

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), (5)(a), (c) and (d), (B)(1)(b) and (2), (C)(2), and  
3 (E)(1)(b), relative to records of arrests and violations of municipal ordinances and  
4 state statutes; to provide with respect to expungement of records; and to provide for  
5 related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. R.S. 44:9(A)(3)(a), (5)(a), (c) and (d), (B)(1)(b) and (2), (C)(2), and  
8 (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 two hundred fifty dollars for the expungement **and destruction** of  
14 any record of arrest when ordered to do so by the court in compliance with the  
15 provisions of this Section.

16 \* \* \*

17 (5)(a) Any person who has been convicted for the violation of a municipal

1 or parish ordinance, a traffic violation, or for violation of a state statute which is  
2 classified as a misdemeanor may make a written motion to the district, parish, or city  
3 court in which the violation was prosecuted or to the district court located in the  
4 parish in which he was arrested, for expungement of the arrest record if ~~five~~ **two** or  
5 more years has elapsed between the date of the motion and the successful completion  
6 of any sentence, deferred adjudication, or period of probation or parole.  
7 Notwithstanding the provisions of Code of Criminal Procedure Article 892.1 or 894,  
8 or any other provision of law to the contrary regarding the set aside of a conviction  
9 or the dismissal of a prosecution, an expungement shall occur only once with respect  
10 to any person during a ~~five~~ **two**-year period, except in the case of a misdemeanor  
11 offense of operating a vehicle while intoxicated which may occur only once with  
12 respect to any person during a ten-year period.

13 \* \* \*

14 (c) **Before filing the** ~~The~~ motion for expungement, **a movant shall deliver**  
15 **a written request to the district attorney for a certification** ~~shall include a~~  
16 ~~certification obtained from the district attorney which~~ **that** verifies that, to his  
17 knowledge, the applicant has no felony convictions and no pending misdemeanor or  
18 felony charges under a bill of information or indictment. **Within thirty days of**  
19 **movant's written request, the district attorney must either provide the**  
20 **requested certification or request a date for a contradictory hearing.**

21 (d) 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 but not destroy the ~~record of the same~~ **arrest**  
25 **record** in accordance with the provisions of this Paragraph; however, nothing in this  
26 Paragraph shall limit or impede the authority under law to consider prior arrests or  
27 convictions in pursuing prosecution under multiple offender provisions or impede  
28 the investigation of any law enforcement official seeking to ascertain or confirm the  
29 qualifications of any person for any privilege or license authorized by law.

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

5 \* \* \*

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

8 (2) If, after **notice and the opportunity for** a contradictory hearing with the  
9 district attorney ~~and the arresting law enforcement agency~~, the court finds that the  
10 mover is entitled to the relief sought for the above reasons, it shall order all law  
11 enforcement agencies to expunge the ~~record of the same~~ **arrest record** in accordance  
12 herewith. However, nothing in this Paragraph shall limit or impede the authority  
13 under law to consider prior arrests or convictions in pursuing prosecution under  
14 multiple offender provisions or impede the investigation of any law enforcement  
15 official seeking to ascertain or confirm the qualifications of any person for any  
16 privilege or license authorized by law.

17 C.(1) \* \* \*

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

24 \* \* \*

25 E.(1) \* \* \*

26 (b) After **notice and the opportunity for** a contradictory hearing with the  
27 district attorney ~~and the arresting law enforcement agency~~, the court may order  
28 expungement of the record of a felony conviction dismissed pursuant to Article 893  
29 of the Code of Criminal Procedure. Upon the entry of such an order of expungement,

1 all rights which were lost or suspended by virtue of the conviction shall be restored  
2 to the person against whom the conviction has been entered, and such person shall  
3 be treated in all respects as not having been arrested or convicted unless otherwise  
4 provided in this Section or otherwise provided in the Code of Criminal Procedure  
5 Articles 893 and 894.

6 \* \* \*

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

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The original instrument was prepared by Angela Lockett De Jean. The following digest, which does not constitute a part of the legislative instrument, was prepared by Tammy Crain Waldrop.

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#### DIGEST

Morrell (SB 606)

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 retains present law but provides that the fee shall include expungement and destruction.

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 that 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 that 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 arrest record 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 the arrest record in accordance with present law.

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 (5)(a), (c) and (d), (B)(1)(b) and (2), (C)(2), and (E)(1)(b))

#### Summary of Amendments Adopted by Senate

##### Committee Amendments Proposed by Senate Committee on Judiciary B to the original bill

1. Removes present law requirement that the present law fees of the clerk of court, sheriff, and district attorney be included as part of the present law \$250 processing fee for an expungement.

##### Senate Floor Amendments to engrossed bill

1. Clarifies language.
2. Makes technical corrections.