

2017 Regular Session

HOUSE BILL NO. 506

BY REPRESENTATIVES JEFFERSON AND JACKSON

(On Recommendation of the Louisiana State Law Institute)

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

CHILDRENS CODE: Provides relative to juvenile records and proceedings

1 AN ACT

2 To amend and reenact Children's Code Articles 414(A), 728(2), 736.1, 737(A)(4), 738(B)  
3 and (C), 742(B), 917, 918, 919, 920(A) and (B), 921, 922, and 923(E) and R.S.  
4 15:593 and 614(B), to enact Children's Code Articles 737(D), 740(A)(6), 782(A)(7),  
5 Chapter 15-A of Title VII of the Children's Code, to be comprised of Articles 792  
6 and 793, and Children's Code Articles 901(G), 924, 925, and 926, to repeal  
7 Children's Code Articles 738(D) and 923, and to provide comments to Children's  
8 Code Articles 733, 733.1, 735, 736, and 758, relative to juvenile records and  
9 proceedings; to provide for the disclosure of juvenile records for sentencing  
10 purposes; to provide comments; to provide for the confidentiality of records; to  
11 provide for the records relating to placement when a child is taken into custody; to  
12 provide guidelines to the court in a juvenile disposition proceeding; to provide  
13 relative to the expungement and sealing of court and agency records; to provide for  
14 the waiver of costs and fees; to provide forms; to provide for the removal of records  
15 from the state police data base; to provide for effectiveness; and to provide for  
16 related matters.

17 Be it enacted by the Legislature of Louisiana:

18 Section 1. Children's Code Articles 414(A), 728(2), 736.1, 737(A)(4), 738(B) and  
19 (C), 742(B), 917, 918, 919, 920(A) and (B), 921, 922, and 923(E) are hereby amended and  
20 reenacted and Children's Code Articles 737(D), 740(A)(6), 782(A)(7), Chapter 15-A of Title

1 VII of the Children's Code, comprised of Articles 792 and 793, and Children's Code Articles  
2 901(G), 924, 925, and 926 are hereby enacted to read as follows:

3 Art. 414. Disclosure of records for sentencing; ~~habitual offender proceedings~~

4 A. Notwithstanding any provision of law to the contrary, upon written  
5 request, reports and records concerning juvenile court proceedings shall be released  
6 to the sentencing judge when necessary for sentencing ~~and released to the district~~  
7 ~~attorney for purposes of charging a person as a habitual offender pursuant to R.S.~~  
8 ~~15:529.1.~~

9 \* \* \*

10 Comments - 2017

11 The former provision pertaining to the use of juvenile delinquency records  
12 for sentencing under the habitual offender law has been removed in keeping with the  
13 holding of *State v. Brown*, 879 So. 2d 1276 (La. 2004).

14 \* \* \*

15 Art. 728. Definitions

16 As used in this Title:

17 \* \* \*

18 (2) "Child" means a person under eighteen years of age who, prior to  
19 ~~juvenile~~ proceedings under this Title, has not been judicially emancipated or  
20 emancipated by marriage.

21 \* \* \*

22 Comments - 2017

23 The definition of the term "child" has been amended to remove the reference  
24 to "juvenile" proceedings, which generally connote juvenile delinquency. Article  
25 792 provides that Families in Need of Services matters are neither juvenile  
26 delinquency nor criminal in nature.

27 \* \* \*

28 Art. 736.1. Immunity

29 Any law enforcement officer acting in good faith upon the request of a parent  
30 or guardian, exercising due care in the taking into custody a runaway child, or  
31 providing assistance thereto, pursuant to the provisions of this Title shall have  
32 immunity from any civil liability that otherwise might be incurred or imposed

1 because of the report, taking into custody, or assistance provided. The limitation of  
2 liability provided by this Article shall not extend to acts constituting negligence, ~~or~~  
3 a violation of the law, or a violation of the confidentiality provisions of this Code,  
4 including those contained in Article 412.

5 Comments - 2017

6 All records and reports regarding Families in Need of Services proceedings  
7 are confidential, and any violation of this confidentiality may subject the violator to  
8 penalties. See Children's Code Article 412.

