF ARREST
5	DOC	CKET NUMBER
6	CHA	RGE
7	In acco	ordance with Louisiana Code of Criminal Procedure Article 983, the Office of
8	the Di	istrict Attorney has reviewed the available databases and determined that
9	(Checi	k all that apply. To be completed by authorized personnel from the District
10	Attorn	ey's Office and returned within 15 days to defendant.):
11		The arrestee listed above has NO FELONY CONVICTIONS.
12		AND
13		The arrestee listed above has NO PENDING FELONY CHARGES UNDER
14		A BILL OF INDICTMENT OR INFORMATION.
15		AND
16		The arrestee listed above WAS ACQUITTED after trial of all charges
17		derived from the arrest listed above, including any lesser and included
18		offense.
19		OR
20		The arrestee listed above WAS NOT PROSECUTED WITHIN THE TIME
21		LIMITATIONS prescribed in Chapter 1 of Title XVII of the Code of
22		Criminal Procedure and the arrestee did not participate in a pretrial diversion
23		program for the arrest listed above.
24		OR
25		The case involving the arrestee listed above was dismissed or the district
26		attorney declined to prosecute the case prior to the time limitations
27		prescribed in Chapter 1 of Title XVII of the Code of Criminal Procedure, and
28		the arrestee did not participate in a pretrial diversion program.
29		OR

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1	\Box The arrestee listed above has been determined to be factually innocent and
2	entitled to compensation for a wrongful conviction pursuant to the provisions
3	of R.S. 15:572.8.
4	<u>OR</u>
5	The arrestee listed above is a juvenile who has successfully completed any
6	juvenile drug court program and is exempt from fees pursuant to Code of
7	Criminal Procedure Article 983(G).
8 9	District Attorney or his designee - Print Name
10	,20"
11	District Attorney or his designee - Signature Date
12	Art. 989. Motion for expungement forms to be used
13	" STATE OF LOUISIANA
14	JUDICIAL DISTRICT FOR THE PARISH OF
15	
16	No.: Division: ""
17	State of Louisiana
18	VS.
19	
20	MOTION FOR EXPUNGEMENT
21	NOW INTO COURT comes mover, who provides the court with the
22	following information in connection with this request:
23	I. DEFENDANT INFORMATION
24	NAME:
25	(Last, First, MI)
26	DOB: // (MM/DD/YYYY)
27	GENDERFemaleMale
28	SSN (last 4 digits): XXX-XX

1	RACE:					
2	DRIVER LIC.#					
3	ARRESTING AGENCY	ARRESTING AGENCY:				
4	SID# (if available):					
5	ARREST NUMBER <u>(A</u>	<u>ATN)</u> :	_			
6	AGENCY ITEM NUM	BER:	_			
7	Mover is entitled	d to expunge the record of his arre	st/conviction pursuant to			
8	Louisiana Code of Crin	ninal Procedure Article 971 et seq	. and states the following			
9	in support:					
10	II. ARREST INFO	ORMATION				
11	1. Mover was arres	sted on/	(MM/DD/YYYY)			
12 13 14	2YES		heet with arrests and/or hed after page 2 of this			
15	3. Mover was:					
16 17 18 19	YES YES	NO Convicted of an misdemeanor	not result in conviction nd seeks to expunge a eks to expunge a felony			
20 21 22	offense booked a	ked and/or charged with the follow and charged separately. <u>Please numb</u> number 1. Attach a supplemental s	ber each item numerically			
23	YesNo A	ARRESTS THAT DID NOT RES	SULT IN CONVICTION			
24 25 26 27 28 29 30 31 32 33 34 35	N ((((a. Rev. Stat. Ann. Jame of the offense Time expired for prosecution Not prosecuted for any offense arising out of this charge. Pre-trial Diversion Program. DWI Pre-Trial Diversion Progr and 5 years have elapsed since date of arrest. Charge dismissed Found not guilty/judgment of a 	the			

			HB NO. 284
1 2 3 4 5 6 7 8 9	ITEM NO. 2	 La. Rev. Stat. Ann. Name of the offense () Time expired for prosecution () Not prosecuted for any offense arising out of this charge () Pre-trial Diversion Program. () Charge dismissed () Found not guilty/judgment of access 	
10 11 12 13 14 15 16 17 18	ITEM NO. 3	 La. Rev. Stat. Ann. Name of the offense () Time expired for prosecution () Not prosecuted for any offense arising out of this charge. () Pre-trial Diversion Program. () Charge dismissed () Found not guilty/judgment of access 	§ :
19	YesNo	MISDEMEANOR CONVICTION	S
20 21 22 23 24 25 26 27 28 29 30 31	ITEM NO. 1 ITEM NO. 2	 La. Rev. Stat. Ann. Name of the offense () Conviction set aside/dismissed pursuant to C.Cr.P. Art. 894(B) () More than 5 years have passed since completion of sentence. La. Rev. Stat. Ann. Name of the offense () Conviction set aside/dismissed pursuant to C.Cr.P. Art. 894(B) () More than 5 years have passed since completion of sentence. 	<pre>§: // (MM/DD/YYYY) §: // (MM/DD/YYYY)</pre>
32	YesNo	FELONY CONVICTIONS	
33 34 35 36 37	ITEM NO. 1	 La. Rev. Stat. Ann. () Conviction set aside/dismissed pursuant to C.Cr.P. Art. 893(E) () More than 10 years have passed since completion of sentence 	§:: /// (MM/DD/YYYY)
38 39 40 41 42	ITEM NO. 2	 La. Rev. Stat. Ann. () Conviction set aside/dismissed pursuant to C.Cr.P. Art. 893(E) () More than 10 years have passed since completion of sentence 	§:// (MM/DD/YYYY)
43 44	Yes No	OPERATING A MOTOR V INTOXICATED CONVICTIONS	VEHICLE WHILE

