

Regular Session, 2012

SENATE BILL NO. 606

BY SENATOR MORRELL

PUBLIC RECORDS. Provides relative to expungement of records. (gov sig)

1 AN ACT

2 To amend and reenact R.S. 44:9(A)(3)(a) and (b), (4)(a), (5)(a), (c) and (d), (B)(1)(b) and
3 (2), (C)(2), and (E)(1)(b), relative to records of arrests and violations of municipal
4 ordinances and state statutes; to provide with respect to expungement of records; and
5 to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. R.S. 44:9(A)(3)(a) and (b), (4)(a), (5)(a), (c) and (d), (B)(1)(b) and (2),
8 (C)(2), and (E)(1)(b) are hereby amended and reenacted to read as follows:

9 §9. Records of violations of municipal ordinances and of state statutes classified as
10 a misdemeanor or felony

11 A.(1) * * *

12 (3)(a) The Bureau of Criminal Identification and Information may charge a
13 processing fee of **not more than** two hundred fifty dollars for the expungement **and**
14 **destruction** of any record of arrest when ordered to do so by the court in compliance
15 with the provisions of this Section.

16 (b) The clerk of court shall collect the processing fee at the time the motion
17 for expungement is filed and may collect a fee of up to ten dollars **from the**

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Coding: Words which are ~~struck through~~ are deletions from existing law; words in **boldface type and underscored** are additions.

1 the applicant has no felony convictions and no pending misdemeanor or felony
2 charges under a bill of information or indictment. Within thirty days of movant's
3 written request, the district attorney must either provide the requested
4 certification or request a date for a contradictory hearing.

5 (d) If, after notice and the opportunity for a contradictory hearing with the
6 district attorney ~~and the arresting law enforcement agency~~, the court finds that the
7 mover is entitled to the relief sought for the above reasons, it shall order all law
8 enforcement agencies to expunge but not destroy the record of the same in
9 accordance with the provisions of this Paragraph; however, nothing in this Paragraph
10 shall limit or impede the authority under law to consider prior arrests or convictions
11 in pursuing prosecution under multiple offender provisions or impede the
12 investigation of any law enforcement official seeking to ascertain or confirm the
13 qualifications of any person for any privilege or license authorized by law.

14 B.(1) Any person who has been arrested for the violation of a felony offense
15 or who has been arrested for a violation of R.S. 14:34.2, R.S. 14:34.3, or R.S. 14:37
16 may make a written motion to the district court for the parish in which he was
17 arrested for the expungement of the arrest record if:

18 * * *

19 (b) The record of arrest that resulted in ~~and~~ prosecution for the offense is
20 without substantial probative value as a prior act for any subsequent prosecution.

21 (2) If, after notice and the opportunity for a contradictory hearing with the
22 district attorney ~~and the arresting law enforcement agency~~, the court finds that the
23 mover is entitled to the relief sought for the above reasons, it shall order all law
24 enforcement agencies to expunge the record of the same in accordance herewith.
25 However, nothing in this Paragraph shall limit or impede the authority under law to
26 consider prior arrests or convictions in pursuing prosecution under multiple offender
27 provisions or impede the investigation of any law enforcement official seeking to
28 ascertain or confirm the qualifications of any person for any privilege or license
29 authorized by law.

* * *

(2) If, after **notice and the opportunity for** a contradictory hearing with the ~~arresting agency~~ **district attorney**, the court finds that the mover is entitled to the relief sought for any of the above reasons, it shall order all law enforcement agencies to expunge same in accordance herewith. However, the arresting agency may preserve the name and address of the person arrested and the facts of the case for investigative purposes only.

* * *

E.(1)

* * *

(b) After **notice and the opportunity for** a contradictory hearing with the district attorney ~~and the arresting law enforcement agency~~, the court may order expungement of the record of a felony conviction dismissed pursuant to Article 893 of the Code of Criminal Procedure. Upon the entry of such an order of expungement, all rights which were lost or suspended by virtue of the conviction shall be restored to the person against whom the conviction has been entered, and such person shall be treated in all respects as not having been arrested or convicted unless otherwise provided in this Section or otherwise provided in the Code of Criminal Procedure Articles 893 and 894.

* * *

Section 2. This Act shall become effective upon signature by the governor or, if not signed by the governor, upon expiration of the time for bills to become law without signature by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If vetoed by the governor and subsequently approved by the legislature, this Act shall become effective on the day following such approval.

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Angela L. De Jean.

DIGEST

Present law provides that any person who has been arrested for the violation of a municipal or parish ordinance or for violation of a state statute which is classified as a misdemeanor may make a written motion to the district, parish, or city court in which the violation was prosecuted or to the district court located in the parish in which he was arrested, for

expungement of the arrest record, under certain conditions.

Present law provides that the Bureau of Criminal Identification and Information may charge a processing fee of \$250 for the expungement of any record of arrest when ordered to do so by the court in compliance with present law.

Proposed law provides that the Bureau of Criminal Identification and Information may charge a processing fee of not more than \$250 for the expungement and destruction of any record of arrest when ordered to do so by the court in compliance with present law.

Present law provides that the clerk of court shall collect the processing fee at the time the motion for expungement is filed and may collect a fee of up to \$10 to cover the clerk's administration costs.

Proposed law provides instead that the clerk of court may charge up to \$10 from the processing fee to cover his costs.