9 Art. 737. Place of prehearing placement upon a taking into custody

10 A. When taken into custody, the child shall be placed in the least restrictive  
11 prehearing placement consistent with the child's need for protection or control, in the  
12 following order of priority:

13 \* \* \*

14 (4) A secure detention facility, until a hearing is held within twenty-four  
15 hours after the child's entry into custody in accordance with Article 739, if the child  
16 can be detained separately from children who have been adjudicated delinquent and  
17 ~~any~~ both of the following apply:

18 (a) ~~The child is a runaway.~~ Non-secure placement is not available to meet  
19 the child's need for protection or control.

20 (b) ~~The child is ungovernable.~~ There are reasonable grounds to believe that  
21 the child is a runaway, ungovernable, or otherwise at substantial risk of failing to  
22 appear at the next scheduled hearing if released to the custody of a parent or  
23 guardian.

24 (c) ~~The child has previously failed to appear at a scheduled juvenile court~~  
25 ~~hearing.~~

26 \* \* \*

27 D. Any records and reports related to placement of a child into custody under  
28 any of the provisions of this Title shall be confidential and shall not be disclosed  
29 unless specifically authorized by provisions of this Code, including Article 412.

1 Comments - 2017

2 The provisions of Paragraph D are consistent with Article 793, which  
3 provides that all records and reports regarding Families in Need of Services  
4 proceedings are confidential. Any violation of this confidentiality may subject the  
5 violator to penalties. See Children's Code Article 412.

6 Art. 738. Release from custody

7 \* \* \*

8 ~~B. If the court finds that these conditions are insufficient to assure the~~  
9 ~~presence of the child at later proceedings, the court may require the posting of bail~~  
10 ~~in accordance with Title VIII.~~

11 ~~C.~~ If the court finds that release under ~~neither~~ Paragraph A ~~nor~~ B of this  
12 Article is appropriate ~~inappropriate~~, it may authorize the continued custody of the  
13 child pending the holding of a continued custody hearing within the time limitations  
14 established in Article 739.

15 ~~D.C.~~ An appropriate representative of the ~~arresting~~ agency that took the child  
16 into custody shall be responsible for transporting the child to the adjudication or  
17 disposition hearing, or both, and transporting the child back to the shelter care  
18 facility or secure detention facility as determined by the court through its order or  
19 judgment of disposition.

20 \* \* \*

21 Art. 740. Advice of rights

22 A. At the continued custody hearing, the court shall advise the parents and  
23 the child, in terms understandable by the child, of:

24 \* \* \*

25 (6) The nature of Families in Need of Services proceedings as set forth in  
26 Article 792 and the confidentiality of Families in Need of Services records as set  
27 forth in Article 793.

28 \* \* \*

29 Comments - 2017

30 Because Families in Need of Services cases may originate with a taking into  
31 custody and detention, it is important that the court instruct the child as to the

1 distinction between Families in Need of Services matters and juvenile delinquency  
2 or criminal matters.

3 \* \* \*

4 Art. 742. Place of continued custody

5 \* \* \*

6 B. The court may detain the child in a secure detention facility for up to  
7 twenty-four hours, excluding weekends and holidays, only for the purpose of  
8 providing adequate time to arrange for an appropriate non-secure alternative  
9 placement in accordance with Article 737 pending the adjudication hearing.

10 \* \* \*

11 Comments - 2017

12 The 2017 amendment clarifies that secure placement is intended to be  
13 short-term pending non-secure placement.

14 \* \* \*

15 Art. 782. Judgment of disposition

16 A. The court shall enter into the record a written judgment of disposition  
17 specifying the following:

18 \* \* \*

19 (7) The nature of Families in Need of Services proceedings in accordance  
20 with Article 792 and the confidentiality of Families in Need of Services records in  
21 accordance with Article 793.

22 \* \* \*

23 Comments - 2017

24 The judgment of disposition must include notice that these proceedings and  
25 records relative thereto are not, nor should they be treated as, juvenile delinquency  
26 or criminal proceedings and records. See Children's Code Articles 792 and 793.

