2016 Regular Session

HOUSE BILL NO. 7

BY REPRESENTATIVE PRICE

CRIMINAL/PROCEDURE: Provides with respect to expungement

1	AN ACT
2	To amend and reenact Code of Criminal Procedure Articles 978(B)(1), 989, and 992 and to
3	enact Code of Criminal Procedure Articles 976(A)(4) and 978(E), relative to
4	expungement; to provide for eligibility for an expungement in cases of factual
5	innocence; to provide for the expungement of certain crimes of violence after a
6	cleansing period; to provide for the expungement forms to be used; and to provide
7	for related matters.
8	Be it enacted by the Legislature of Louisiana:
9	Section 1. Code of Criminal Procedure Articles 978(B)(1), 989, and 992 are hereby
10	amended and reenacted and Code of Criminal Procedure Articles 976(A)(4) and 978(E) are
11	hereby enacted to read as follows:
12	Art. 976. Motion to expunge record of arrest that did not result in a conviction
13	A. A person may file a motion to expunge a record of his arrest for a felony
14	or misdemeanor offense that did not result in a conviction if any of the following
15	apply:
16	* * *
17	(4) The person was judicially determined to be factually innocent and
18	entitled to compensation for a wrongful conviction pursuant to the provisions of R.S.
19	15:572.8. The person may seek to have the arrest and conviction which formed the
20	basis for the wrongful conviction expunged without the limitations or time delays

CODING: Words in struck through type are deletions from existing law; words <u>underscored</u> are additions.

1	imposed by the provisions of this Article or any other provision of law to the
2	contrary.
3	* * *
4	Art. 978. Motion to expunge record of arrest and conviction of a felony offense
5	* * *
6	B. No expungement shall be granted nor shall a person be permitted to file
7	a motion to expunge the record of arrest and conviction of a felony offense if the
8	person was convicted of the commission or attempted commission of any of the
9	following offenses:
10	(1) A crime of violence as defined by or enumerated in R.S. 14:2(B), <u>unless</u>
11	otherwise authorized in Paragraph E of this Article.
12	* * *
13	<u>E.(1)</u> Notwithstanding any other provision of law to the contrary, after a
14	contradictory hearing, the court may order the expungement of the arrest and
15	conviction records of a person pertaining to a conviction of aggravated battery,
16	second degree battery, aggravated criminal damage to property, simple robbery,
17	purse snatching, or illegal use of weapons or dangerous instrumentalities if all of the
18	following conditions are proven by the petitioner:
19	(a) More than ten years have elapsed since the person completed any
20	sentence, deferred adjudication, or period of probation or parole based on the felony
21	conviction.
22	(b) The person has not been convicted of any other criminal offense during
23	the ten-year period.
24	(c) The person has no criminal charge pending against him.
25	(d) The person has been continuously employed for a period of ten
26	consecutive years.
27	(2) The motion filed pursuant to this Paragraph shall include a certification
28	from the district attorney which verifies that, to his knowledge, the applicant has no
29	convictions during the ten-year period and no pending charges under a bill of

1	information or indictment. The motion shall be heard by contradictory hearing as
2	provided by Article 980.
3	* * *
4	Art. 989. Motion for expungement forms to be used
5	STATE OF LOUISIANA
6	JUDICIAL DISTRICT FOR THE PARISH OF
7	
8	No.: Division: ""
9	State of Louisiana
10	vs.
11	
12	MOTION FOR EXPUNGEMENT
13	NOW INTO COURT comes mover, who provides the court with the
14	following information in connection with this request:
15	I. DEFENDANT INFORMATION
16	NAME:
17	(Last, First, MI)
18	DOB:/(MM/DD/YYYY)
19	GENDERFemaleMale
20	SSN (last 4 digits): XXX-XX
21	RACE:
22	DRIVER LIC.#
23	ARRESTING AGENCY:
24	SID# (if available):
25	ARREST NUMBER:
26	Mover is entitled to expunge the record of his arrest/conviction pursuant to
27	Louisiana Code of Criminal Procedure Article 971 et seq. and states the following
28	in support:

