

Expunging Arrests from the Public Record

Expungement Fair
Baton Rouge

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What is a Public Record?

- LSA-R.S. 44:1
- A(2)(a) All books, records, writings, accounts, letters and letter books, maps, drawings, photographs, cards, tapes, recordings, memoranda, and papers, and all copies, duplicates, photographs, including microfilm, or other reproductions thereof, or any other documentary materials, regardless of physical form or characteristics, including information contained in electronic data processing equipment, **having been used, being in use, or prepared, possessed, or retained for use in the conduct, transaction, or performance of any business, transaction, work, duty, or function which was conducted, transacted, or performed by or under the authority of the constitution or laws of this state, or by or under the authority of any ordinance, regulation, mandate, or order of any public body or concerning the receipt or payment of any money received or paid by or under the authority of the constitution or the laws of this state, are "public records",** except as otherwise provided in this Chapter or the Constitution of Louisiana.

Who Creates Public Records?

44A.(1) As used in this Chapter, the phrase "public body" means any branch, department, office, agency, board, commission, district, governing authority, political subdivision, or any committee, subcommittee, advisory board, or task force thereof, any other instrumentality of state, parish, or municipal government, including a public or quasi-public nonprofit corporation designated as an entity to perform a governmental or proprietary function, or an affiliate of a housing authority.

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What You Cant Get From the State

LSA 44:3 A (1)(2)(3)

- (1) Records pertaining to **pending criminal litigation** or any criminal litigation which can be **reasonably anticipated**, until such litigation has been finally adjudicated or otherwise settled, except as otherwise provided in Subsection F of this Section; or
- (2) Records containing the identity of a confidential source of information or records which would tend to reveal the identity of a confidential source of information; or
- (3) Records containing security procedures, investigative training information or aids, investigative techniques, investigative technical equipment or instructions on the use thereof, criminal intelligence information pertaining to terrorist-related activity, or threat or vulnerability assessments collected or obtained in the prevention of terrorist-related activity, including but not limited to physical security information, proprietary information, operational plans, and the analysis of such information, or internal security information; or

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Factors to Consider if Litigation is Reasonably Anticipated

In re Matter under Investigation, 15 So.3d 972 (La., 2009)

La. R.S. 44:3(A)(1) must be guided by objective factors. The determination should take into account, among other things the court finds relevant: whether criminal litigation may still be initiated given the prescriptive period of the offense to be charged; the temporal and procedural posture of each case; whether criminal litigation has been finally adjudicated or otherwise settled; the assertion of the prosecutorial authority as to its intent or lack thereof to initiate criminal litigation; whether the prosecutorial authority has taken objective, positive and verifiable steps to preserve its ability to initiate criminal litigation, including, but not limited to, preserving evidence, maintaining contact with witnesses, and continuing an investigation; the time it would take to appropriately investigate and try an offense; the prosecutor's inherent authority to determine whom, when and how he will prosecute, La.Cr.P. art. 61; the severity of the crime; the availability of witnesses, victims and defendants; the spoilation of evidence; the reasonable likelihood that a missing witness or an absconded defendant might be found; and the reasonable likelihood that additional witnesses might be willing to come forward with the passage of time.

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Arrest Reports

44:3A(4)

(a) The records of the arrest of a person, other than the report of the officer or officers investigating a complaint, until a final judgment of conviction or the acceptance of a plea of guilty by a court of competent jurisdiction. However, the initial report of the officer or officers investigating a complaint, but not to apply to any follow up or subsequent report or investigation, records of the booking of a person as provided in Louisiana Code of Criminal Procedure Article 228, records of the issuance of a summons or citation, and records of the filing of a bill of information shall be a public record.

(b) The initial report shall set forth:

- (i) A narrative description of the alleged offense, including appropriate details thereof as determined by the law enforcement agency.
- (ii) The name and identification of each person charged with or arrested for the alleged offense.
- (iii) The time and date of the alleged offense.
- (iv) The location of the alleged offense.
- (v) The property involved.
- (vi) The vehicles involved.
- (vii) The names of investigating officers.

(c) Nothing herein shall be construed to require the disclosure of information which would reveal undercover or intelligence operations.

(d) Nothing herein shall be construed to require the disclosure of information which would reveal the identity of the victim of a sexual offense.