27 \* \* \*



1 Art. 917. Expungement and sealing; generally

2 ~~A person seventeen years of age or older may move for expungement of~~  
3 ~~records of juvenile criminal conduct pursuant to this Chapter. This Chapter provides~~  
4 ~~the exclusive procedure by which records and reports of proceedings under Title VIII~~  
5 ~~of this Code may be expunged and sealed.~~

6 Art. 918. Grounds

7 A. ~~Records concerning conduct or conditions~~ and reports of a delinquency  
8 matter that did not result in adjudication may be expunged and sealed at any time.

9 B. Records and reports of a matter that resulted in a finding of Families in  
10 Need of Services may be expunged and sealed only if the court exercising juvenile  
11 jurisdiction has ceased to exercise such jurisdiction in accordance with Article 313.

12 C. ~~Records concerning conduct or conditions~~ Except as otherwise provided  
13 in Paragraph E of this Article, records and reports of a matter that resulted in a  
14 misdemeanor delinquency adjudication for a misdemeanor offense may be expunged  
15 and sealed only if two or more years have elapsed since the person satisfied the most  
16 recent judgment against him. all of the following circumstances exist:

17 (1) The person seeking expungement and sealing has attained the age of  
18 seventeen years, or six months have elapsed since the court exercising juvenile  
19 jurisdiction ceased to exercise such jurisdiction in accordance with Article 313.

20 (2) The court exercising juvenile jurisdiction has ceased to exercise such  
21 jurisdiction in accordance with Article 313.

22 C.D. ~~Records concerning conduct or conditions~~ Except as otherwise  
23 provided in Paragraph E of this Article, records and reports of a matter that resulted  
24 in a felony delinquency adjudication for a felony offense may be expunged and  
25 sealed only if all of the following circumstances exist:

26 (1) The delinquency adjudication was not for murder, manslaughter, ~~any~~  
27 ~~sexual crime~~; an offense requiring registration as a sex offender under R.S. 15:542,  
28 kidnapping, or armed robbery.

1           (2) ~~Five or more~~ The person seeking expungement and sealing has attained  
2           the age of seventeen years, or two years have elapsed since the person satisfied the  
3           most recent judgment against him the court exercising juvenile jurisdiction ceased  
4           to exercise such jurisdiction in accordance with Article 313.

5           (3) The person seeking expungement and sealing has no ~~criminal court~~ adult  
6           felony convictions and no ~~criminal court~~ adult convictions for misdemeanors against  
7           a person involving a ~~weapon~~ firearm.

8           (4) The person seeking expungement and sealing has no ~~outstanding pending~~  
9           indictment or bill of information ~~charging him~~.

10           ~~D.E.~~ Records concerning conduct or conditions and reports of a matter that  
11           resulted in a misdemeanor or felony adjudication for R.S. 14:82, 83.3, 83.4, 89, or  
12           89.2 may be expunged and sealed upon petition to the court and upon a showing that,  
13           during the time of the commission of the offense, the person seeking the  
14           expungement and sealing was a victim of trafficking of children for sexual purposes  
15           pursuant to R.S. 14:46.3(E) provided that the person has no ~~outstanding pending~~  
16           indictment or bill of information ~~charging him~~.

17           Art. 919. Procedure for expungement

18           A. A person ~~seventeen years of age or older~~ may move for the expungement  
19           and sealing of his records and reports ~~concerning the person's juvenile criminal~~  
20           ~~conduct or conditions~~.

21           B. The motion for expungement and sealing ~~must be in writing and must~~  
22           shall be substantially in the form provided in Article 925 and shall state facts that  
23           constitute grounds for expungement and sealing under Article 918.

24           C. The motion for expungement ~~must~~ and sealing shall be filed with the  
25           court possessing the records and reports ~~the person seeks to expunge~~, or with the  
26           court ~~having~~ exercising juvenile jurisdiction over the arresting agency.