1	Move	r has att	tached the following:
2 3 4 5 6 7 8		()	A copy of the proof certified letter of compliance in accordance with C.Cr.P. Art. 984 from the Department of Public Safety and Corrections, office of motor vehicles, that it has received from the clerk of court a certified copy of the record of the plea, fingerprints of the defendant, and proof of the requirements set forth in C.Cr.P. Art. 556, which shall include the defendant's date of birth, last four digits of social security number, and driver's license number
9	5. Mo	over has	attached to this Motion the following pertinent documents:
10 11			Criminal Background Check from the La. State Police/Parish Sheriff 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 15			Certification Letter from the District Attorney for fee waiver (if eligible).
16 17 18			Certification Letter from the District Attorney verifying that the applicant has no convictions or pending applicable criminal charges in the requisite time periods.
19 20			Certification Letter from the District Attorney verifying that the charges were refused.
21 22			Certification Letter from the District Attorney verifying that the applicant did not participate in a pretrial diversion program.
23 24			A copy of the order waiving the sex offender registration and notification requirements.
25	<u>6.</u>	Move	r was:
26			YES NO Arrested with another individual.
27		The N	lover prays that if there is no objection timely filed by the arresting law
28	enford	cement	agency, the district attorney's office, or the Louisiana Bureau of
29	Crimi	nal Inve	estigation and Information, that an order be issued herein ordering the
30	expun	igement	of the record of arrest and/or conviction set forth above, including all
31	photo	graphs,	fingerprints, disposition, or any other such information, which record
32	shall ł	oe confi	dential and no longer considered a public record, nor be made available
33	to oth	er perso	ons, except a prosecutor, member of a law enforcement agency, or a
34	judge	who ma	ay request such information in writing, certifying that such request is
35	for the	e purpos	se of prosecuting, investigating, or enforcing the criminal law, for the
36	purpo	se of ar	y other statutorily defined law enforcement or administrative duties,

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1	or for the purpose of the requirem	ents 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 Opp	osition" by each agency named herein is attached	
5	hereto and made a part hereof, De	fendant requests that no contradictory hearing be	
6	required and the Motion be grante	d 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 16 17		Address	
18		City, State, ZIP Code	
19 20		Telephone Number	
21		If not represented by counsel:	
22 23		Signature of Mover/Defendant	
24 25		Mover/Defendant Name	
26 27		Address	
28 29 30		City, State, ZIP Code	
31 32		Telephone Number "	
33	*	* *	

1

Art. 992. Order of expungement form to be used

2	"		STATE OF LOUISIANA
3		JUDICIA	AL DISTRICT FOR THE PARISH OF
4			
5	No.:		Division: ""
6			State of Louisiana
7			vs.
8			
9	ORDER	OF EXPUN	GEMENT OF ARREST/CONVICTION RECORD
10	Conside	ring the Moti	on for Expungement
11		The hearing c	onducted and evidence adduced herein, OR
12		Affidavits of]	No Opposition filed,
13	IT IS OF	RDERED, AI	DJUDGED AND DECREED
14		THE MOTIO	N IS DENIED for Item(s) No, , , , the following
15	ľ	easons (checl	k all that apply):
16	[☐ More	than five years have not elapsed since Mover completed the
17		misder	meanor 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		offense	es:
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	\Box An offense defined or enumerated as a "crime of violence"
2	pursuant to La. Rev. Stat. Ann. 14:2(B) at the time the
3	Motion was filed.
4	The arrest and conviction being sought to have expunged is for
5	operating a motor vehicle while intoxicated and a copy of the proof
6	from the Department of Public Safety and Corrections, office of
7	motor vehicles, is not attached as required by C.Cr.P. Art. 984(A).
8	Mover has had another record of misdemeanor conviction expunged
9	during the previous five-year period.
10	The record of arrest and conviction which Mover seeks to have
11	expunged is for operating a motor vehicle while intoxicated and
12	Mover has had another record of arrest and misdemeanor conviction
13	expunged during the previous ten-year period.
14	Mover has had another record of felony conviction expunged during
15	the previous fifteen-year period.
16	Mover was convicted of a misdemeanor which arose from
17	circumstances involving a sex offense as defined in R.S. 15:541.
18	Mover was convicted of misdemeanor offense of domestic abuse
19	battery which was not dismissed pursuant to C. Cr. P. Art. 894(B).
20	Mover did not complete pretrial diversion.
21	The charges against the mover were not dismissed or refused.
22	Mover's felony conviction was not set aside and dismissed pursuant
23	to C. Cr. P. Art. 893(E).
24	Mover's felony conviction was not set aside and dismissed pursuant
25	to C. Cr. P. Art. 894(B).
26	Mover completed a DWI pretrial diversion program, but five years
27	have not elapsed since the mover's date of arrest.