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Undercover Cops, Juveniles, Sex Offenders

- 44:3
- (5) Records containing the identity of an undercover police officer or records which would tend to reveal the identity of an undercover police officer; or
- (6) Records concerning status offenders as defined in the Code of Juvenile Procedure.
- (7) Collected and maintained by the Louisiana Bureau of Criminal Identification and Information, provided that this exception shall not apply to the central registry of sex offenders maintained by the bureau.

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Homicides

44:3 F

after a period of ten years has lapsed from the date of death of a person by other than natural causes, and upon approval by the district court having jurisdiction over any criminal prosecution which may result due to the death of such person, any prosecutive, investigative, and other law enforcement agency, or any other governmental agency in possession of investigative files or evidence or potential evidence, or any other record, document, or item relating to said death shall, upon request, provide copies of all such files, records, and documents to immediate family members of the victim and shall provide unlimited access for any and all purposes to all such evidence, potential evidence, and other items to any member of the immediate family and to any person or persons whom any member of the immediate family has designated for such purposes. The access granted shall include but not be limited to the examination, inspection, photographing, copying, testing, making impressions, and the use in any court proceeding of and conducting forensic studies on such evidence, potential evidence, and other items. For the purposes of this Subsection, the term "immediate family" shall mean the surviving spouse, children, grandchildren, and siblings of the victim.

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What is an Expungement

- LSA-R.S. 44:9 G.
- "Expungement" means removal of a record from public access but does not mean destruction of the record. An expunged record is confidential, but remains available for use by.....

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Who Can See Expunged Records?

.....law enforcement agencies, criminal justice agencies, the Office of Financial Institutions, the Louisiana State Board of Medical Examiners, the Louisiana State Board of Nursing, the Louisiana State Board of Dentistry, the Louisiana State Board of Examiners of Psychologists, the Louisiana Board of Pharmacy, the Louisiana State Board of Social Work Examiners, the Emergency Medical Services Certification Commission, the Louisiana Attorney Disciplinary Board, Office of Disciplinary Counsel, the Louisiana Supreme Court Committee on Bar Admissions, the Louisiana Department of Insurance, the Louisiana Licensed Professional Counselors Board of Examiners, or any person or entity requesting a record of all criminal arrests and convictions pursuant to R.S. 15:587.1.

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Expunging Misdemeanors 44:9

A.(1) Any person who has been arrested for the violation of a municipal or parish ordinance or for violation of a state statute which is classified as a misdemeanor may make a written motion to the district, parish, or city court in which the violation was prosecuted or to the district court located in the parish in which he was arrested, for expungement of the arrest record, under either of the following conditions:

- (a) The time limitation for the institution of prosecution on the offense has expired, and no prosecution has been instituted; or
- (b) If prosecution has been instituted, and such proceedings have been finally disposed of by dismissal, sustaining of a motion to quash, or acquittal.

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Can't Expunge DWI Pretrial for 5 Years

La. R.S. 15:578.1 provides that any person arrested for driving while intoxicated ("D.W.I.") in violation of La. R.S. 14:98 and placed into a pretrial diversion program shall have his or her arrest record and placement into the pretrial diversion program made a public record after exiting that program. This public record shall be maintained for five years from the date of arrest before becoming subject to expungement or destruction. Held Constitutional by State v. Granger 982 So.2d 779 (La. 2008)

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Expunging Misdemeanors

44:9 A (2) If the court finds that the mover is entitled to the relief sought as authorized by this Subsection, it shall order all agencies and law enforcement offices having any record of the arrest, whether on microfilm, computer card or tape, or on any other photographic, electronic, or mechanical method of storing data, to **destroy** any record of arrest, photograph, fingerprint, or any other information of any and all kinds or descriptions.

..... This Subsection does not apply to arrests for a first or second violation of any ordinance or statute making criminal the driving of a motor vehicle while under the influence of alcoholic beverages or narcotic drugs, as denounced by R.S. 14:98 or 98.1.

