

**ACT No. 200**

2015 Regular Session

HOUSE BILL NO. 284

BY REPRESENTATIVE LOPINTO AND SENATOR GALLOT

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AN ACT

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

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 A. 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 Article 979.

27 Art. 977. Motion to expunge a record of arrest and conviction of a misdemeanor  
28 offense

29 \* \* \*

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~~ A  
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~~ A  
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 a

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 of not more than  
29 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                    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  
 30                   records. The court cost provided by this Paragraph shall be submitted to the

1 department regardless of whether the clerk of court is submitting this matter to the  
2 department pursuant to Paragraph B or D of this Article.

3 D. In lieu of forwarding the items listed in Paragraph B of this Article, the  
4 clerk of court may send a copy of the letter issued by the department pursuant to  
5 Subparagraph (B)(1) of Article 894 if the clerk had previously submitted records of  
6 the plea to the department pursuant to that Article.

7 \* \* \*

8 Art. 986. Forms for the expungement of records

9 \* \* \*

10 C. The clerk of court for any court in the state of Louisiana having criminal  
11 jurisdiction may amend any of the forms provided for in Articles 987, 988, 989, 990,  
12 991, 992, 993, 994, and 995 to provide the appropriate name of the court ordering  
13 an expungement of records.

14 \* \* \*

15 Art. 988. Motion for fee exemption form to be used

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

18 \_\_\_\_\_

19 No.: \_\_\_\_\_ Division: " \_\_\_\_\_ "

20 **State of Louisiana**

21 **vs.**

22 \_\_\_\_\_

23 **CERTIFICATION OF FEE WAIVER**

24 *To be completed by defendant and submitted to the District Attorney's Office prior*  
25 *to filing. Append completed form to Motion of Expungement at filing only if eligible.*

1	DEFENDANT NAME	
2	DATE OF BIRTH	
3	SSN ( <u>last 4 digits</u> )#	XXX-XX-
4	DATE OF ARREST	
5	DOCKET NUMBER	
6	CHARGE	

7 In accordance with Louisiana Code of Criminal Procedure Article 983, the Office of  
 8 the District Attorney has reviewed the available databases and determined that  
 9 *(Check all that apply. To be completed by authorized personnel from the District*  
 10 *Attorney'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**



1 DRIVER LIC.# \_\_\_\_\_  
 2 ARRESTING AGENCY: \_\_\_\_\_  
 3 SID# (if available): \_\_\_\_\_  
 4 ARREST NUMBER (ATN): \_\_\_\_\_  
 5 AGENCY ITEM NUMBER: \_\_\_\_\_

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

9 **II. ARREST INFORMATION**

- 10 1. Mover was arrested on \_\_\_\_/\_\_\_\_/\_\_\_\_ (MM/DD/YYYY)  
 11 2. \_\_\_\_ YES \_\_\_\_ NO A supplemental sheet with arrests and/or  
 12 convictions is attached after page 2 of this  
 13 Motion.  
 14 3. Mover was:  
 15 \_\_\_\_ YES \_\_\_\_ NO Arrested, but it did not result in conviction  
 16 \_\_\_\_ YES \_\_\_\_ NO Convicted of and seeks to expunge a  
 17 misdemeanor  
 18 \_\_\_\_ YES \_\_\_\_ NO Convicted of and seeks to expunge a felony  
 19 4. Mover was booked and/or charged with the following offenses: (List each  
 20 offense booked and charged separately. Please number each item numerically  
 21 beginning with number 1. Attach a supplemental sheet, if necessary.)