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- Mover's conviction for felony carnal knowledge of a juvenile is not
 defined as misdemeanor carnal knowledge of a juvenile had the
 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 certifying that such request is for the purpose of prosecuting, investigating, or 13 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

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 6	NAME:		
7	DOB:/(MM/DD/YY)		
8	GENDER: FemaleMale		
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	 Louisiana Bureau of Criminal Identification and Information 		
26	 5. Attorney for Defendant (or defendant) 		
27	6. Clerk of Court "		
28	* * *		

1 2	Art. 996. Submission of expungement records to office of motor vehicles; forms to be used		
3 4 5 6 7 8 9	TRANSMITTAL OF RECORDS FOR EXPUNGEMENT OF DWI PURSUANT TO C.Cr.P. Art. 984		
10 11 12	OFFICE OF MOTOR VEHICLES P.O. BOX 64886 BATON ROUGE, LA 70896		
13	NAME DRIVERS LICENSE#		
14	DATE OF BIRTH: OFFENSE DATE:		
15	SS# DOCKET NO:		
16	TICKET NO:		
17 18 19 20 21	☐ Attached is a certified copy of the court minutes, original/certified copy of fingerprints and proof of the requirements as set forth in the Code of Criminal Procedure Article 556.1. Additionally, a \$50.00 money order or certified funds made payable to the office of motor vehicles, in reference to the above named defendant is attached; or		
22 23 24 25 26	☐ Attached is a copy of the certified letter received from office of motor vehicles indicating that all of the required documents were previously filed in conjunction with the requirements of Article 894 and are on file. Additionally, a \$50.00 money order or certified funds made payable to the office of motor vehicles is attached.		
27 28	<u>NOTE:</u> Do not use this form to submit records of a DWI plea pursuant to Code of 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 34 35 36 37 38	TRANSMITTAL OF RECORDS OF DWI PLEA FOR ARTICLE 894		
39 40 41	OFFICE OF MOTOR VEHICLES P.O. BOX 64886 BATON ROUGE, LA 70896		

1	NAME	DRIVERS LICENSE#		
2	DATE OF BIRTH:	OFFENSE DATE:		
3	<u>SS#</u>	DOCKET NO:		
4	TICKET NO:	TICKET NO:		
5 6 7 8 9	fingerprints, and Criminal Procedu	fied copy of the court minutes, original/certified copy of proof of the requirements as set forth in the Code of re Article 556.1, as well as a \$50.00 money order or de payable to the office of motor vehicles, in reference to lefendant.		
10 11	<u>NOTE: Do not use this fo</u> Code of Criminal Procedu	orm to submit records of a DWI expungement pursuant to ure Article 984.		

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)]

2015 Regular Session

Lopinto

Abstract: Amends the provisions of law providing for expungements.

<u>Present law</u> provides for the expungement of criminal records of arrest and convictions of certain criminal offenses.

<u>Present law</u> provides that an arrest that did not result in a conviction may be expunged if the time period for prosecution has expired and the person was not prosecuted, the district attorney declined to prosecute any offenses arising out of the arrest, or proceedings were finally disposed of by dismissal, sustaining a motion to quash, or acquittal.

<u>Proposed law</u> retains <u>present law</u> and provides that no person arrested for a violation of operating a vehicle while intoxicated and placed by the prosecuting authority into a pretrial diversion program, shall be entitled to an expungement of the record until five years have elapsed since the date of arrest for that offense.

<u>Proposed law</u> provides that motions to expunge a record of arrest that did not result in a conviction shall be served in the same manner as all other expungement motions.

<u>Proposed law</u> provides that when service of a motion of expungement is made by U.S. mail, the motion shall be accompanied by a certificate of service indicating the date the motion was placed in the U.S. mail for service.

<u>Present law</u> provides that a misdemeanor conviction which arose from circumstances involving a sex offense cannot be expunged.

<u>Proposed law</u> changes the provisions of <u>present law</u> to provide that if the misdemeanor conviction is the result of an arrest for a sex offense, the record cannot be expunged.

<u>Proposed law</u> adds that a misdemeanor conviction for the crime of stalking cannot be expunged.

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<u>Present law</u> 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.

<u>Proposed law</u> provides that when a defendant who has entered a plea pursuant to <u>present law</u> 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.

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

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

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

<u>Proposed law</u> makes changes to form provisions to make them consistent with <u>present law</u> 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 <u>House Committee on Administration of</u> <u>Criminal Justice to the original bill:</u>
- 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.