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Expungements if no 894 or 892.1

44:9A(5)

(a) Any person who has been convicted for the violation of a municipal or parish ordinance, a traffic violation, or for violation of a state statute which is classified as a misdemeanor may make a written motion to the district, parish, or city court in which the violation was prosecuted or to the district court located in the parish in which he was arrested, for expungement of the arrest record if five or more years has elapsed between the date of the motion and the successful completion of any sentence, deferred adjudication, or period of probation or parole. Notwithstanding the provisions of Code of Criminal Procedure Article 892.1 or 894, or any other provision of law to the contrary regarding the set aside of a conviction or the dismissal of a prosecution, an expungement shall occur only once with respect to any person during a five-year period, except in the case of a misdemeanor offense of operating a vehicle while intoxicated which may occur only once with respect to any person during a ten-year period.

(b) No person shall be entitled to an expungement if the misdemeanor conviction arose from circumstances involving a sexual act or act of domestic violence.

(c) The motion for expungement shall include a certification obtained from the district attorney which verifies that, to his knowledge, the applicant has no felony convictions and no pending misdemeanor or felony charges under a bill of information or indictment.

(d) If, after a contradictory hearing with the district attorney and the arresting law enforcement agency, the court finds that the mover is entitled to the relief sought for the above reasons, it shall order all law enforcement agencies to expunge but not destroy the record of the same in accordance with the provisions of this Paragraph; however, nothing in this Paragraph shall limit or impede the authority under law to consider prior arrests or convictions in pursuing prosecution under multiple offender provisions or impede the investigation of any law enforcement official seeking to ascertain or confirm the qualifications of any person for any privilege or license authorized by law.

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Expunging Felonies and Certain Misdemeanor Crimes

44:B(1) Any person who has been arrested for the violation of a felony offense or who has been arrested for a violation of R.S. 14:34.2, R.S. 14:34.3, or R.S. 14:37 may make a written motion to the district court for the parish in which he was arrested for the expungement of the arrest record if:

- (a) The district attorney declines to prosecute, or the prosecution has been instituted, and such proceedings have been finally disposed of by acquittal, dismissal, or sustaining a motion to quash; and
- (b) The record of arrest and prosecution for the offense is without substantial probative value as a prior act for any subsequent prosecution.

(2) If, after a contradictory hearing with the district attorney and the arresting law enforcement agency, the court finds that the mover is entitled to the relief sought for the above reasons, it shall order all law enforcement agencies to expunge the record of the same in accordance herewith. However, nothing in this Paragraph shall limit or impede the authority under law to consider prior arrests or convictions in pursuing prosecution under multiple offender provisions or impede the investigation of any law enforcement official seeking to ascertain or confirm the qualifications of any person for any privilege or license authorized by law.

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Do I Have to Wait for Time Limitations to Run Before Expungement?

term "dismissal of an offense" in La.Rev.Stat. 44:9B includes dismissal when the district attorney declines to prosecute, either by written statement of dismissal or by oral dismissal in open court.

Moreover, the reasons given by the district attorney in this case are not valid. If further evidence of relator's guilt is discovered, the expungement of relator's arrest record will not have any effect on the district attorney's right to prosecute relator for this crime. *State v. Diaz 582 So. 2d 193 (La., 1991)*

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How to Expunge Felonies

- C.(1) Any person who has been arrested for the violation of a state statute which is classified as a felony may make a written motion to the district court for the parish in which he was arrested for expungement of the arrest record if the **time limitation for the institution of prosecution on the offense has expired, and no prosecution has been instituted.**
- (2) If, after a contradictory hearing with the arresting agency, the court finds that the mover is entitled to the relief sought for any of the above reasons, it shall order all law enforcement agencies to expunge same* in accordance herewith. However, the arresting agency may preserve the name and address of the person arrested and the facts of the case for investigative purposes only.

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No Destruction of Felony Records

44:9E.(1)

(a) No court shall order the destruction of any record of the arrest and prosecution of any person convicted of a felony, including a conviction dismissed pursuant to Article 893 of the Code of Criminal Procedure.

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Restoration of Rights 893,894

44:9E.(1)

(b) After a contradictory hearing with the district attorney and the arresting law enforcement agency, the court may order expungement of the record of a felony conviction dismissed pursuant to Article 893 of the Code of Criminal Procedure. Upon the entry of such an order of expungement, all rights which were lost or suspended by virtue of the conviction shall be restored to the person against whom the conviction has been entered, and such person shall be treated in all respects as not having been arrested or convicted unless otherwise provided in this Section or otherwise provided in the Code of Criminal Procedure Articles 893 and 894.

