
DIGEST

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Morrell

SB No. 606

Present law (R.S. 44:9(A)) 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 person 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. 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, the movant shall deliver a written request to the district attorney for a certification that verifies the information required by present law. Requires the district attorney to provide the certification or deny the request within 60 days of receiving the movant's written request. Otherwise retains present law.

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 reasons provided in present law, it shall order all law enforcement agencies to expunge but not destroy the arrest record in accordance with the provisions of present law.

Proposed law provides that the order for expungement occurs after notice and an opportunity for a contradictory hearing, instead of after a contradictory hearing. Otherwise retains present law.

Present law (R.S. 44:9(B)) 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 (R.S. 14:34.2, 34.3, or 37) 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 additionally provides that before filing the motion of expungement, a movant shall deliver a written request to the district attorney for a certification that verifies that his office declines to prosecute on the offense, or that prosecution has been instituted, and such proceedings have been finally disposed of by acquittal, dismissal, or sustaining a motion to quash and that the record of arrest and prosecution for the offense is without substantial probative value as a prior act for any subsequent prosecution. Requires the district attorney to provide the certification or deny the request within 60 days of receiving the movant's written request.

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 reasons provided in present law, it shall order all law enforcement agencies to expunge but not destroy the arrest record in accordance with the provisions of present law.

Proposed law provides that the order for expungement occurs after notice and an opportunity for a contradictory hearing, instead of after a contradictory hearing. Otherwise retains present law.

Present law (R.S. 44:9(C)) 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 and additionally provides that before filing the motion of expungement, a movant shall deliver a written request to the district attorney for a certification that verifies that the time limitation for the institution of prosecution on the offense has expired and no prosecution has been instituted. Requires the district attorney to provide the certification or deny the request within 60 days of receiving the movant's written request.

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 reasons provided in present law, it shall order all law enforcement agencies to expunge the arrest record in accordance with present law.

Proposed law provides that the order for expungement occurs after notice and an opportunity for a contradictory hearing, instead of after a contradictory hearing. Provides that the district attorney shall participate in the contradictory hearing in addition to the arresting agency. Otherwise retains present law.

Present law (R.S. 44:9(E)) 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 (Code of Criminal Procedure Article 893). 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 (Code of Criminal Procedure Article 893).

Proposed law provides that the order for expungement occurs after notice and an opportunity for a contradictory hearing, instead of after a contradictory hearing. Otherwise retains present law.

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.

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

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

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.

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on House and Governmental Affairs to the reengrossed bill.

1. Deletes provisions from proposed law relative to fees charged for the destruction of records of arrest.
2. Deletes provisions from proposed law changing time limits for seeking expungement relative to certain offenses.
3. Adds provisions requiring a person prior to filing a motion for expungement to file a written request with the district attorney for a certification verifying that the requirements of present law are met. Requires the district attorney to provide the certification or deny the request within 60 days of receiving the movant's written request.
4. Deletes provisions of proposed law removing the arresting law enforcement agency from participation in contradictory hearings concerning expungement.
5. Makes technical changes.