1	II.	ARREST IN	FORMATION	Ň	
2	1.	Mover was an	rested on	/(MM/DD/YYYY)
3	2.	YES _	NO	A supplemental sh	eet with arrests and/or
4				convictions is attached	ed after page 2 of this
5				Motion.	
6	3.	Mover was:			
7		YES _	NO	Arrested, but it did no	ot result in conviction
8		YES _	NO	Convicted of and	d seeks to expunge a
9				misdemeanor	
10		YES _	NO	Convicted of and seel	ks to expunge a felony
11		YES _	NO	Convicted but dete	ermined to be factually
12				innocent and entitled	to compensation for a
13				wrongful convictio	on pursuant to the
14				provisions of R.S. 15	:572.8.
15	4.	Mover was b	ooked and/or c	charged with the follow	ing offenses: (List each
16		offense book	ed and charge	d separately. Attach a	supplemental sheet, if
17		necessary.)			
18		Yes No	ARRESTS T	THAT DID NOT RESU	ULT IN CONVICTION
19	ITEN	I NO. 1	La. Rev. Stat	. Ann.	§:
20			Name of the	offense	
21			() Time exp	bired for prosecution	
22					(MM/DD/YYYY)
23			() Not pros	ecuted for any offense	
24			arising o	ut of this charge.	
25			() Pre-trial	Diversion Program.	

1		() DWI Pre-Trial Diversion Progr	am
2		and 5 years have elapsed since	the
3		date of arrest.	
4		() Charge dismissed	
5		() Found not guilty/judgment of a	cquittal
6	ITEM NO. 2	La. Rev. Stat. Ann.	§:
7		Name of the offense	
8		() Time expired for prosecution	
9			(MM/DD/YYYY)
10		() Not prosecuted for any	
11		offense arising out of this charg	ge.
12		() Pre-trial Diversion Program.	
13		() Charge dismissed	
14		() Found not guilty/judgment of a	cquittal
15	ITEM NO. 3	La. Rev. Stat. Ann.	§:
16		Name of the offense	
17		() Time expired for prosecution	
18			(MM/DD/YYYY)
19		() Not prosecuted for any offense	
20		arising out of this charge.	
21		() Pre-trial Diversion Program.	
22		() Charge dismissed	
23		() Found not guilty/judgment of a	cquittal

1	YesNo	MISDEMEANOR CONVICTION	S
2 3 4	ITEM NO. 1	La. Rev. Stat. Ann. Name of the offense () Conviction set aside/dismissed	\$: //
5 6 7		 pursuant to C.Cr.P. Art. 894(B) () More than 5 years have passed since completion of sentence. 	(MM/DD/YYYY)
8 9 10 11 12 13	ITEM NO. 2	 La. Rev. Stat. Ann. Name of the offense () Conviction set aside/dismissed pursuant to C.Cr.P. Art. 894(B) () More than 5 years have passed since completion of sentence. 	<pre>§:</pre> / (MM/DD/YYYY)
14	YesNo	FELONY CONVICTIONS	
15 16 17 18 19	ITEM NO. 1	 La. Rev. Stat. Ann. () Conviction set aside/dismissed pursuant to C.Cr.P. Art. 893(E) () More than 10 years have passed since completion of sentence 	§: // (MM/DD/YYYY)
20 21 22 23 24	ITEM NO. 2	 La. Rev. Stat. Ann. () Conviction set aside/dismissed pursuant to C.Cr.P. Art. 893(E) () More than 10 years have passed since completion of sentence 	§: // (MM/DD/YYYY)

Page 6 of 14

1	Yes	No OPERATING A MOTOR VEHICLE WHILE
2		INTOXICATED CONVICTIONS
3	Mover has att	tached the following:
4	()	A copy of the proof from the Department of Public Safety and
5		Corrections, office of motor vehicles, that it has received from the
6		clerk of court a certified copy of the record of the plea, fingerprints
7		of the defendant, and proof of the requirements set forth in C.Cr.P.
8		Art. 556, which shall include the defendant's date of birth, last four
9		digits of social security number, and driver's license number
10	5. Mover has	attached to this Motion the following pertinent documents:
11		Criminal Background Check from the La. State Police/Parish Sheriff
12		dated within the past 30 days (required).
13		Bill(s) of Information (if any).
14		Minute entry showing final disposition of case (if any).
15		Certification Letter from the District Attorney for fee waiver (if
16		eligible).
17		Certification Letter from the District Attorney verifying that the
18		applicant has no convictions or pending applicable criminal charges
19		in the requisite time periods.
20		Certification Letter from the District Attorney verifying that the
21		charges were refused.
22		Certification Letter from the District Attorney verifying that the
23		applicant did not participate in a pretrial diversion program.
24		A copy of the order waiving the sex offender registration and
25		notification requirements.
26		

