2021 Regular Session

HOUSE BILL NO. 604

### BY REPRESENTATIVES JAMES AND MARCELLE

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana. CRIMINAL/RECORDS: Provides relative to expungement of records

1	AN ACT
2	To amend and reenact Code of Criminal Procedure Articles 971(7), 973(D) and (E), 974(B)
3	and (C), 976, 977(A)(introductory paragraph) and (2), (B), and (C)(introductory
4	paragraph) and (1), 978(A)(introductory paragraph) and (2), (B)(introductory
5	paragraph), (C), and (E)(1), 979(section heading), 980(section heading), 981,
6	982(section heading), 983(I), 985, 985.1(C), 986(A), 987, and 992, to enact Code of
7	Criminal Procedure Articles 971(8), 972(5) through (14), 976.1, 976.2, 977.1, 977.2,
8	978.1, 981.1, 981.2, 982.1, and 983(J), and to repeal Code of Criminal Procedure
9	Articles 978(E)(2), 984, and 996, relative to expungement; to provide relative to
10	legislative findings; to provide for definitions; to provide relative to the
11	dissemination of expunged records by third parties and court order; to provide
12	relative to petition-based expungement of a record of arrest that did not result in
13	conviction; to provide relative to petition-based expungement of a record of arrest
14	and conviction of a misdemeanor and felony offenses; to provide relative to service
15	of a petition-based motion to expunge a record; to provide relative to petition-based
16	contradictory hearings; to provide relative a judgement granting a petition-based
17	motion to expunge a record of arrest or conviction; to provide relative to service of
18	order and judgement of petition-based expungement; to provide relative to
19	expungement by redaction of records with references to multiple individuals; to
20	provide relative to interim petition-based motion to expunge a felony arrest; to

#### Page 1 of 30

provide relative to forms the expungement of records; to provide relative to
government-initiated expungement of a fingerprinted record of arrest that did not
result in conviction; to provide relative to government-initiated expungements; to
provide relative to government-initiated expungement of a fingerprinted record of
arrest and conviction of a misdemeanor and felony offenses; to provide relative to
certificate of compliance confirming a government-initiated expungement; to
provide relative to the transmission of data to complete, serve, and confirm a
government-initiated expungement; to provide relative to the costs of a petition-
based expungement; to provide relative interim petition-based motions to expunge
a felony arrest from criminal history; to provide relative to the requirements for
expungement of records involving the operation of a motor vehicle while
intoxicated; to provide relative to liability of clerks of court with respect to
expungements; to provide relative to remedies for incomplete expungements; to
provide relative for effectiveness; and to provide for related matters.
Be it enacted by the Legislature of Louisiana:
Section 1. Code of Criminal Procedure Articles 971(7), 973(D) and (E), 974(B) and
(C), 979(section heading), 980(section heading), 981, 982(section heading), 983(I), 985,
985.1(C), 986(A), 987, and 992 are hereby amended and reenacted and Code of Criminal
Procedure Articles 971(8), 972(5) through (14), 976.2, 977.2, 978.1, and 983(J) are hereby
enacted to read as follows:
Art. 971. Legislative findings
The legislature hereby finds and declares the following:
* * *
(7) Automatic, government-initiated, criminal record-clearing removes the
burden of filing a court petition, is intended to reduce recidivism, and will benefit the
economy.
(8) In balancing the legitimate needs of law enforcement agencies and the
desire to afford employment opportunities to all Louisiana citizens, the Louisiana
Legislature enacts the provisions of this Title within the Code of Criminal Procedure.

1	Art. 972. Definitions
2	As used in this Title:
3	* * *
4	(5) "Arrest date" means the date of citation, summons, or booking date for
5	a state misdemeanor or felony charge.
6	(6) "Case Management Information System" (CMIS) is the system operated
7	by the Louisiana Supreme Court to receive and maintain criminal records related to
8	a defendant's criminal record and criminal court case.
9	(7) "Certificate of Compliance" means a document produced by the
10	Louisiana Bureau of Criminal Identification and Information upon request by the
11	person whose record has been expunged after a government-initiated expungement
12	has been fully processed, as provided in Article 981.1.
13	(8) "Criminal repository" means the criminal history record information
14	system as established and maintained by R.S. 15:578 by the Louisiana Bureau of
15	Criminal Identification and Information.
16	(9) "Fingerprinted record of arrest" means a fingerprint identifying a person
17	included in the Automatic Fingerprint Identification System (AFIS) that is
18	transferred to the criminal history repository operated by the Louisiana Bureau of
19	Criminal Identification and Information.
20	(10) "Government-initiated expungement" means the removal from public
21	access of eligible criminal history record information contained in the Criminal
22	Repository and Case Management Information System (CMIS) through the
23	automated process described in this Title.
24	(11) "Non-fingerprinted record of arrest" means a record or portion of a
25	record of citation, summons, or arrest, not including records of only traffic offenses
26	as provided for in Title 32 of the Louisiana Revised Statutes of 1950 and offenses
27	in municipal, mayor's, city, or traffic courts of the state of Louisiana that does not
28	create or result in a fingerprinted or biometric record transferred to the criminal