22 \_\_\_\_ Yes \_\_\_\_ No **ARRESTS THAT DID NOT RESULT IN CONVICTION**

23 **ITEM NO. 1** La. Rev. Stat. Ann. § \_\_\_\_\_ : \_\_\_\_\_  
 24 Name of the offense \_\_\_\_\_  
 25 ( ) Time expired for prosecution \_\_\_\_\_  
 26 (MM/DD/YYYY)  
 27 ( ) Not prosecuted for any offense  
 28 arising out of this charge.  
 29 ( ) Pre-trial Diversion Program.  
 30 ( ) DWI Pre-Trial Diversion Program  
 31 and 5 years have elapsed since the  
 32 date of arrest.  
 33 ( ) Charge dismissed  
 34 ( ) Found not guilty/judgment of acquittal

35 **ITEM NO. 2** La. Rev. Stat. Ann. § \_\_\_\_\_ : \_\_\_\_\_  
 36 Name of the offense \_\_\_\_\_  
 37 ( ) Time expired for prosecution \_\_\_\_\_  
 38 (MM/DD/YYYY)  
 39 ( ) Not prosecuted for any  
 40 offense arising out of this charge.  
 41 ( ) Pre-trial Diversion Program.  
 42 ( ) Charge dismissed  
 43 ( ) Found not guilty/judgment of acquittal





- 1  Minute entry showing final disposition of case (if any).
- 2  Certification Letter from the District Attorney for fee waiver (if  
3 eligible).
- 4  Certification Letter from the District Attorney verifying that the  
5 applicant has no convictions or pending applicable criminal charges  
6 in the requisite time periods.
- 7  Certification Letter from the District Attorney verifying that the  
8 charges were refused.
- 9  Certification Letter from the District Attorney verifying that the  
10 applicant did not participate in a pretrial diversion program.
- 11  A copy of the order waiving the sex offender registration and  
12 notification requirements.

13 6. Mover was:

14           YES          NO          Arrested with another individual.

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

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

31   Respectfully submitted,

32   \_\_\_\_\_  
33   Signature of Attorney for Mover/Defendant

1  
2  
3  
4  
5  
6  
7  
8  
9

\_\_\_\_\_  
Attorney for Mover/Defendant Name

\_\_\_\_\_  
Attorney's Bar Roll No.

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State, ZIP Code

10  
11

\_\_\_\_\_  
Telephone Number

12

**If not represented by counsel:**

13  
14

\_\_\_\_\_  
Signature of Mover/Defendant

15  
16

\_\_\_\_\_  
Mover/Defendant Name

17  
18

\_\_\_\_\_  
Address

19  
20

\_\_\_\_\_  
City, State, ZIP Code

21

22  
23

\_\_\_\_\_  
Telephone Number "

24

\* \* \*

25

Art. 992. Order of expungement form to be used

26

" **STATE OF LOUISIANA**

27

**JUDICIAL DISTRICT FOR THE PARISH OF**

28

\_\_\_\_\_

29

No.: \_\_\_\_\_

Division: " \_\_\_\_\_ "

30

**State of Louisiana**

31

**vs.**

32

\_\_\_\_\_

33

**ORDER OF EXPUNGEMENT OF ARREST/CONVICTION RECORD**

34

Considering the Motion for Expungement

35

The hearing conducted and evidence adduced herein, OR

36

Affidavits of No Opposition filed,

1 IT IS ORDERED, ADJUDGED AND DECREED

2  THE MOTION IS DENIED for Item(s) No.       ,       ,       ,        the following  
3 reasons (check all that apply):

4  More than five years have not elapsed since Mover completed the  
5 misdemeanor conviction sentence.

6  More than ten years have not elapsed since Mover completed the  
7 felony conviction sentence.

8  Mover was convicted of one of the following ineligible felony  
9 offenses:

10  A violation of the Uniform Controlled Dangerous Substances  
11 Law which is ineligible to be expunged.

12  An offense currently listed as a sex offense that requires  
13 registration pursuant to La. Rev. Stat. Ann. 15:540 et seq., at  
14 the time the Motion was filed, regardless of whether the duty  
15 to register was ever imposed.

16  An offense defined or enumerated as a "crime of violence"  
17 pursuant to La. Rev. Stat. Ann. 14:2(B) at the time the  
18 Motion was filed.