27           D. The motion ~~must~~ shall be served personally or by domiciliary service, or  
28           by ~~certified~~ United States mail or electronic means, on the district attorney, the clerk  
29           of the court whose records and reports are sought to be expunged and sealed, and the

1 head of any agency whose ~~reports and~~ records are sought to be expunged and sealed,  
2 including but not limited to the Federal Bureau of Investigation, the Louisiana  
3 Bureau of Criminal Identification and Information, the Department of Public Safety  
4 and Corrections, office of juvenile justice, and local law enforcement agencies.

5 E. ~~Unless waived by consent of the parties,~~ Any person or agency that  
6 objects to the granting of the motion for a matter that resulted in a delinquency  
7 adjudication for a misdemeanor offense or for a felony offense shall file an affidavit  
8 of response in the form provided in Article 926, and a contradictory hearing ~~must~~  
9 shall be conducted with the district attorney and any agency whose records and  
10 reports are sought to be expunged and sealed.

11 F. If the court finds that the grounds have been established; and that the  
12 person is entitled to expungement and sealing, the court ~~may~~ shall order  
13 expungement and sealing.

14 Art. 920. Order of expungement and sealing; court records

15 A. An order for the expungement and sealing of juvenile court records and  
16 reports must shall be in ~~writing and,~~ the form provided in Article 925 and, except as  
17 ~~hereinafter provided, must~~ otherwise provided by law, shall require that the clerk of  
18 court ~~destroy~~ expunge and seal all records and reports relating to the conduct or  
19 conditions referred to in the motion for expungement and sealing, including ~~but not~~  
20 ~~limited to~~ pleadings, exhibits, reports, minute entries, correspondence, and all other  
21 documents.

22 B. References, documents, recordings, or other materials ~~that cannot be~~  
23 ~~destroyed may be maintained~~ shall be expunged and sealed. Under no circumstances  
24 may any ~~undestroyed~~ expunged and sealed information be released.

25 \* \* \*

26 Art. 921. Order of expungement and sealing; agency records

27 A. An order for the expungement and sealing of juvenile records and reports  
28 ~~must shall~~ be in ~~writing and must~~ the form provided in Article 925 and shall require  
29 that both of the following occur:

1 (1) Except as otherwise provided by law, all officials, agencies, institutions,  
2 boards, systems, and law enforcement offices, and their employees, agents, and  
3 consultants, ~~destroy all reports and~~ expunge and seal all records and reports, whether  
4 on microfilm, computer memory device, or tape, ~~or~~ and any other photographic,  
5 fingerprint, DNA, or any other information of any kind and all kinds or descriptions  
6 relating to the conduct or conditions referred to in the motion for expungement and  
7 sealing.

8 (2) ~~Any and all such~~ All agencies and law enforcement offices file an  
9 affidavit with the court ~~attesting to the fact that such records and reports have been~~  
10 ~~destroyed~~ expunged and sealed and that no notation or references have been retained  
11 in any central depository which will or might lead to the inference that any record  
12 or report ever was on file with that agency or law enforcement office. A copy of the  
13 affidavit of expungement and sealing shall be retained by the court.

14 B. The order ~~must~~ shall specify the time within which the ~~destruction~~  
15 expungement and sealing is to be effected. The order ~~must~~ shall also specify the  
16 limitations on information ~~which~~ that may be maintained in accordance with this  
17 Article.

18 C. An order for expungement ~~must~~ and sealing shall be served in the manner  
19 provided for service of the motion on both the district attorney and the head of ~~the~~  
20 each agency whose ~~reports or records~~ or reports are to be ~~destroyed~~ expunged and  
21 sealed.

22 D. A copy of the ~~judgment ordering destruction~~ order of expungement and  
23 sealing may be maintained by the custodian of ~~reports and~~ records and reports of the  
24 agency or office. However, the custodian ~~must~~ shall not disclose to anyone the fact  
25 that such ~~judgment~~ order is maintained or that the ~~destroyed reports or~~ expunged and  
26 sealed records previously existed ~~to anyone~~ except upon written order of the court.  
27 Art. 922. Expungement and sealing order; effect

28 Except for the limited purposes stated in Articles 920 and 921, upon an order  
29 of expungement and sealing, the ~~conduct and conditions~~ records and reports

1 expunged and sealed and the underlying conduct and conditions are considered  
2 nonexistent and ~~are to be treated as such upon inquiry~~ shall not be made available to  
3 any person. No person whose juvenile records and reports have been expunged and  
4 sealed shall be required to disclose to any person that he was arrested or adjudicated  
5 or that the records and reports of arrest or adjudication have been expunged and  
6 sealed.