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Felony Convictions with no 893

44:9E.(1)

(c) A court may order the expungement of the record of a felony conviction of any person if all of the following conditions are met:

(i) The person was convicted of a nonviolent first offense felony for distribution, dispensing, or possession with intent to produce, manufacture, distribute, or dispense amphetamine or methamphetamine or cocaine or oxycodone or methadone, in violation of R.S. 40:967(A) and sentenced under R.S. 40:967(B)(1) or (4)(b) when the amount of amphetamine or methamphetamine or cocaine or oxycodone or methadone involved was twenty-eight grams or less.

(ii) The person was not sentenced as a habitual offender under the provisions of R.S. 15:529.1.

(iii) The person was committed to the Department of Public Safety and Corrections and successfully completed the intensive incarceration program as provided for in R.S. 15:574.4.4.

(iv) The person has not been convicted of any other offense since completion of his sentence.

(v) The person has no criminal charge pending against him.

(vi) A minimum of nineteen years has passed since completion of his sentence.

(vii) The person has not received a prior expungement of a felony pursuant to Code of Criminal Procedure Article 893.

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One 893 Felony Expungement per Lifetime

44:9 1(d) Notwithstanding the provisions of Code of Criminal Procedure Article 893 or any other provision of law to the contrary regarding the set aside of a conviction or the dismissal of a prosecution, an expungement of a **felony conviction** shall occur only once with respect to any person during a lifetime.

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No Expungements for Sex Offenders

44:9E(2) No court shall order the expungement or destruction of any record of the arrest and prosecution of any person convicted of a sex offense as defined by R.S. 15:541, involving a child under the age of seventeen years. The provisions of this Paragraph shall apply to all records of any proceedings, order, judgment, or other action under Code of Criminal Procedure Article 893.

44:9E (4) However a criminal background check requested by a health care provider pursuant to R.S. 40:1300.51 et seq. shall include records which would inform a potential employer of any crimes enumerated in said statute which were committed by an applicant for employment.

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Destruction of Felony Record if you can prove actual innocence

44:9J

(1) Any person who has obtained from the appropriate district court an order expunging an arrest may, with the consent of the district attorney, petition the same court alleging actual innocence for an order to destroy the records previously expunged.

(2) Such petition must be served on the arresting agency and the custodian of such records at least fifteen days in advance of any consideration by the court.

(3) No such petition may be entertained by the court without the express written consent of the district attorney. Such consent may be withdrawn at any time prior to consideration by the court.

(4) Upon consideration of the petition to destroy records properly authorized by the district attorney, the court shall order all agencies and law enforcement offices having any record of the arrest, whether on microfilm, computer card or tape, or on any other photographic, electronic or mechanical method of storing data, to destroy any record of arrest, photograph, fingerprint, or any other information of any and all kinds or descriptions.

(5) Any such order may include a requirement that the custodian of records file a sworn affidavit attesting that the records have been destroyed and that no notations or references have been retained in the agency's or law enforcement office's central repository which will or might lead to the inference that any record ever was on file with any agency or law enforcement office. The original of this affidavit shall be kept by the court so ordering same, and a copy shall be retained by the affiant agency or law enforcement office which said copy shall not be a public record and shall not be open for public inspection but rather shall be kept under lock and key and maintained only for internal recordkeeping purposes to preserve the integrity of said agency's or law enforcement office's files and shall not be used for any investigative purpose.

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Who Can See Expunged Records

44:9 F

For investigative purposes only, the Department of Public Safety and Corrections may maintain a confidential, nonpublic record of the arrest and disposition. Upon specific request therefor and on a confidential basis, the information contained in this record may be released to the following entities who shall maintain the confidentiality of such record: any law enforcement agency, criminal justice agency, the office of financial institutions, the Louisiana State Board of Medical Examiners, the Louisiana State Board of Nursing, the Louisiana State Board of Dentistry, the Louisiana State Board of Examiners of Psychologists, the Louisiana Board of Pharmacy, the Louisiana State Board of Social Work Examiners, the Emergency Medical Services Certification Commission, Louisiana Attorney Disciplinary Board, Office of Disciplinary Counsel, the Louisiana Supreme Court Committee on Bar Admissions, the Louisiana Department of Insurance, the Louisiana Licensed Professional Counselors Board of Examiners, or any person or entity requesting a record of all criminal arrests and convictions pursuant to R.S. 15:587.1.