1	repository operated by the Louisiana Bureau of Criminal Identification and
2	Information.
3	(12) "Petition-based expungement" means a manual paper-based process
4	initiated by an attorney or person with a record who may be eligible for an
5	expungement and files the motion and paperwork as required by this Title.
6	(13) "Sentence date" means the date upon which a judge or jury imposes a
7	sentence for the disposition of charges adverse to the defendant, including a plea of
8	guilty or nolo contendere by the defendant, or the finding of guilt by a judge or jury,
9	including any sentence of deferred adjudication.
10	(14) "Sentence duration" means the period of time that a person convicted
11	of a felony or misdemeanor serves for any sentence including time in custody,
12	deferred adjudication, or period of probation or parole based on the felony or
13	misdemeanor conviction.
14	* * *
15	Art. 973. Effect of expunged record of arrest or conviction
16	* * *
17	D.(1) Any person who fails to maintain the confidentiality of records as
18	required by the provisions of this Article shall be subject to contempt proceedings.
19	(2) Nothing in this Code shall be construed to create any cause of action,
20	including but not limited to damages, writ of mandamus, or declaratory relief,
21	against the office of state police, Louisiana Supreme Court, or a clerk of court for
22	records not expunged pursuant to the provisions of Articles 976, 976.1, 977, 977.1,
23	or 978 when necessary data did not exist in the records of the criminal repository,
24	CMIS, or clerk of court for government-initiated expungement. In such
25	circumstances, the only remedies available to a person seeking expungement are to
26	request that a clerk of court provide the necessary information, if available, to the
27	Louisiana State Police or the Case Management Information System to complete the
28	record or file a petition-based expungement of the record.

1	(3) Nothing in this Title shall be construed to create any cause of action,
2	including but not limited to damages, writ of mandamus, or declaratory relief against
3	the office of state police when a government-initiated expungement is processed that
4	is contrary to the provisions of this Title.
5	E. Nothing in this Article shall be construed to limit or impair in any way the
6	subsequent use of any expunged record of any arrests or convictions by a judge, law
7	enforcement agency, criminal justice agency, or prosecutor including its use as a
8	predicate offense, for the purposes of the Habitual Offender Law, setting bail,
9	sentencing, or as otherwise authorized by law.
10	* * *
11	Art. 974. Dissemination of expunged records by third parties; court order
12	* * *
13	B. The <u>A</u> person obtaining the <u>a petition-based</u> expungement shall send
14	notice of the order of expungement by certified or registered mail with return receipt
15	requested and a certified copy of the order of expungement.
16	C. A private third-party entity that publicly disseminates criminal history
17	information in violation of this Article after having received notice as provided for
18	in Paragraph B of this Article or through a notification process established by the
19	courts, may be liable for any actual damages, court costs, and attorney fees that are
20	incurred by the person whose criminal history was disseminated.
21	* * *
22	Art. 976.2. Petition-based expungement of a record of arrest that did not result in
23	conviction
24	A. A person may file a motion to expunge a record of his arrest for a felony
25	or misdemeanor offense that did not result in a conviction if any of the following
26	apply:
27	(1) The person was not prosecuted for the offense for which he was arrested
28	and the limitations on the institution of prosecution have barred the prosecution for
29	that offense.

1	(2) The district attorney for any reason declined to prosecute any offense
2	arising out of that arrest, including the reason that the person successfully completed
3	a pretrial diversion program.
4	(3) Prosecution was instituted and such proceedings have been finally
5	disposed of by dismissal, with prejudice, sustaining a motion to quash with
6	prejudice, or acquittal.
7	(4) The person was judicially determined to be factually innocent and
8	entitled to compensation for a wrongful conviction pursuant to the provisions of R.S.
9	15:572.8. The person may seek to have the arrest and conviction which formed the
10	basis for the wrongful conviction expunged without the limitations or time delays
11	imposed by the provisions of this Article or any other provision of law to the
12	contrary.
13	(5) The criminal repository or Case Management Information System did not
14	complete an expungement under Articles 976 or 976.1 and the person is otherwise
15	eligible under this Article.
16	B. Pursuant to R.S. 15:578.1, no person arrested for a violation of R.S. 14:98
17	(operating a vehicle while intoxicated) or a parish or municipal ordinance that
18	prohibits operating a vehicle while intoxicated, impaired, or while under the
19	influence of alcohol, drugs, or any controlled dangerous substance, and placed by the
20	prosecuting authority into a pretrial diversion program, shall be entitled to an
21	expungement of the record until five years have elapsed since the date of arrest for
22	that offense. A person may file a motion to expunge his record of arrest if the
23	criminal repository or Case Management Information System did not complete an
24	expungement under Articles 976 or 976.1, and the person is otherwise eligible under
25	this Article.
26	C. The motion to expunge a record of arrest that did not result in a
27	conviction of a misdemeanor or felony offense shall be served pursuant to the
28	provisions of Article 979.
29	* * *

# Page 6 of 30

1	Art. 977.2. Petition-based expungement of a record of arrest and conviction of a
2	misdemeanor offense
3	A. A person may file a motion to expunge his record of arrest and conviction
4	of a misdemeanor offense if either of the following apply:
5	(1) The conviction was set aside and the prosecution was dismissed pursuant
6	to Article 894(B) of this Code.
7	(2) Five years have elapsed since the person completed any sentence,
8	deferred adjudication, or period of probation or parole, and the person has not been
9	convicted of any felony offense during the five-year period and has no felony charge
10	pending against him.
11	(3) A person may file a motion to expunge his record of arrest if the criminal
12	repository or Case Management Information System did not complete an
13	expungement under Articles 977 or 977.1 and the person is otherwise eligible under
14	this Article.
15	B. The motion to expunge a record of arrest and conviction of a misdemeanor
16	offense shall be served pursuant to the provisions of Article 979 of this Code.
17	C. No person shall be entitled to expungement of a record under any of the
18	following circumstances:
19	(1) The misdemeanor conviction arose from circumstances involving or is
20	the result of an arrest for a sex offense as defined in R.S. 15:541, except that an
21	interim expungement shall be available as authorized by the provisions of Article
22	<u>985.1.</u>
23	(2) The misdemeanor conviction was for domestic abuse battery.
24	(3) The misdemeanor conviction was for stalking (R.S. 14:40.2).
25	* * *
26	Art. 978.1. Petition-based expungement of record of arrest and conviction of a
27	felony offense
28	A. A person may file a motion to expunge his record of arrest and conviction
29	of a felony offense if any of the following apply:

1	(1) The conviction was set aside and the prosecution was dismissed pursuant
2	to Article 893(E).
3	(2) More than ten years have elapsed since the person completed any
4	sentence, deferred adjudication, or period of probation or parole based on the felony
5	conviction, and the person has not been convicted of any other criminal offense
6	during the ten-year period, and has no criminal charge pending against him. The
7	motion filed pursuant to this Subparagraph shall include a certification obtained from
8	the district attorney which verifies that, to his knowledge, the applicant has no
9	convictions during the ten-year period and no pending charges under a bill of
10	information or indictment.
11	(3) The person is entitled to a first offender pardon for the offense pursuant $(3)$
12	to Article IV, Section 5(E)(1) of the Constitution of Louisiana, provided that the
13	offense is not defined as a crime of violence pursuant to R.S. 14:2(B) or a sex
14	offense pursuant to R.S. 15:541.
15	(4) A person may file a motion to expunge his record of arrest if the criminal
16	repository or Case Management Information System did not complete an
17	expungement under Article 977 or 977.1 and the person is otherwise eligible under
18	this Article.
19	B. No expungement shall be granted nor shall a person be permitted to file
20	a motion to expunge the record of arrest and conviction of a felony offense if the
21	person was convicted of the commission or attempted commission of any of the
22	following offenses:
23	(1) A crime of violence as defined by or enumerated in R.S. 14:2(B), unless
24	otherwise authorized in Paragraph D of this Article.
25	(2)(a) Notwithstanding any provision of Article 893, a sex offense or a
26	criminal offense against a victim who is a minor as each term is defined by R.S.
27	15:541, or any offense which occurred prior to June 18, 1992, that would be defined
28	as a sex offense or a criminal offense against a victim who is a minor had it occurred
29	on or after June 18, 1992.

1	(b) Any person who was convicted of carnal knowledge of a juvenile (R.S.
2	14:80) prior to August 15, 2001, is eligible for an expungement pursuant to the
3	provisions of this Title if the offense for which the offender was convicted would be
4	defined as misdemeanor carnal knowledge of a juvenile (R.S. 14:80.1) had the
5	offender been convicted on or after August 15, 2001. The burden is on the mover
6	to establish that the elements of the offense of conviction are equivalent to the
7	current definition of misdemeanor carnal knowledge of a juvenile as defined by R.S.
8	14:80.1. A copy of the order waiving the sex offender registration and notification
9	requirements issued pursuant to the provisions of R.S. 15:542(F) shall be sufficient
10	to meet this burden.
11	(3) A violation of the Uniform Controlled Dangerous Substances Law,
12	except for any of the following which may be expunged pursuant to the provisions
13	of this Title:
14	(a) A conviction for possession of a controlled dangerous substance as
15	provided for in R.S. 40:966(C), 967(C), 968(C), or 969(C), or 970(C).
16	(b) A conviction for possession of a controlled dangerous substance with the
17	intent to distribute.
18	(c) A conviction for a violation of the Uniform Controlled Dangerous
19	Substances Law which is punishable by a term of imprisonment of not more than
20	five years.
21	(d) A conviction for a violation of the Uniform Controlled Dangerous
22	Substances Law which may be expunged pursuant to Article 893(E).
23	(e) A conviction for a violation of the Uniform Controlled Dangerous
24	Substances Law for which the person is entitled to a first offender pardon pursuant
25	to Article IV, Section 5(E)(1) of the Constitution of Louisiana.
26	(4) The conviction was for domestic abuse battery.
27	C. The motion to expunge a record of arrest and conviction of a felony
28	offense shall be served pursuant to the provisions of Article 979.

1	D.(1) Notwithstanding any other provision of law to the contrary, after a
2	contradictory hearing, the court may order the expungement of the arrest and
3	conviction records of a person pertaining to a conviction of aggravated battery,
4	second degree battery, aggravated criminal damage to property, simple robbery,
5	purse snatching, or illegal use of weapons or dangerous instrumentalities if all of the
6	following conditions are proven by the petitioner:
7	(a) More than ten years have elapsed since the person completed any
8	sentence, deferred adjudication, or period of probation or parole based on the felony
9	conviction.
10	(b) The person has not been convicted of any other criminal offense during
11	the ten-year period.
12	(c) The person has no criminal charge pending against him.
13	(2) The motion filed pursuant to this Paragraph shall include a certification
14	from the district attorney which verifies that, to his knowledge, the applicant has no
15	convictions during the ten-year period and no pending charges under a bill of
16	information or indictment. The motion shall be heard by contradictory hearing as
17	provided by Article 980.
18	Art. 979. Service of <u>petition-based</u> motion to expunge a record
19	* * *
20	Art. 980. Contradictory Petition-based contradictory hearing
21	* * *
22	Art. 981. Judgment granting petition-based motion to expunge a record of arrest or
23	conviction; execution
24	A judgment ordering <u>a petition-based</u> expungement of a record of arrest or
25	of conviction of a misdemeanor or felony offense shall be served as provided for in
26	Article 982 of this Code. The judgment shall not affect any persons or other entities
27	set forth in Article 979 or 982 of this Code who have not been served with the
28	motion and judgment ordering the expungement of a record.
29	* * *

