

2022 Regular Session

SENATE BILL NO. 334

BY SENATOR JACKSON

CRIMINAL RECORDS. Provides for attempted malfeasance in office convictions to be set aside and expunged. (8/1/22)

1 AN ACT

2 To amend and reenact Code of Criminal Procedure Art. 978, 987, and 989, and to enact R.S.
3 14:134(D), relative to expungement of records; to provide relative to the crime of
4 attempted malfeasance in office; to provide that convictions for attempted
5 malfeasance in office may be set aside; to provide relative to expungement of records
6 of arrest and conviction for attempted malfeasance in office; and to provide for
7 related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. Code of Criminal Procedure Art. 978, 987, and 989 are hereby amended
10 and reenacted to read as follows:

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

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

15 * * *

16 **(4) The person was convicted of attempted malfeasance in office. If the**
17 **expungement is granted under this Subparagraph, it shall be filed at no cost to**

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the defendant.

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Art. 987. Motion to set aside conviction and dismiss prosecution; rule to show cause; order of dismissal forms to be used

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

No.: _____

Division: " _____ "

State of Louisiana

vs.

**MOTION TO SET ASIDE CONVICTION AND
DISMISS PROSECUTION**

NOW INTO HONORABLE COURT, comes

- Defendant, OR
- Defendant through undersigned Counsel,

who moves that the conviction pursuant to Louisiana Code of Criminal Procedure

- Article 894(B) Misdemeanors, OR
- Article 893(E) Felonies, **OR**

in the above numbered case be set aside and that the prosecution dismissed in accordance with the Code of Criminal Procedure in that:

- ~~the~~ **The** period of the deferred sentence has run and petitioner has successfully completed the terms of his probation.
- The defendant was convicted for the offense of attempted malfeasance in office.**

The mover is further identified below:

DOCKET NUMBER: _____

CHARGE: _____

DATE OF ARREST: _____

ARRESTING AGENCY: _____

CITY/PARISH OF ARREST: _____

The Mover prays that, after a contradictory hearing with the District Attorney's Office, the Court order the above numbered case be set aside and that the prosecution dismissed in accordance with the Code of Criminal Procedure.

Respectfully submitted,

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Signature of Attorney for Mover/Defendant

Attorney for Mover/Defendant Name

Attorney's Bar Roll No.

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

STATE OF LOUISIANA
JUDICIAL DISTRICT FOR THE PARISH OF

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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 _____

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.

JUDGE

PLEASE SERVE:

- 1. District Attorney: _____
- 2. Attorney for Defendant and/or Defendant _____ "

* * *

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): _____
 ARREST NUMBER (ATN): _____
 AGENCY ITEM NO. _____

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

II. ARREST INFORMATION

- 1. Mover was arrested on _____ / _____ / _____ (MM/DD/YYYY)
- 2. _____ YES _____ NO A supplemental sheet with arrests and/or convictions is attached after page 2 of this Motion.
- 3. Mover was:
 - _____ YES _____ NO Arrested, but it did not result in conviction
 - _____ YES _____ NO Convicted of _____ and seeks to expunge a misdemeanor
 - _____ YES _____ NO Convicted of _____ and seeks to expunge a felony
 - _____ YES _____ NO Convicted but determined to be factually innocent and entitled to compensation for a wrongful conviction pursuant to the provisions of R.S. 15:572.8.
- 4. Mover was booked and/or charged with the following offenses: (List each offense booked and charged separately. Attach a supplemental sheet, if necessary.)

ARRESTS THAT DID NOT RESULT IN CONVICTION

 Yes No **NO. 1** La. Rev. Stat. Ann. § _____ : _____
 Name of the offense _____
 () Time expired for prosecution _____
 () Not prosecuted for any offense (MM/DD/YYYY)
 arising out of this charge.
 () Pre-trial Diversion Program.
 () DWI Pre-Trial Diversion Program

1 and 5 years have elapsed since the
 2 date of arrest.
 3 () Charge dismissed
 4 () Found not guilty/judgment of acquittal
 5 **NO. 2** La. Rev. Stat. Ann. § _____ : _____
 6 Name of the offense _____
 7 () Time expired for prosecution _____
 8 (MM/DD/YYYY)
 9 () Not prosecuted for any
 10 offense arising out of this charge.
 11 () Pre-trial Diversion Program.
 12 () Charge dismissed
 13 () Found not guilty/judgment of acquittal

14 **NO. 3** La. Rev. Stat. Ann. § _____ : _____
 15 Name of the offense _____
 16 () Time expired for prosecution _____
 17 (MM/DD/YYYY)
 18 () Not prosecuted for any offense
 19 arising out of this charge.
 20 () Pre-trial Diversion Program.
 21 () Charge dismissed
 22 () Found not guilty/judgment of acquittal

23 Yes No **MISDEMEANOR CONVICTIONS**

24 **NO. 1** La. Rev. Stat. Ann. § _____ : _____
 25 Name of the offense _____
 26 () Conviction set aside/dismissed _____ / _____ / _____
 27 pursuant to C.Cr.P. Art. 894(B) (MM/DD/YYYY)
 28 () More than 5 years have passed
 29 since completion of sentence.

30 **NO. 2** La. Rev. Stat. Ann. § _____ : _____
 31 Name of the offense _____
 32 () Conviction set aside/dismissed _____ / _____ / _____
 33 pursuant to C.Cr.P. Art. 894(B) (MM/DD/YYYY)
 34 () More than 5 years have passed
 35 since completion of sentence.