7 Art. 923. Expungement and sealing of adjudications involving human trafficking  
8 victims

9 \* \* \*

10 E. If the motion is granted, the court shall order the expungement and sealing  
11 of the record and report of the ~~delinquency~~ juvenile proceedings including ~~but not~~  
12 ~~limited to~~ all records and files related to the child's arrest, citation, investigation,  
13 charge, delinquency proceedings, adjudication, and probation for the offense.

14 Art. 924. Fees

15 A. No court costs or fees shall be allowed against any party to a proceeding  
16 for an expungement and sealing.

17 B. The court may waive all or any part of any other fees or costs associated  
18 with the expungement and sealing and shall waive those fees and costs upon finding  
19 that the applicant is indigent.

20 C. Notwithstanding any provision of law to the contrary, a child who has  
21 successfully completed a juvenile drug court program operated by a court of this  
22 state shall be exempt from payment of any processing or filing fees or other costs  
23 associated with the expungement and sealing of his related juvenile records and  
24 reports.

25 Comments - 2017

26 For the procedure for determining indigency in accordance with Paragraph  
27 B of this Article, see Article 320.

1        Art. 925. Expungement and sealing; forms

2            A. The following form shall be used for filing a motion, setting a  
3        contradictory hearing, and ordering the expungement and sealing of records and  
4        reports:

5                            MOTION FOR EXPUNGEMENT AND SEALING

6            NOW INTO COURT COMES \_\_\_\_\_, in  
7        proper person or through undersigned counsel, and herein moves this Honorable  
8        Court:

9            (1) To order the expungement and sealing of all records and reports,  
10        including but not limited to the record of arrest and order of disposition concerning  
11        the below described conduct or condition, and directing all officials, agencies,  
12        institutions, boards, and systems, including their employees, agents, consultants, and  
13        special committees, to expunge and seal any record in any form concerning the arrest  
14        of mover, whether on microfilm, computer card or tape, and any other photographic,  
15        fingerprint, DNA, or any other information of any and all kinds or descriptions; and

16            (2) To direct each agency and law enforcement office having any such  
17        records, including but not limited to the above named entities, to file a sworn  
18        affidavit with the clerk of court to the effect that such records have been expunged  
19        and sealed and that no notation or reference has been retained in any central  
20        depository which could or might lead to the inference that the expunged and sealed  
21        record was ever on file with that agency or law enforcement office, except as  
22        otherwise specifically provided by law.

23                            I.

24        Full name of mover:

25        \_\_\_\_\_

26        SEX: { } Male { } Female

Social Security Number: \_\_\_\_\_

27        Race/Ethnicity: \_\_\_\_\_

Date of Birth:    /    /

28        Address: Street: \_\_\_\_\_ Apt. #: \_\_\_\_\_

29        City/State: \_\_\_\_\_ Zip: \_\_\_\_\_



1 AND the court which had exercised juvenile jurisdiction ceased to exercise such in  
2 accordance with Children's Code Article 313.

3 { } This matter resulted in a felony adjudication.

4 AND the mover has attained the age of seventeen years, or two years have elapsed  
5 since the court exercising juvenile jurisdiction ceased to exercise such in accordance  
6 with Children's Code Article 313.

7 AND the adjudication was not for murder, manslaughter, an offense requiring  
8 registration as a sex offender under R.S. 15:542, kidnaping, or armed robbery.

9 AND mover has no adult felony conviction and no adult conviction for a  
10 misdemeanor against a person involving a firearm.

11 AND mover has no pending indictment or bill of information against him.

12 WHEREFORE, mover prays that after due proceedings are had, there be an  
13 order herein in favor of mover, ordering the clerk of court and all other agencies,  
14 offices or organizations to expunge and seal their records or reports concerning the  
15 conduct or condition of mover as a child as more fully described herein.