# Page 10 of 30

1	Art. 982. Service of order and judgment of petition-based expungement
2	* * *
3	Art. 983. Costs of <u>a petition-based</u> expungement of a record; fees; collection;
4	exemptions; disbursements
5	* * *
6	I. Notwithstanding any provision of law to the contrary, an applicant for the
7	expungement of a record, other than as provided in Paragraphs F and G of this
8	Article, may proceed in forma pauperis in accordance with the provisions of Code
9	of Civil Procedure Article 5181 et seq. <u>A person shall not be charged any costs for</u>
10	a government-initiated expungement of their records.
11	* * *
12	Art. 985. Expungement by redaction of records with references to multiple
13	individuals
14	A. If a record includes the name of more than one individual and one or
15	more of the individuals is entitled to an expungement of an arrest or conviction
16	pursuant to the provisions of this Title, any individual entitled to an expungement
17	may petition the court to have records related to the arrest or conviction of the
18	individual expunged by redaction, or have their records expunged by the
19	government-initiated process described in this Title.
20	B. If the court grants the expungement by redaction with proper notice to all
21	parties with the record, the name of the individual and all other identifying
22	information regarding the individual granted the expungement by redaction shall be
23	redacted from all records regarding the arrest and conviction. The redacted records
24	shall be available for public access.
25	C. The clerk of court shall not be liable for any damages resulting to any
26	person or entity as a consequence of expunging or redacting or for the failure to
27	expunge or redact any record where the expungement order or transmittal of data
28	described in Article 981.1 or 981.2 does not specifically identify all locations of the

# Page 11 of 30

1	records to be expunged or specify the information to be redacted or when necessary
2	data did not exist in the records of the clerk of court.
3	Art. 985.1. Interim <u>petition-based</u> motion to expunge a felony arrest from criminal
4	history in certain cases resulting in a misdemeanor conviction
5	* * *
6	C. Except as provided in Paragraph D of this Article, an interim motion to
7	expunge a felony arrest from criminal history shall follow the same procedures and
8	fees established pursuant to the provisions of Article 979 et seq. of this Code.
9	* * *
10	Art. 986. Forms for the expungement of records
11	A. Only the forms provided for in Articles 987, 988, 989, 990, 991, 992, 993,
12	994, and 995 of this Code shall be used for filing motions to expunge a record of an
13	arrest which did not result in a conviction, for the expungement of a record of arrest
14	and conviction of a misdemeanor or felony offense, or for an interim motion to
15	expunge a felony offense which resulted in a misdemeanor conviction for petition-
16	based expungement of a record of arrest or conviction as provided by this Title.
17	* * *
18	Art. 987. Motion to set aside conviction and dismiss prosecution; rule to show
19	cause; order of dismissal forms to be used
20	" STATE OF LOUISIANA
21	JUDICIAL DISTRICT FOR THE PARISH OF
22	
23	No.: Division: ""
24	State of Louisiana
25	VS.
26	
27	MOTION TO SET ASIDE CONVICTION AND
28	DISMISS PROSECUTION

1	NOW INTO HONORABLE COURT, comes
2	□ Defendant, OR
3	□ Defendant through undersigned Counsel,
4	who moves that the conviction pursuant to Louisiana Code of Criminal Procedure
5	□ Article 894(B) Misdemeanors, OR
6	□ Article 893(E) Felonies
7	in the above numbered case be set aside and that the prosecution dismissed in
8	accordance with the Code of Criminal Procedure in that the period of the deferred
9	sentence has run and petitioner has successfully completed the terms of his
10	probation.
11	The mover is further identified below:
12	DOCKET NUMBER:
13	CHARGE:
14	DATE OF ARREST:
15	ARRESTING AGENCY:
16	CITY/PARISH OF ARREST:
17	The Mover prays that, after a contradictory hearing with the District Attorney's
18	Office, the Court order the above numbered case be set aside and that the prosecution
19	dismissed in accordance with the Code of Criminal Procedure.
20	Respectfully submitted,
21 22	Signature of Attorney for Mover/Defendant
23 24	Attorney for Mover/Defendant Name
25 26	Attorney's Bar Roll No.
27 28	Address
29 30	City, State, ZIP Code

1 2 3	Telephone Number If not represented by counsel:
4 5	Signature of Mover/Defendant
6 7	Mover/Defendant Name
8 9	Address
10 11	City, State, ZIP Code
12 13	Telephone Number
14	STATE OF LOUISIANA
15	JUDICIAL DISTRICT FOR THE PARISH OF
16	
17	No.: Division: ""
18	State of Louisiana
19	vs.
20	
21	RULE TO SHOW CAUSE
22	IT IS HEREBY ORDERED, that the District Attorney show cause on the
23	day of, 20, ato'clockm why the foregoing
24	motion should not be granted.
25	THUS ORDERED AND SIGNED this day of, 20,
26	at, Louisiana,
27 28	JUDGE
29	PLEASE SERVE:
30	1. District Attorney:
31	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
heari	ng conducted on the representation of the State of Louisiana of its consent hereto, and
that t	here is no opposition for any good cause appearing herein;
	IT IS ORDERED, ADJUDGED AND DECREED that this conviction is set aside and
the p	rosecution dismissed for purposes of expungement.
	THUS ORDERED AND SIGNED this day of, 20at
	, Louisiana.
	JUDGE
	PLEASE SERVE:
	1. District Attorney:
	2. Attorney for Defendant and/or Defendant
	3. Louisiana Bureau of Criminal Identification and Information: Louisiana State
	Police, Superintendent of Records, 7919 Independence Boulevard, Baton
	Rouge, Louisiana 70806"
	* * *
	Art. 992. Order of expungement form to be used
	STATE OF LOUISIANA
	JUDICIAL DISTRICT FOR THE PARISH OF
	No.: Division: ""