Present law provides that if the court finds the mover is entitled to the relief sought, the clerk shall direct the collected processing fee to the Bureau of Criminal Identification and Information and the processing fee amount shall be deposited immediately upon receipt into the Criminal Identification and Information Fund. If the court does not grant such relief, the clerk of court shall return the fee to the moving party.

Present law provides that the sheriff and the district attorney may each charge a processing fee of \$50 for the expungement of any record of arrest when ordered to do so by the court in compliance with present law.

Proposed law provides instead that the sheriff and the district attorney may each collect from the processing fee a charge of up to \$50 for the expungement of any record of arrest when ordered to do so by the court in compliance present law.

Present law provides that any person who has been convicted for the violation of a municipal or parish ordinance, a traffic violation, or for violation of a state statute which is classified as a misdemeanor may make a written motion to the district, parish, or city court in which the violation was prosecuted or to the district court located in the parish in which he was arrested, for expungement of the arrest record if five or more years has elapsed between the date of the motion and the successful completion of any sentence, deferred adjudication, or period of probation or parole.

Present law provides that notwithstanding present law regarding the set aside of a conviction or the dismissal of a prosecution, an expungement shall occur only once with respect to any person during a five year period, except in the case of a misdemeanor offense of operating a vehicle while intoxicated which may occur only once with respect to any person during a 10 year period.

Proposed law retains present law but changes the number of years the movant must wait from the completion of any sentence (or period of probation and parole) to file a motion for expungement from five to two.

Present law provides that no person shall be entitled to an expungement if the misdemeanor conviction arose from circumstances involving a sexual act or act of domestic violence.

Proposed law retains present law.

Present law provides that the motion for expungement shall include a certification obtained from the district attorney which verifies that, to his knowledge, the applicant has no felony convictions and no pending misdemeanor or felony charges under a bill of information or indictment.

Proposed law provides that before filing the motion for expungement, a movant shall deliver a written request to the district attorney for a certification which verifies that, to his knowledge, the applicant has no felony convictions and no pending misdemeanor or felony charges under a bill of information or indictment.

Proposed law provides that within 30 days of movant's written request, the district attorney must either provide the requested certification or request a date for a contradictory hearing.

Present law provides that if, after a contradictory hearing with the district attorney and the arresting law enforcement agency, the court finds that the mover is entitled to the relief sought for the above reasons, it shall order all law enforcement agencies to expunge but not destroy the record of the same in accordance with the provisions of present law.

Present law provides that nothing in present law shall limit or impede the authority to consider prior arrests or convictions in pursuing prosecution under multiple offender provisions or impede the investigation of any law enforcement official seeking to ascertain or confirm the qualifications of any person for any privilege or license authorized by present law.

Proposed law retains present law and adds that the district attorney shall have the opportunity for a contradictory hearing after notice of the movant's motion for expungement. Proposed law deletes from present law the opportunity for the arresting law enforcement agency to have a contradictory hearing.

Present law provides that any person who has been arrested for the violation of a felony offense or who has been arrested for a violation of present law may make a written motion to the district court for the parish in which he was arrested for the expungement of the arrest record if:

1. The district attorney declines to prosecute, or the prosecution has been instituted, and such proceedings have been finally disposed of by acquittal, dismissal, or sustaining a motion to quash; and
2. The record of arrest and prosecution for the offense is without substantial probative value as a prior act for any subsequent prosecution.

Proposed law retains present law and clarifies that the record of arrest resulted in prosecution for the offense.

Present law provides that any person who has been arrested for the violation of a state statute which is classified as a felony may make a written motion to the district court for the parish in which he was arrested for expungement of the arrest record if the time limitation for the institution of prosecution on the offense has expired, and no prosecution has been instituted.

Proposed law retains present law.

Present law provides that if, after a contradictory hearing with the arresting agency, the court finds that the mover is entitled to the relief sought for any of the above reasons, it shall order all law enforcement agencies to expunge same in accordance herewith.

Present law provides that the arresting agency may preserve the name and address of the person arrested and the facts of the case for investigative purposes only.

Proposed law retains present law but adds that the district attorney instead of the arresting agency shall have the opportunity for a contradictory hearing after notice of the motion for expungement.

Present law provides that whoever violates any provisions of present law shall be punished

by a fine of not more than \$250 or by imprisonment of not more than 90 days, or both, if the conviction is for a first violation; second and subsequent violations shall be punished by a fine of not more than \$500 or imprisonment of six months, or both.

Proposed law retains present law.

Present law provides that no court shall order the destruction of any record of the arrest and prosecution of any person convicted of a felony, including a conviction dismissed pursuant to present law.

Proposed law retains present law.

Present law provides that after a contradictory hearing with the district attorney and the arresting law enforcement agency, the court may order expungement of the record of a felony conviction dismissed pursuant to present law.

Present law provides that upon the entry of such an order of expungement, all rights which were lost or suspended by virtue of the conviction shall be restored to the person against whom the conviction has been entered, and such person shall be treated in all respects as not having been arrested or convicted unless otherwise provided in present law.

Proposed law retains present law and adds that the district attorney shall have the opportunity for a contradictory hearing after notice of the movant's motion for expungement. Proposed law deletes from present law the opportunity for the arresting law enforcement agency to have a contradictory hearing.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Amends R.S. 44:9(A)(3)(a) and (b), (4)(a), (5)(a), (c) and (d), (B)(1)(b) and (2), (C)(2), and (E)(1)(b))