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Who Can't Ask For an Expungement

44:9 H

A convicted felon while in the custody of the secretary of the Department of Public Safety and Corrections shall have no right or standing to petition the court for expungement under this Section.

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Do I Have to Tell People I Was Arrested If my Record was Expunged

44:9 I

Except to those entities listed in Subsection G of this Section, no person whose record of arrest and conviction has been expunged pursuant to the provisions of this Section shall be required to disclose that he was arrested or convicted for the subject offense or that the record of the arrest and conviction has been expunged, unless otherwise provided in this Section.

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Expungement Costs

44:9 A(3)

(a) The Bureau of Criminal Identification and Information may charge a processing fee of two hundred fifty dollars for the expungement of any record of arrest when ordered to do so by the court in compliance with the provisions of this Section.

(b) The clerk of court shall collect the processing fee at the time the motion for expungement is filed and may collect a fee of up to ten dollars to cover the clerk's administration costs. If the court finds the mover is entitled to the relief sought, the clerk shall direct the collected processing fee to the Bureau of Criminal Identification and Information and the processing fee amount shall be deposited immediately upon receipt into the Criminal Identification and Information Fund. If the court does not grant such relief, the clerk of court shall return the fee to the moving party.

(c) Notwithstanding the provisions of Subparagraphs (a) and (b) of this Paragraph, a juvenile who has participated in and has successfully completed any juvenile drug court program operated by a court of this state shall be exempt from payment of the processing fees otherwise authorized by this Paragraph.

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Expungement Costs The DA and Sheriff Get a Cut

44:9 A(4)

(a) The sheriff and the district attorney may each charge a processing fee of fifty dollars for the expungement of any record of arrest when ordered to do so by the court in compliance with the provisions of this Section.

(b) The clerk of court shall collect the processing fee at the time the motion for expungement is filed. If the court finds the mover is entitled to the relief sought, the clerk shall direct the collected processing fee to the sheriff and the district attorney and the processing fee amount shall be remitted immediately upon receipt in equal proportions to the office of the district attorney and the sheriff's general fund. If the court does not grant such relief, the clerk of court shall return the processing fee to the moving party.

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What if I Can't Afford an Expungement

44:9 K.

The following applicants for expungement shall not be required to pay any fee to the clerk of court, the Bureau of Criminal Identification and Information, sheriff, the district attorney, or any other agency to obtain or execute an order of a court of competent jurisdiction to expunge the arrest from the individual's arrest record if a certification obtained from the district attorney is presented to the clerk of court which verifies that the applicant has no felony convictions and no pending felony charges under a bill of information or indictment and at least one of the following applies:

- (1) The applicant was acquitted, after trial, of all charges derived from the arrest, including any lesser and included offense.
- (2) The district attorney consents, and the case against the applicant was dismissed or the district attorney declined to prosecute the case prior to the time limitations prescribed in Chapter 1 of Title XVII of the Code of Criminal Procedure, and the applicant did not participate in a pretrial diversion program.
- (3) The applicant was arrested and was never prosecuted within the time limitations prescribed in Chapter 1 of Title XVII of the Code of Criminal Procedure and did not participate in a pretrial diversion program.

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What Happens if the State Discloses Expunged Records

44:9D

Whoever violates any provisions of this section shall be punished by a fine of not more than two hundred fifty dollars or by imprisonment of not more than ninety days, or both, if the conviction is for a first violation; second and subsequent violations shall be punished by a fine of not more than five hundred dollars or imprisonment of six months, or both.

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How Can We Make the Process Better

44:9L

(1) The Louisiana State Law Institute shall develop a uniform expungement form for persons seeking an expungement without the necessity of employing counsel.

(2) The Louisiana State Law Institute shall develop a uniform order of expungement. The order shall provide for any information deemed appropriate by the Louisiana State Law Institute including the following:

- (a) The signatures of the judge, district attorney, and any other parties required by law.
- (b) The statutory authority for granting or denying the expungement.
- (c) A place for the court to provide written reasons when the expungement is denied.

(3) After development of the forms provided for by the provisions of this Subsection, the Louisiana State Law Institute shall make the forms available to the Judicial Council for distribution to the appropriate courts throughout the state of Louisiana.

(4) The clerks of court in all parishes shall make this information available to the public upon request.