1		State of Louisiana		
2		VS.		
3				
4	ORDI	ER OF	<b>EXPUNGEMENT OF ARREST/CONVICTION RECORD</b>	
5	Consi	idering	the Motion for Expungement	
6		The h	nearing conducted and evidence adduced herein, OR	
7		Affid	avits of No Opposition filed,	
8	IT IS	ORDE	ERED, ADJUDGED AND DECREED	
9		THE	<b>MOTION IS DENIED</b> for No(s), ,,, for the following	
10		reaso	ns (check all that apply):	
11			More than five years have not elapsed since Mover completed the	
12			misdemeanor conviction sentence.	
13			Mover's misdemeanor conviction was not set aside and dismissed	
14			pursuant to C.Cr.P. Art. 894(B).	
15			More than ten years have not elapsed since Mover completed the	
16			felony conviction sentence.	
17			Mover was convicted of one of the following ineligible felony	
18			offenses:	
19			A violation of the Uniform Controlled Dangerous Substances Law	
20			which is ineligible to be expunged.	
21			An offense currently listed as a sex offense that requires registration	
22			pursuant to R.S. 15:540 et seq., at the time the Motion was filed,	
23			regardless of whether the duty to register was ever imposed.	
24			An offense defined or enumerated as a "crime of violence" pursuant	
25			to R.S. 14:2(B) at the time the Motion was filed.	
26			The arrest and conviction being sought to have expunged is for	
27			operating a motor vehicle while intoxicated and a copy of the proof	
28			from the Department of Public Safety and Corrections, office of	
29			motor vehicles, is not attached as required by C.Cr.P. Art. 984(A).	

Page 16 of 30

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		Mover was not convicted of a crime that would be eligible for
17		expungement as required by C.Cr.P. Art. 978(E)(1).
18		Mover has criminal charges pending against him.
19		Mover was convicted of a criminal offense during the ten-year
20		period.
21		Mover received a first offender pardon but for an ineligible offense.
22		Mover did not receive a first offender pardon.
23		Denial for any other reason provided by law with attached reasons for
24		denial.
25	$\Box  \text{THE}$	MOTION IS HEREBY GRANTED for No(s) and all
26	agencies are ordered	to expunge the record of arrest/conviction and any photographs,
27	fingerprints, or any c	ther such information of any kind maintained in connection with the
28	Arrest(s)/Conviction	(s) in the above-captioned matter, which record shall be confidential and
29	no longer considered	a public record, nor be available to other persons except a prosecutor,

#### HLS 21RS-850

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.

7

#### THE MOTION IS HEREBY GRANTED FOR EXPUNGEMENT BY

8 **REDACTION** If the record includes more than one individual and the mover is entitled to 9 expungement by redaction pursuant to Code of Criminal Procedure Article 985, for No(s). 10 and all agencies are ordered to expunge the record of arrest/conviction and 11 any photographs, fingerprints, or any other such information of any kind maintained in 12 relation to the Arrest(s)/Conviction(s) in the above-captioned matter as they relate to the 13 mover only. The record shall be confidential and no longer considered a public record, nor 14 be available to other persons except a prosecutor, member of a law enforcement agency, or 15 a judge who may request such information in writing certifying that such request is for the 16 purpose of prosecuting, investigating, or enforcing the criminal law, for the purpose of any 17 other statutorily defined law enforcement or administrative duties, or for the purpose of the 18 requirements of sex offender registration and notification pursuant to the provisions of R.S. 19 15:541 et seq. or upon an order of this Court to any other person for good cause shown, or 20 as otherwise authorized by law.

21	NAME:		
22	(Last,	First,	MI)
23	DOB://	(MM/DD/YY)	
24	GENDER: Female	Male	
25	SSN (last 4 digits): XXX-X	XX	
26	RACE:		
27	DRIVER LIC.#		
28	ARRESTING AGENCY:		
29	SID# (if available):		

#### Page 18 of 30

1	ARREST NUMBER (ATN):
2	AGENCY ITEM NUMBER:
3	ARREST DATE:/ (MM/DD/YY)
4	THUS ORDERED AND SIGNED this day of, 20
5	at, Louisiana.
6	
7	JUDGE
8	PLEASE SERVE:
9	1. District Attorney:
10	2. Arresting Agency:
11	3. Parish Sheriff:
12	4. Louisiana Bureau of Criminal Identification and Information
13	5. Attorney for Defendant (or defendant)
14	6. Clerk of Court"
15	Section 2. Code of Criminal Procedure Articles 976, 977(A)(introductory paragraph)
16	and (2), (B), and (C)(introductory paragraph) and (1), and 978(A)(introductory paragraph)
17	and (2), and (B)(introductory paragraph), (C), and (E)(1) are hereby amended and reenacted
18	and Code of Criminal Procedure Article 981.1 is hereby enacted to read as follows:
19	Art. 976. Motion to expunge Government-initiated expungement of a fingerprinted
20	record of arrest that did not result in a conviction
21	A. A person may file a motion to expunge a <u>fingerprinted</u> record of his arrest
22	for a felony or misdemeanor offense that did not result in a conviction if any shall
23	be expunged through government automation at the earliest of the following apply:
24	(1) The person was not prosecuted for the offense for which he was arrested,
25	and the limitations on the institution of prosecution have barred the prosecution for
26	that offense. The district attorney for any reason declined to prosecute any offense
27	out of that arrest, including the reason that the person successfully completed a
28	pretrial diversion program.