1	\Box <u>A copy of the court order determination of factual innocence and</u>
2	order of compensation for a wrongful conviction pursuant to the
3	provisions of R.S. 15:572.8 if applicable.
4	The Mover prays that if there is no objection timely filed by the arresting law
5	enforcement agency, the district attorney's office, or the Louisiana Bureau of
6	Criminal Investigation and Information, that an order be issued herein ordering the
7	expungement of the record of arrest and/or conviction set forth above, including all
8	photographs, fingerprints, disposition, or any other such information, which record
9	shall be confidential and no longer considered a public record, nor be made available
10	to other persons, except a prosecutor, member of a law enforcement agency, or a
11	judge who may request such information in writing, certifying that such request is
12	for the purpose of prosecuting, investigating, or enforcing the criminal law, for the
13	purpose of any other statutorily defined law enforcement or administrative duties,
14	or for the purpose of the requirements of sex offender registration and notification
15	pursuant to the provisions of R.S. 15:541 et seq. or as an order of this Court to any
16	other person for good cause shown, or as otherwise authorized by law.
17	If an "Affidavit of No Opposition" by each agency named herein is attached
18	hereto and made a part hereof, Defendant requests that no contradictory hearing be
19	required and the Motion be granted ex parte.
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 29	Address
29 30	
31	City, State, ZIP Code
32 33	Telephone Number

Page 8 of 14

1	If not represented by counsel:
2 3	Signature of Mover/Defendant
4 5	Mover/Defendant Name
6 7 8 9	Address
10	City, State, ZIP Code
11 12 13 14	Telephone Number * * *
15	Art. 992. Order of expungement 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	ORDER OF EXPUNGEMENT OF ARREST/CONVICTION RECORD
24	Considering the Motion for Expungement
25	□ The hearing conducted and evidence adduced herein, OR
26	□ Affidavits of No Opposition filed,
27	IT IS ORDERED, ADJUDGED AND DECREED
28	□ THE MOTION IS DENIED for Item(s) No, , , the following
29	reasons (check all that apply):
30	\Box More than five years have not elapsed since Mover completed the
31	misdemeanor conviction sentence.
32	\Box More than ten years have not elapsed since Mover completed the felony
33	conviction sentence.

Page 9 of 14

1	Mover was convicted of one of the following ineligible felony
2	offenses:
3	□ A violation of the Uniform Controlled Dangerous Substances
4	Law which is ineligible to be expunged.
5	\Box An offense currently listed as a sex offense that requires
6	registration pursuant to La. Rev. Stat. Ann. 15:540 et seq., at
7	the time the Motion was filed, regardless of whether the duty
8	to register was ever imposed.
9	\Box An offense defined or enumerated as a "crime of violence"
10	pursuant to La. Rev. Stat. Ann. 14:2(B) at the time the
11	Motion was filed.
12	The arrest and conviction being sought to have expunged is for
13	operating a motor vehicle while intoxicated and a copy of the proof
14	from the Department of Public Safety and Corrections, office of
15	motor vehicles, is not attached as required by C.Cr.P. Art. 984(A).
16	Mover has had another record of misdemeanor conviction expunged
17	during the previous five-year period.
18	The record of arrest and conviction which Mover seeks to have
19	expunged is for operating a motor vehicle while intoxicated and
20	Mover has had another record of arrest and misdemeanor conviction
21	expunged during the previous ten-year period.
22	Mover has had another record of felony conviction expunged during
23	the previous fifteen-year period.
24	Mover was convicted of a misdemeanor which arose from
25	circumstances involving a sex offense as defined in R.S. 15:541.
26	Mover was convicted of misdemeanor offense of domestic abuse
27	battery which was not dismissed pursuant to C.Cr.P. Art. 894(B).
28	Mover did not complete pretrial diversion.
29	The charges against the mover were not dismissed or refused.

Page 10 of 14

1		Mover's felony conviction was not set aside and dismissed pursuant
2		to C.Cr.P. Art. 893(E).
3		Mover's felony conviction was not set aside and dismissed pursuant
4		to C.Cr.P. Art. 894(B).
5		Mover completed a DWI pretrial diversion program, but five years
6		have not elapsed since the mover's date of arrest.
7		Mover's conviction for felony carnal knowledge of a juvenile is not
8		defined as misdemeanor carnal knowledge of a juvenile had the
9		mover been convicted on or after August 15, 2001.
10		Mover has not been employed for ten consecutive years as required
11		by Article 978(E)(1)(d)
12		Mover was not convicted of a crime that would be eligible for
13		expungement as required by Article 978(E)(1)
14		Mover has criminal charges pending against him.
15		Mover was convicted of a criminal offense during the ten year period.
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/convict	ion and any photographs, fingerprints, or any other such information
21	of any kind m	aintained in connection with the Arrest(s)/Conviction(s) in the above-
22	captioned ma	tter, 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	t 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 of	or administrative duties, or for the purpose of the requirements of sex
28	offender regis	stration and notification pursuant to the provisions of R.S. 15:541 et

Page 11 of 14

CODING: Words in struck through type are deletions from existing law; words <u>underscored</u> are additions.