16 Respectfully submitted,

17 \_\_\_\_\_  
18 Name of Mover or Attorney

19 \_\_\_\_\_  
20 \_\_\_\_\_  
21 Address

22 \_\_\_\_\_  
23 City/State/Zip

24 \_\_\_\_\_  
25 Phone

26 ORDER

27 CONSIDERING the above and foregoing:

28 IT IS ORDERED that a contradictory hearing be and is hereby set for the  
29 day of \_\_\_\_\_, 20 at \_\_\_\_\_ in Section \_\_\_\_\_.  
30 \_\_\_\_\_, Louisiana this day of \_\_\_\_\_ 20 .

31 \_\_\_\_\_  
32 JUDGE

33 Note: Please add any additional necessary agencies below.

1        PLEASE SERVE:  
 2        Parish of \_\_\_\_\_  
 3                District Attorney \_\_\_\_\_  
 4                Clerk of Court \_\_\_\_\_  
 5                Sheriff \_\_\_\_\_

6        Bureau of Identification and Information  
 7        Attn: Expungement  
 8        7919 Independence Blvd.  
 9        Baton Rouge, Louisiana 70806

10       and

11	_____	_____
12	<u>Name of Agency</u>	<u>Name of Agency</u>
13	_____	_____
14	<u>Attn:</u>	<u>Attn:</u>
15	_____	_____
16	<u>Address</u>	<u>Address</u>
17	_____	_____
18	<u>City/State/Zip</u>	<u>City/State/Zip</u>

19                B. The following form shall be used to order the expungement and sealing:

20                                ORDER OF EXPUNGEMENT AND SEALING

21                CONSIDERING the Motion for Expungement and Sealing and the evidence  
 22        adduced as to the following described matter, and as to the following described  
 23        conduct or conditions:

<u>Item #s</u>	<u>Offense(s) Charged</u>	<u>Date of Arrest(s)</u>	<u>Arresting Agencies</u>

26                                IT IS ORDERED that the clerk of court expunge and seal all records and  
 27        reports, in any medium, including but not limited to pleadings, exhibits, reports,  
 28        minute entries, correspondence, and all other documents. The court may maintain  
 29        a confidential record of the fact of an adjudication, which may be released only upon  
 30

1 written motion of a court exercising criminal jurisdiction over the mover herein and  
2 then only for purposes authorized by the Code of Criminal Procedure.

3 IT IS FURTHER ORDERED that all officials, agencies, institutions, boards,  
4 systems, and law enforcement officers and their employees, agents, and consultants  
5 expunge and seal all records and reports, in any medium, concerning the above  
6 described matter, whether on microfilm, computer card or tape, and any other  
7 photographic, fingerprint, DNA, or any other information of any and all kinds and  
8 descriptions. The custodian of records and reports of the agency or office may  
9 maintain a copy of this order. However, the custodian shall not disclose to anyone  
10 the fact that an order is maintained or that the expunged and sealed records or reports  
11 previously existed except upon written order of the court.

12 IT IS FURTHER ORDERED that each agency and law enforcement office  
13 herein served and having any records or reports of the conduct or condition file a  
14 sworn affidavit with the clerk of court to the effect that the records and reports have  
15 been expunged and sealed and that no notation or references have been retained in  
16 any central depository which could or might lead to the inference that any report or  
17 record was on file with the agency or law enforcement office served, which affidavit  
18 shall be filed with the clerk of court within \_\_\_\_\_ days after service of this order.

19 Signed at \_\_\_\_\_, Louisiana this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_.

20 \_\_\_\_\_  
21 JUDGE

22 Note: Please add any necessary agencies below.

23 PLEASE SERVE:

24 Parish of \_\_\_\_\_

25 District Attorney \_\_\_\_\_

26 Clerk of Court \_\_\_\_\_

27 Sheriff \_\_\_\_\_

28 Bureau of Identification & Information

29 Attn: Expungements

30 7919 Independence Blvd.