1	(2) The district attorney for any reason declined to prosecute any offense
2	arising out of that arrest, including the reason that the person successfully completed
3	a pretrial diversion program. Prosecution was instituted and such proceedings have
4	been finally disposed of by dismissal with prejudice, sustaining of a motion to quash
5	with prejudice, or acquittal.
6	(3) Prosecution was instituted and such proceedings have been finally
7	disposed of by dismissal, sustaining of a motion to quash, or acquittal. The person
8	was judicially determined to be factually innocent and entitled to compensation for
9	a wrongful conviction pursuant to the provisions of R.S. 15:572.8. The person may
10	seek to have the arrest and conviction which formed the basis for the wrongful
11	conviction expunged without the limitations or time delays imposed by the
12	provisions of this Article or any other provision of law to the contrary.
13	(4) The person was judicially determined to be factually innocent and
14	entitled to compensation for a wrongful conviction pursuant to the provisions of R.S.
15	15:572.8. The person may seek to have the arrest and conviction which formed the
16	basis for the wrongful conviction expunged without the limitations or time delays
17	imposed by the provisions of this Article or any other provision of law to the
18	<del>contrary.</del>
19	B. Pursuant to R.S. 15:578.1, no person arrested for a violation of R.S. 14:98
20	(operating a vehicle while intoxicated) or a parish or municipal ordinance that
21	prohibits operating a vehicle while intoxicated, impaired, or while under the
22	influence of alcohol, drugs, or any controlled dangerous substance, and placed by the
23	prosecuting authority into a pretrial diversion program, shall be entitled to an a
24	government-initiated expungement of the record until five years have elapsed since
25	the date of arrest for that offense.
26	C. The motion to expunge a record of arrest that did not result in a
27	conviction of a misdemeanor or felony offense shall be served pursuant to the
28	provisions of Article 979. The government-initiated expungement of a fingerprinted

1	record of arrest that did not result in a conviction of a misdemeanor or felony offense
2	shall be served pursuant to the provisions of Article 982.1.
3	* * *
4	Art. 977. Motion to expunge Government-initiated expungement of a fingerprinted
5	record of arrest and conviction of a misdemeanor offense
6	A. A person may file a motion to expunge his fingerprinted record of a
7	misdemeanor conviction and any underlying records of arrest associated with such
8	conviction record of arrest and conviction of a misdemeanor offense if either shall
9	be expunged through government automation by the criminal repository at the
10	<u>earliest</u> of the following <del>apply</del> :
11	* * *
12	(2) More than five Five years have elapsed since the person completed any
13	sentence, deferred adjudication, or period of completion of the sentence duration
14	probation or parole, and the person has not been convicted of any fingerprint-based
15	felony offense during the five-year period, and has no fingerprint-based felony
16	charge pending against him. The motion filed pursuant to this Subparagraph shall
17	include a certification obtained from the district attorney which verifies that to his
18	knowledge the applicant has no felony convictions during the five-year period and
19	no pending felony charges under a bill of information or indictment.
20	B. The motion to expunge a record of arrest and conviction of a
21	misdemeanor offense shall be served pursuant to the provisions of Article 979 of this
22	Code. The criminal repository shall serve notice of this expungement pursuant to the
23	provisions of Article 982.1.
24	C. No person shall be entitled to <u>a government-initiated</u> expungement of a
25	record under any of the following circumstances:

1	(1) The misdemeanor conviction arose from circumstances involving or is
2	the result of an arrest for a sex offense as defined in R.S. 15:541, except that an
3	interim expungement shall be available as authorized by the provisions of Article
4	985.1 of this Code.
5	* * *
6	Art. 978. Motion to expunge Government-initiated expungement of a record of
7	arrest and conviction of a felony offense
8	A. Except as provided in Paragraph B of this Article, a person may file a
9	motion to expunge his record of arrest and <u>a</u> conviction of a felony offense if any of
10	the and any underlying records of arrest associated with the conviction record shall
11	be expunged through government automation by the criminal repository at the
12	earliest of the following apply:
13	* * *
14	(2) More than ten Ten years have elapsed since the person completed
15	completion of the sentence duration any sentence, deferred adjudication, or period
16	of probation or parole based on the felony conviction, and the person has not been
17	convicted of any other fingerprinted criminal offense during the ten-year period, and
18	has no fingerprinted criminal charge pending against him. The motion filed pursuant
19	to this Subparagraph shall include a certification obtained from the district attorney
20	which verifies that, to his knowledge, the applicant has no convictions during the
21	ten-year period and no pending charges under a bill of information or indictment.
22	* * *
23	B. No government-initiated expungement shall be granted nor shall a person
24	be permitted to file a motion to expunge the record of arrest and conviction of a
25	felony offense processed for a felony conviction with any underlying records of
26	arrest associated in the criminal repository if the person was convicted of the
27	commission or attempted commission of any of the following offenses:
28	* * *

1	C. The motion to expunge a record of arrest and conviction of a felony
2	offense shall be served pursuant to the provisions of Article 979. The criminal
3	repository shall serve notice of this expungement pursuant to the provisions of
4	<u>Article 982.1.</u>
5	* * *
6	E.(1) Notwithstanding any other provision of law to the contrary, after a
7	contradictory hearing, the court may order the expungement of the arrest and
8	conviction records of a person a government-initiated expungement shall be
9	processed for a felony conviction and any records associated with the arrest in the
10	criminal repository pertaining to a conviction convictions of aggravated battery,
11	second degree battery, aggravated criminal damage to property, simple robbery,
12	purse snatching, or illegal use of weapons or dangerous instrumentalities if all of the
13	following conditions are proven by the petitioner apply:
14	(a) More than ten <u>Ten</u> years have elapsed since the person completed any
15	sentence, deferred adjudication, or period of probation or parole completion of the
16	sentence duration based on the felony conviction.
17	(b) The person has not been convicted of any other <u>fingerprinted</u> criminal
18	offense during the ten-year period.
19	(c) The person has no <u>fingerprinted</u> criminal charge pending against him.
20	* * *
21	Art. 981.1. Certificate of compliance and transmission of data confirming
22	government-initiated expungement of a fingerprinted record
23	A. The certificate of compliance and transmission of data shall include the
24	following individual identifying information if available:
25	(1) Full legal name.
26	(2) Date of birth.
27	(3) Last four digits of the individual's social security number.
28	(4) Race of the individual.
29	(5) SID number for the individual.