19  The arrest and conviction being sought to have expunged is for  
20 operating a motor vehicle while intoxicated and a copy of the proof  
21 from the Department of Public Safety and Corrections, office of  
22 motor vehicles, is not attached as required by C.Cr.P. Art. 984(A).

23  Mover has had another record of misdemeanor conviction expunged  
24 during the previous five-year period.

25  The record of arrest and conviction which Mover seeks to have  
26 expunged is for operating a motor vehicle while intoxicated and  
27 Mover has had another record of arrest and misdemeanor conviction  
28 expunged during the previous ten-year period.

29  Mover has had another record of felony conviction expunged during  
30 the previous fifteen-year period.

- 1                      Mover was convicted of a misdemeanor which arose from
- 2                                     circumstances involving a sex offense as defined in R.S. 15:541.
- 3                      Mover was convicted of misdemeanor offense of domestic abuse
- 4                                     battery which was not dismissed pursuant to C. Cr. P. Art. 894(B).
- 5                      Mover did not complete pretrial diversion.
- 6                      The charges against the mover were not dismissed or refused.
- 7                      Mover's felony conviction was not set aside and dismissed pursuant
- 8                                     to C. Cr. P. Art. 893(E).
- 9                      Mover's felony conviction was not set aside and dismissed pursuant
- 10                                    to C. Cr. P. Art. 894(B).
- 11                     Mover completed a DWI pretrial diversion program, but five years
- 12                                    have not elapsed since the mover's date of arrest.
- 13                     Mover's conviction for felony carnal knowledge of a juvenile is not
- 14                                    defined as misdemeanor carnal knowledge of a juvenile had the
- 15                                    mover been convicted on or after August 15, 2001.
- 16                     Denial for any other reason provided by law with attached reasons for
- 17                                    denial.
- 18                     **THE MOTION IS HEREBY GRANTED** for Item(s) No.
- 19                                    \_\_\_\_\_ and all agencies are ordered to expunge the record of
- 20                                    arrest/conviction and any photographs, fingerprints, or any other such information
- 21                                    of any kind maintained in connection with the Arrest(s)/Conviction(s) in the above-
- 22                                    captioned matter, which record shall be confidential and no longer considered a
- 23                                    public record, nor be available to other persons except a prosecutor, member of a law
- 24                                    enforcement agency, or a judge who may request such information in writing
- 25                                    certifying that such request is for the purpose of prosecuting, investigating, or
- 26                                    enforcing the criminal law, for the purpose of any other statutorily defined law
- 27                                    enforcement or administrative duties, or for the purpose of the requirements of sex
- 28                                    offender registration and notification pursuant to the provisions of R.S. 15:541 et
- 29                                    seq. or upon an order of this Court to any other person for good cause shown, or as
- 30                                    otherwise authorized by law.

**THE MOTION IS HEREBY GRANTED FOR EXPUNGEMENT**

**BY REDACTION** If the record includes more than one individual and the mover is entitled to expungement by redaction pursuant to Code of Criminal Procedure Article 985, for Item(s) No. \_\_\_\_\_ and all agencies are ordered to expunge the record of arrest/conviction and any photographs, fingerprints, or any other such information of any kind maintained in relation to the Arrest(s)/Conviction(s) in the above-captioned matter as they relate to the mover only. The record shall be confidential and no longer considered a public record, nor be 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 upon an order of this Court to any other person for good cause shown, or as otherwise authorized by law.

NAME: \_\_\_\_\_  
(Last, First, MI)

DOB: \_\_\_\_/\_\_\_\_/\_\_\_\_ (MM/DD/YY)

GENDER: \_\_\_\_ Female \_\_\_\_ Male

SSN (last 4 digits): XXX-XX-\_\_\_\_\_

RACE: \_\_\_\_\_

DRIVER LIC.# \_\_\_\_\_

ARRESTING AGENCY: \_\_\_\_\_

SID# (if available): \_\_\_\_\_

ARREST NUMBER (ATN): \_\_\_\_\_

AGENCY ITEM NUMBER: \_\_\_\_\_

ARREST DATE: \_\_\_\_/\_\_\_\_/\_\_\_\_ (MM/DD/YY)

**THUS ORDERED AND SIGNED** this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

at \_\_\_\_\_, Louisiana.