- 1
- 2

seq. or upon an order of this Court to any other person for good cause shown, or as otherwise authorized by law.

3 THE MOTION IS HEREBY GRANTED FOR EXPUNGEMENT 4 BY REDACTION If the record includes more than one individual and the mover 5 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 6 7 the record of arrest/conviction and any photographs, fingerprints, or any other such 8 information of any kind maintained in relation to the Arrest(s)/Conviction(s) in the 9 above-captioned matter as they relate to the mover only. The record shall be 10 confidential and no longer considered a public record, nor be available to other 11 persons except a prosecutor, member of a law enforcement agency, or a judge who 12 may request such information in writing certifying that such request is for the 13 purpose of prosecuting, investigating, or enforcing the criminal law, for the purpose 14 of any other statutorily defined law enforcement or administrative duties, or for the 15 purpose of the requirements of sex offender registration and notification pursuant to 16 the provisions of R.S. 15:541 et seq. or upon an order of this Court to any other 17 person for good cause shown, or as otherwise authorized by law. 18 NAME: _____ (Last, First, MI) 19 DOB: ____/ (MM/DD/YY) 20 GENDER: _____ Female ____Male 21 22 SSN (last 4 digits): XXX-XX-_____

 23
 RACE: ______

 24
 DRIVER LIC.# ______

 25
 ARRESTING AGENCY: ______

 26
 SID# (if available): _______

 27
 ARREST NUMBER (ATN): _______

 28
 AGENCY ITEM NUMBER: _______

29 ARREST DATE: ____/ ___ (MM/DD/YY)

1	THUS	S ORDERED AND SIGNED this day of, 20
2	at	, Louisiana.
3 4		JUDGE
5	PLEA	SE SERVE:
6	1.	District Attorney:
7	2.	Arresting Agency:
8	3.	Parish Sheriff:
9	4.	Louisiana Bureau of Criminal Identification and Information
10	5.	Attorney for Defendant (or defendant)
11	6.	Clerk of Court

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 7 Engrossed	2016 Regular Session	Price

Abstract: Provides for expungement of records of arrest and conviction for persons determined to be factually innocent and entitled to compensation for a wrongful conviction and allows for the expungement of specific crimes of violence after a cleansing period.

<u>Present law</u> provides for the expungement of certain misdemeanor and felony arrest records if the arrest did not result in a conviction if any of the following occur:

- (1) The person was not prosecuted for the offense and the time limitations for prosecution have run.
- (2) The DA declined to prosecute for any offense arising from that arrest.
- (3) Prosecution was instituted and resulted in a dismissal, acquittal, or sustaining of a motion to quash.

<u>Proposed law</u> retains <u>present law</u> and adds an additional criteria if the person was determined to be factually innocent and entitled to compensation for a wrongful conviction.

<u>Present law</u> provides for the expungement of felony arrest and conviction records if either of the following occur:

- (1) The conviction and prosecution dismissed.
- (2) 10 years have elapsed since the completion of sentence, probation, or deferred sentence and the applicant has not been convicted of any offenses during the 10-year period.

Page 13 of 14

CODING: Words in struck through type are deletions from existing law; words <u>underscored</u> are additions.

<u>Proposed law</u> retains <u>present law</u> and adds an additional criteria if the person was judicially determined to be factually innocent and entitled to compensation for a wrongful conviction.

<u>Present law</u> provides for the expungement of certain misdemeanor and felony arrest and conviction records, but prohibits an expungement of a conviction for a crime of violence.

<u>Proposed law</u> changes <u>present law</u> to allow for the expungement of aggravated battery, second degree battery, aggravated criminal damage to property, simple robbery, purse snatching, and illegal use of weapons or dangerous instrumentalities if more than 10 years have elapsed since the person completed any sentence, deferred adjudication, or period of probation or parole based on the felony conviction, and the person has not been convicted of any other criminal offense during the 10-year period, has no criminal charge pending against him, and has been continuously employed for a period of 10 consecutive years.

(Amends C.Cr.P. Arts. 978(B)(1), 989 and 992; Adds C.Cr.P. Arts. 976(A)(4) and 978(E))

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. Amends expungement forms to reflect proposed law.
- 2. Requires that determination of factual innocence be a judicial determination.
- 3. Requires employment for 10 years to be continuous employment.