# Page 23 of 30

1	(6) Arrest number or ATN for the individual.
2	(7) Agency item number.
3	(8) Arrest dates.
4	(9) Docket numbers and associated screening numbers.
5	(10) Arrest disposition.
6	(11) Charge.
7	(12) Final disposition.
8	(13) Disposition date.
9	(14) Sentencing and fines.
10	(15) Whether or not sentenced to hard labor.
11	B. For purposes of government-initiated expungement, the Louisiana Bureau
12	of Criminal Identification and Information shall transmit the available information
13	described in Paragraph A of this Article to the entities provided for in Article 982.1.
14	(1) Until August 1, 2025, the transmission of the available information shall
15	be at least once every ninety days.
16	(2) Beginning August 1, 2025, the transmission of available information
17	shall be at least once a month.
18	C. Upon request from an individual seeking confirmation of their
19	government-initiated expungement, the Louisiana Bureau of Criminal Identification
20	and Information shall generate and issue a certificate of compliance to the individual
21	listed on the certificate for the purposes of confirming a record has been expunged
22	through the government-initiated process. The individual seeking confirmation of
23	government-initiated expungement shall request the certificate through a right to
24	review or other process established by the Louisiana Bureau of Criminal
25	Identification and Information.
26	Section 3. Code of Criminal Procedure Articles 976.1, 977.1, 981.2, and 982.1 are
27	hereby enacted to read as follows:

1	Art. 976.1. Government-initiated expungement of a non-fingerprinted record of
2	arrest that did not result in conviction
3	A. A non-fingerprinted record of arrest for a misdemeanor offense that did
4	not result in a conviction shall be expunged through government automation at the
5	earliest of the following:
6	(1) The district attorney for any reason declined to prosecute any offense out
7	of that arrest, including the reason that the person successfully completed a pretrial
8	diversion program.
9	(2) Prosecution was instituted and such proceedings have been finally
10	disposed of by dismissal with prejudice, sustaining of a motion to quash with
11	prejudice, or acquittal.
12	(3) The person was judicially determined to be factually innocent and
13	entitled to compensation for a wrongful conviction pursuant to the provisions of R.S.
14	15:572.8. The person may seek to have the arrest and conviction which formed the
15	basis for the wrongful conviction expunged without the limitations or time delays
16	imposed by the provisions of this Article or any other provision of law to the
17	contrary.
18	B. Pursuant to R.S. 15:578.1, no person arrested for a violation of R.S. 14:98
19	(operating a vehicle while intoxicated) or a parish or municipal ordinance that
20	prohibits operating a vehicle while intoxicated, impaired, or while under the
21	influence of alcohol, drugs, or any controlled dangerous substance, and placed by the
22	prosecuting authority into a pretrial diversion program, shall be entitled to a
23	government-initiated expungement of the record until five years have elapsed since
24	the date of the arrest for that offense.
25	C. The government-initiated expungement of a non-fingerprinted record of
26	arrest that did not result in a conviction of a misdemeanor offense shall be served
27	pursuant to the provisions of Article 982.1 of this Code.
28	* * *

1	Art. 977.1. Government-initiated expungement of a record of arrest and conviction
2	of a non-fingerprinted misdemeanor offense
3	A. A non-fingerprinted record of a misdemeanor conviction and any
4	underlying records of arrest associated with such conviction shall be expunged
5	through automation by the Case Management Information System at the earliest of
6	the following:
7	(1) The conviction was set aside and the prosecution was dismissed pursuant
8	to Article 894(B).
9	(2) Five years have elapsed since the completion of the sentence duration for
10	any sentence, deferred adjudication, or period of probation or parole.
11	B. The Case Management Information System shall serve notice of this
12	expungement pursuant to the provisions of Article 982.1.
13	C. No person shall be entitled to a government-initiated expungement of a
14	record under any of the following circumstances:
15	(1) The misdemeanor conviction was for domestic battery.
16	(2) The misdemeanor conviction was for stalking (R.S. 14:40.2).
17	* * *
18	Art. 981.2. Transmission of data confirming government-initiated expungement of
19	a non-fingerprinted record
20	A. The transmission of data shall include the following individual identifying
21	information if available from the Case Management Information System:
22	(1) Full legal name.
23	(2) Date of birth.
24	(3) Last four digits of the individual's social security number.
25	(4) Race of the individual.
26	(5) SID number for the individual.
27	(6) Arrest number or ATN for the individual.
28	(7) Agency item number.
29	(8) Arrest dates.

1	(9) Docket numbers and associated screening numbers.
2	(10) Arrest disposition.
3	(11) Charge.
4	(12) Final disposition.
5	(13) Disposition date.
6	(14) Sentencing and fines.
7	(15) Whether or not sentenced to hard labor.
8	B. For purposes of government-initiated expungement, the Louisiana
9	Supreme Court Case Management Information System shall transmit the available
10	information described in Paragraph A of this Article to the entities provided for in
11	<u>Article 982.1.</u>
12	(1) Until August 1, 2025, the transmission of the available information shall
13	be at least once every ninety days.
14	(2) Beginning August 1, 2025, the transmission of available information
15	shall be at least once a month.
16	C. The available data described in Paragraph A of this Article related to a
17	non-fingerprinted record of arrest or conviction of a misdemeanor offense shall be
18	transmitted as provided for in Article 982.1. The transmission of data shall not affect
19	any persons or other entities not set forth in Article 982.1.
20	* * *
21	Art. 982.1. Transmission of data to complete and serve a government-initiated
22	fingerprinted and non-fingerprinted expungement
23	A. The Louisiana Bureau of Criminal Identification and Information through
24	the criminal repository shall transmit the available data provided in Article 981.1 by
25	United States mail or electronically to all of the following entities:
26	(1) The district attorney of the parish of conviction.
27	(2) The clerk of court of the parish of conviction.
28	(3) The arresting agency, if such agency is included in the arrest entry.
29	(4) The sheriff of the parish of conviction.