\_\_\_\_\_  
JUDGE

- 1 **PLEASE SERVE:**
- 2 1. District Attorney: \_\_\_\_\_
- 3 2. Arresting Agency: \_\_\_\_\_
- 4 3. Parish Sheriff: \_\_\_\_\_
- 5 4. Louisiana Bureau of Criminal Identification and Information \_\_\_\_\_
- 6 5. Attorney for Defendant (or defendant) \_\_\_\_\_
- 7 6. Clerk of Court \_\_\_\_\_ "

8 \* \* \*

9 Art. 996. Submission of expungement records to office of motor vehicles; forms to  
10 be used and completed by the clerk of court

11 TRANSMITTAL OF RECORDS FOR EXPUNGEMENT OF DWI  
 12 PURSUANT TO C.Cr.P. Art. 984  
 13 \_\_\_\_\_  
 14 \_\_\_\_\_  
 15 \_\_\_\_\_  
 16 \_\_\_\_\_  
 17 DATE

18 OFFICE OF MOTOR VEHICLES  
 19 P.O. BOX 64886  
 20 BATON ROUGE, LA 70896

21 NAME \_\_\_\_\_ DRIVERS LICENSE# \_\_\_\_\_

22 DATE OF BIRTH: \_\_\_\_\_ OFFENSE DATE: \_\_\_\_\_

23 SS# \_\_\_\_\_ DOCKET NO: \_\_\_\_\_

24 TICKET NO: \_\_\_\_\_

- 25  Attached is a certified copy of the court minutes, original/certified copy of  
 26 fingerprints and proof of the requirements as set forth in the Code of  
 27 Criminal Procedure Article 556.1. Additionally, a \$50.00 money order or  
 28 certified funds made payable to the office of motor vehicles, in reference to  
 29 the above named defendant is attached; or
- 30  Attached is a copy of the certified letter received from office of motor  
 31 vehicles indicating that all of the required documents were previously filed  
 32 in conjunction with the requirements of Code of Criminal Procedure Article  
 33 894 and are on file. Additionally, a \$50.00 money order or certified funds  
 34 made payable to the office of motor vehicles is attached.

35 NOTE: Do not use this form to submit records of a DWI plea pursuant to Code of  
36 Criminal Procedure Article 894(A)(5).

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1 Section 2. Code of Criminal Procedure Article 894.5 is hereby enacted to read as  
2 follows:

3 Art. 894.5. Submission of DWI - Code of Criminal Procedure Article 894 Plea  
4 Records to office of motor vehicles; forms to be used and completed by the  
5 clerk of court

6 TRANSMITTAL OF RECORDS OF DWI PLEA PURSUANT TO ARTICLE 894

7 \_\_\_\_\_  
8 \_\_\_\_\_  
9 \_\_\_\_\_  
10 \_\_\_\_\_  
11 DATE

12 OFFICE OF MOTOR VEHICLES  
13 P.O. BOX 64886  
14 BATON ROUGE, LA 70896

15 NAME DRIVERS LICENSE#

16 DATE OF BIRTH: OFFENSE DATE:

17 SS# DOCKET NO:

18 TICKET NO:

19  Attached is a certified copy of the court minutes, original/certified copy of  
20 fingerprints, and proof of the requirements as set forth in the Code of  
21 Criminal Procedure Article 556.1, as well as a \$50.00 money order or  
22 certified funds made payable to the office of motor vehicles, in reference to  
23 the above named defendant.

24 NOTE: Do not use this form to submit records of a DWI expungement pursuant to  
25 Code of Criminal Procedure Article 984.

\_\_\_\_\_  
SPEAKER OF THE HOUSE OF REPRESENTATIVES

\_\_\_\_\_  
PRESIDENT OF THE SENATE

\_\_\_\_\_  
GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_