

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

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), unless  
11 otherwise authorized in Paragraph E of this Article.

12 \* \* \*

13 E.(1) 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 employed for a period of ten consecutive years.

26 (2) The motion filed pursuant to this Paragraph shall include a certification  
27 from the district attorney which verifies that, to his knowledge, the applicant has no  
28 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 GENDER \_\_\_\_\_ Female \_\_\_\_\_ Male

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 INFORMATION**

2        1.     Mover was arrested on \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_ (MM/DD/YYYY)

3        2.     \_\_\_\_\_ YES \_\_\_\_\_ NO     A supplemental sheet with arrests and/or  
4   convictions is attached after page 2 of this  
5   Motion.

6        3.     Mover was:  
7                   \_\_\_\_\_ YES \_\_\_\_\_ NO     Arrested, but it did not result in conviction  
8                   \_\_\_\_\_ YES \_\_\_\_\_ NO     Convicted of and seeks to expunge a  
9   misdemeanor

10       \_\_\_\_\_ YES \_\_\_\_\_ NO     Convicted of and seeks to expunge a felony  
11       \_\_\_\_\_ YES \_\_\_\_\_ NO     Convicted but determined to be factually  
12   innocent and entitled to compensation for a  
13   wrongful conviction pursuant to the  
14   provisions of R.S. 15:572.8.

15        4.     Mover was booked and/or charged with the following offenses: (List each  
16                   offense booked and charged separately. Attach a supplemental sheet, if  
17                   necessary.)

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

19        **ITEM NO. 1**     La. Rev. Stat. Ann.     § \_\_\_\_\_ : \_\_\_\_\_

20   Name of the offense     \_\_\_\_\_

21   ( ) Time expired for prosecution     \_\_\_\_\_

(MM/DD/YYYY)

23   ( ) Not prosecuted for any offense  
24   arising out of this charge.

25   ( ) Pre-trial Diversion Program.

- 1                                   ( ) DWI Pre-Trial Diversion Program
- 2   and 5 years have elapsed since the
- 3   date of arrest.
- 4                                   ( ) Charge dismissed
- 5                                   ( ) Found not guilty/judgment of acquittal

**ITEM NO. 2**

La. Rev. Stat. Ann.                                   § \_\_\_\_\_ : \_\_\_\_\_

Name of the offense                                   \_\_\_\_\_

( ) Time expired for prosecution                   \_\_\_\_\_

(MM/DD/YYYY)

- ( ) Not prosecuted for any
- offense arising out of this charge.

( ) Pre-trial Diversion Program.

( ) Charge dismissed

( ) Found not guilty/judgment of acquittal

**ITEM NO. 3**

La. Rev. Stat. Ann.                                   § \_\_\_\_\_ : \_\_\_\_\_

Name of the offense                                   \_\_\_\_\_

( ) Time expired for prosecution                   \_\_\_\_\_

(MM/DD/YYYY)

- ( ) Not prosecuted for any offense
- arising out of this charge.

( ) Pre-trial Diversion Program.

( ) Charge dismissed

( ) Found not guilty/judgment of acquittal

1                  Yes       No    **MISDEMEANOR CONVICTIONS**

2            **ITEM NO. 1**            La. Rev. Stat. Ann.            § \_\_\_\_\_ : \_\_\_\_\_

3    Name of the offense            \_\_\_\_\_

4    ( ) Conviction set aside/dismissed    \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

5    pursuant to C.Cr.P. Art. 894(B)        (MM/DD/YYYY)

6    ( ) More than 5 years have passed

7    since completion of sentence.

8            **ITEM NO. 2**            La. Rev. Stat. Ann.            § \_\_\_\_\_ : \_\_\_\_\_

9    Name of the offense            \_\_\_\_\_

10    ( ) Conviction set aside/dismissed    \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

11    pursuant to C.Cr.P. Art. 894(B)        (MM/DD/YYYY)

12    ( ) More than 5 years have passed

13    since completion of sentence.

14                  Yes       No    **FELONY CONVICTIONS**

15            **ITEM NO. 1**            La. Rev. Stat. Ann.            § \_\_\_\_\_ : \_\_\_\_\_

16    ( ) Conviction set aside/dismissed    \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

17    pursuant to C.Cr.P. Art. 893(E)        (MM/DD/YYYY)

18    ( ) More than 10 years have passed

19    since completion of sentence

20            **ITEM NO. 2**            La. Rev. Stat. Ann.            § \_\_\_\_\_ : \_\_\_\_\_

21    ( ) Conviction set aside/dismissed    \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

22    pursuant to C.Cr.P. Art. 893(E)        (MM/DD/YYYY)

23    ( ) More than 10 years have passed

24    since completion of sentence

1                 **Yes**      **No**    **OPERATING    A MOTOR VEHICLE WHILE**  
2     **INTOXICATED CONVICTIONS**

3            Mover has attached 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               A copy of the court order determination of factual innocence and  
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    Address

29    \_\_\_\_\_  
30    City, State, ZIP Code

31    \_\_\_\_\_  
32    Telephone Number  
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**If not represented by counsel:**

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

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

\_\_\_\_\_  
Address

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

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

\* \* \*

Art. 992. Order of expungement form to be used

**STATE OF LOUISIANA**

**JUDICIAL DISTRICT FOR THE PARISH OF**

\_\_\_\_\_

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

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

**State of Louisiana**

**vs.**

\_\_\_\_\_

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

Considering the Motion for Expungement

The hearing conducted and evidence adduced herein, OR

Affidavits of No Opposition filed,

IT IS ORDERED, ADJUDGED AND DECREED

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

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

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

- 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            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            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.

- 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/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

1 seq. or upon an order of this Court to any other person for good cause shown, or as  
2 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  
6 Article 985, for Item(s) No. \_\_\_\_\_ and all agencies are ordered to expunge  
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: \_\_\_\_\_  
19 (Last, First, MI)

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

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

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)

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

1 **THUS ORDERED AND SIGNED** this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_  
 2 at \_\_\_\_\_, Louisiana.

3 \_\_\_\_\_  
 4 JUDGE

5 **PLEASE 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 \_\_\_\_\_

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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)]

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HB 7 Reengrossed

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.

Present law 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.

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

Present law 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.

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

Present law 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.

Proposed law changes present law 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 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 House Committee on Administration of Criminal Justice to the original bill:

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.

#### The House Floor Amendments to the engrossed bill:

1. Deletes requirement that employment for 10 years be "continuous" employment.