1	B. The Case Management Information System shall transmit the available
2	data provided in Article 981.2 by United States mail or electronically upon all of the
3	following entities:
4	(1) The district attorney of the parish of conviction.
5	(2) The Louisiana Bureau of Criminal Identification and Information.
6	(3) The clerk of court of the parish of conviction.
7	(4) The arresting agency.
8	(5) The sheriff of the parish of conviction.
9	Section 4. Code of Criminal Procedure Article 978(E)(2) is hereby repealed in its
10	entirety.
11	Section 5. Code of Criminal Procedure Article 984 and 996 are hereby repealed in
12	their entirety.
13	Section 6. Code of Criminal Procedure Article 978(B)(2)(b) is hereby repealed in its
14	entirety.
15	Section 7. The Louisiana State Law Institute is hereby authorized and directed to
16	renumber the terms defined in Code of Criminal Procedure Article 972 to ensure that such
17	terms are in alphabetical order.
18	Section 8. This Section and Sections 1, 6, and 7 of this Act shall become effective
19	on August 1, 2021.
20	Section 9. This Section and Sections 2, 4, and 5 of this Act shall become effective
21	on August 1, 2023.
22	Section 10. This Section and Section 3 of this Act shall become effective on August
23	1, 2024.

### DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 604 Re-Reengrossed2021 Regular SessionJames

Abstract: Provides for a comprehensive revision of expungement laws, including petitionbased and government-initiated criminal record-clearing. <u>Present law</u> provides for the expungement of records of arrest and misdemeanor and felony convictions in certain circumstances.

<u>Proposed law</u> provides for a comprehensive revision to <u>present law</u> provisions including the following major changes:

- (1) Provides for definitions for the following terms: arrest date, Case Management Information System, certificate of compliance, criminal repository, fingerprinted record of arrest, government-initiated expungement, non-fingerprinted record of arrest, petition-based expungement, sentence date, and sentence duration.
- (2) Provides for a petition-based expungement of a record of arrest that did not result in conviction.
- (3) Provides for a petition-based expungement of a record of arrest and conviction of a misdemeanor offense.
- (4) Provides for a petition-based expungement of a record of arrest and conviction of a felony offense.
- (5) Provides relative to the costs associated for a petition-based expungement of a record, and provides that a person shall not be charged any costs for a government-initiated expungement of records.
- (6) Amends certain <u>present law</u> forms to conform with <u>proposed law</u> changes.
- (7) Provides relative to the process for a government-initiated expungement of a fingerprinted record of arrest that did not result in a conviction.
- (8) Provides relative to the process for a government-initiated expungement of a fingerprinted record of arrest and conviction of misdemeanor and felony offenses.
- (9) Provides for a certificate of compliance and transmission confirming a governmentinitiated expungement of a fingerprinted record.
- (10) Provides relative to the transmission of data to complete and serve a governmentinitiated fingerprinted and non-fingerprinted expungement.
- (11) Provides immunity for office of state police, La. Supreme Court, and clerks of court if records are not expunged pursuant to proposed law when necessary data did not exist in the criminal repository, CMIS, or the records of the clerk in order to execute the expungement.
- (12) Provides immunity for clerks of court if records are not expunged pursuant to present and proposed law if the expungement order or transmittal of data pursuant to proposed law does not specifically identify all locations of records to be expunged or if necessary data did not exist in the clerk's records.

Proposed law provides for certain effective dates of proposed law.

(Amends C.Cr.P. Arts. 971(7), 973(D) and (E), 974(B) and (C), 976, 977(A)(intro. para.) and (2), (B), and (C)(intro. para.) and (1), 978(A)(intro. para.) and (2), (B)(intro. para.), (C), and (E)(1), 979(section heading), 980(section heading), 981, 982(section heading), 983(I), 985, 985.1(C), 986(A), 987, and 992; Adds C.Cr.P. Arts. 971(8), 972(5) through (14), 976.1, 976.2, 977.1, 977.2, 978.1, 981.1, 981.2, 982.1, and 983(J); Repeals C.Cr.P. Arts. 978(B)(2)(b) and (E)(2), 984, and 996)

### Summary of Amendments Adopted by House

- The Committee Amendments Proposed by <u>House Committee on Administration of</u> <u>Criminal Justice to the original bill:</u>
- 1. Change provisions regarding fingerprinted and non-fingerprinted arrest records for felony or misdemeanor offenses.
- 2. Remove provisions of <u>proposed law</u> regarding the transmission of data confirming government-initiated expungements.
- The Committee Amendments Proposed by <u>House Committee on Appropriations</u> to the <u>engrossed</u> bill:
- 1. Add provision granting immunity to clerks of court for records not expunged pursuant to proposed law when necessary data did not exist in the records of the clerk of court. Further provide remedies for a person seeking expungement in such circumstances.

The House Floor Amendments to the reengrossed bill:

- 1. Make technical changes.
- 2. Specify the available causes of action.
- 3. Specify that nothing in <u>proposed law</u> shall be construed to create a cause of action against the office of state police or the La. Supreme Court.
- 4. Specify that requesting a clerk of court to provide necessary information is the only remedy available to a person seeking expungement.
- 5. Reinstate <u>present law</u> relative to an applicant's ability to proceed in forma pauperis.
- 6. Provide for special effective dates.