36 Yes No **FELONY CONVICTIONS**

37 **NO. 1** La. Rev. Stat. Ann. § _____ : _____
 38 () Conviction set aside/dismissed _____ / _____ / _____
 39 pursuant to C.Cr.P. Art. 893(E) (MM/DD/YYYY)
 40 () More than 10 years have passed
 41 since completion of sentence
 42 () Received a first offender pardon for an ~~eligible~~ **eligible**
 43 offense

44 **() Convicted of attempted malfeasance in office**

45 **NO. 2** La. Rev. Stat. Ann. § _____ : _____
 46 () Conviction set aside/dismissed _____ / _____ / _____
 47 pursuant to C.Cr.P. Art. 893(E) (MM/DD/YYYY)
 48 () More than 10 years have passed
 49 since completion of sentence
 50 () Received a first offender pardon for an eligible offense

51 **() Convicted of attempted malfeasance in office**

52 Yes No **OPERATING A MOTOR VEHICLE WHILE**

53 **INTOXICATED CONVICTIONS**

54 Mover has attached the following:
 55 () A copy of the proof from the Department of Public Safety and
 56 Corrections, office of motor vehicles, that it has received from the
 57 clerk of court a certified copy of the record of the plea, fingerprints
 58 of the defendant, and proof of the requirements set forth in C.Cr.P.

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Art. 556, which shall include the defendant's date of birth, last four digits of social security number, and driver's license number

5. Mover has attached to this Motion the following pertinent documents:
- Criminal Background Check from the La. State Police/Parish Sheriff dated within the past 60 days (required).
 - Bill(s) of Information (if any).
 - Minute entry showing final disposition of case (if any).
 - Certification Letter from the District Attorney for fee waiver (if eligible).
 - Certification Letter from the District Attorney verifying that the applicant has no convictions or pending applicable criminal charges in the requisite time periods.
 - Certification Letter from the District Attorney verifying that the charges were refused.
 - Certification Letter from the District Attorney verifying that the applicant did not participate in a pretrial diversion program.
 - Copy of a first offender pardon
 - A copy of the order waiving the sex offender registration and notification requirements.
 - A copy of the court order determination of factual innocence and order of compensation for a wrongful conviction pursuant to the provisions of R.S. 15:572.8 if applicable.

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

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

Respectfully submitted,

Signature of Attorney for Mover/Defendant

Attorney for Mover/Defendant Name

Attorney's Bar Roll No.

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. 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): _____

ARREST NUMBER (ATN): _____

AGENCY ITEM NO. _____

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

II. ARREST INFORMATION

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

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

3. Mover was:
_____ YES _____ NO Arrested, but it did not result in conviction
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_____ YES _____ NO Convicted of and seeks to expunge a felony
_____ YES _____ NO Convicted but determined to be factually innocent and entitled to compensation for a wrongful conviction pursuant to the provisions of R.S. 15:572.8.

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

ARRESTS THAT DID NOT RESULT IN CONVICTION

 Yes No **NO. 1** La. Rev. Stat. Ann. § _____ : _____

Name of the offense _____

() Time expired for prosecution _____
(MM/DD/YYYY)

() Not prosecuted for any offense arising out of this charge.

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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

5. Mover has attached to this Motion the following pertinent documents:
- Criminal Background Check from the La. State Police/Parish Sheriff dated within the past 60 days (required).
 - Bill(s) of Information (if any).
 - Minute entry showing final disposition of case (if any).
 - Certification Letter from the District Attorney for fee waiver (if eligible).
 - Certification Letter from the District Attorney verifying that the applicant has no convictions or pending applicable criminal charges in the requisite time periods.
 - Certification Letter from the District Attorney verifying that the charges were refused.
 - Certification Letter from the District Attorney verifying that the applicant did not participate in a pretrial diversion program.
 - Copy of a first offender pardon
 - A copy of the order waiving the sex offender registration and notification requirements.
 - A copy of the court order determination of factual innocence and order of compensation for a wrongful conviction pursuant to the provisions of R.S. 15:572.8 if applicable.

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

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

Respectfully submitted,

Signature of Attorney for Mover/Defendant

Attorney for Mover/Defendant Name

Attorney's Bar Roll No.

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

Section 2. R.S. 14:134(D) is hereby enacted to read as follows:

§134. Malfeasance in office

* * *

D. No person shall be convicted of attempted malfeasance in office. Any person convicted of attempted malfeasance in office prior to August 1, 2022, shall have grounds to have the conviction set aside and the conviction expunged.

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Whitney Kauffeld.

DIGEST

SB 334 Original

2022 Regular Session

Jackson

Present law provides for qualifications for a person to file a motion to expunge his record of arrest and conviction, including that the conviction was set aside and prosecution dismissed, more than 10 years have elapsed from the completion of the sentence without any additional convictions, the offender is entitled to a first offender pardon, or upon a contradictory hearing.

Proposed law retains present law and provides for the additional qualification that the conviction was for the offense of attempted malfeasance in office.

Present law provides forms for a motion to set aside a conviction and for expungement.

Proposed law retains present law and adds that a person may file a motion to set aside a conviction and receive an expungement for the crime of attempted malfeasance in office.

Proposed law retains present law but provides there is no offense of attempted malfeasance in office.

Effective August 1, 2022.

(Amends C.Cr.P. Art. 978, 987, and 989; adds R.S. 14:134(D))