1        ~~{ }~~ The adjudication was for a felony offense, and the applicant has a pending  
2        indictment or bill of information filed against him.

3        Respectfully submitted,

4        \_\_\_\_\_  
5        Name of Respondent/Signature of Attorney

6        \_\_\_\_\_  
7        Address

8        \_\_\_\_\_  
9        City/State/Zip

10       \_\_\_\_\_  
11       Phone

12       PLEASE SERVE:

13       Parish of \_\_\_\_\_

14               District Attorney \_\_\_\_\_

15               Clerk of Court \_\_\_\_\_

16               Sheriff \_\_\_\_\_

17       Bureau of Identification & Information

18       Attn: Expungements

19       7919 Independence Blvd.

20       Baton Rouge, Louisiana 70806

21       and

22       \_\_\_\_\_  
23       Name of Agency                               Name of Agency

24       \_\_\_\_\_  
25       Attn:   Attn:

26       \_\_\_\_\_  
27       Address   Address

28       \_\_\_\_\_  
29       City/State/Zip                                       City/State/Zip

30       \_\_\_\_\_  
31       Section 2. Children's Code Article 918 is hereby amended and reenacted to read as  
32 follows:

33       Art. 918. Grounds

1           A. ~~Records concerning conduct or conditions~~ and reports of a delinquency  
2 matter that did not result in adjudication may be expunged and sealed at any time.

3           B. Records and reports of a matter that resulted in a finding of Families in  
4 Need of Services may be expunged and sealed only if the court exercising juvenile  
5 jurisdiction has ceased to exercise such jurisdiction in accordance with Article 313.

6           C. ~~Records concerning conduct or conditions~~ and reports of a matter that  
7 resulted in a ~~misdemeanor delinquency~~ adjudication for a misdemeanor offense may  
8 be expunged and sealed only if all of the following circumstances exist: two or more  
9 years have elapsed since the person satisfied the most recent judgment against him.

10           (1) The person seeking expungement and sealing has attained the age of  
11 seventeen years, or six months have elapsed since the court exercising juvenile  
12 jurisdiction ceased to exercise such jurisdiction in accordance with Article 313.

13           (2) The court exercising juvenile jurisdiction has ceased to exercise such  
14 jurisdiction in accordance with Article 313.

15           C.D. ~~Records concerning conduct or conditions~~ and reports of a matter that  
16 resulted in a ~~felony delinquency~~ adjudication for a felony offense may be expunged  
17 and sealed only if:

18           (1) The delinquency adjudication was not for murder, manslaughter, ~~any~~  
19 ~~sexual crime~~, an offense requiring registration as a sex offender under R.S. 15:542,  
20 kidnapping, or armed robbery.

21           (2) ~~Five or more~~ The person seeking expungement and sealing has attained  
22 the age of seventeen years, or two years have elapsed since the person satisfied the  
23 most recent judgment against him the court exercising juvenile jurisdiction ceased  
24 to exercise such jurisdiction in accordance with Article 313.

25           (3) The person seeking expungement and sealing has no ~~criminal court~~ adult  
26 felony convictions and no ~~criminal court~~ adult convictions for misdemeanors against  
27 a person involving a ~~weapon~~ firearm.

28           (4) The person seeking expungement and sealing has no ~~outstanding pending~~  
29 indictment or bill of information ~~charging him.~~



1 Art. 735. Taking child into custody with a court order

2 \* \* \*

3 Comments - 2017

4 (a) In accordance with Article 792, the taking into custody of a child based  
5 on grounds of Families in Need of Services is not an arrest and should not be  
6 construed to be an arrest.

7 (b) All records and reports regarding Families in Need of Services  
8 proceedings are confidential, and any violation of this confidentiality may subject  
9 the violator to penalties. See Children's Code Article 412.

10 Art. 736. Taking child into custody without a court order

11 \* \* \*

12 Comments - 2017

13 (a) In accordance with Article 792, the taking into custody of a child based  
14 on grounds of Families in Need of Services is not an arrest and should not be  
15 construed to be an arrest.

16 (b) All records and reports regarding Families in Need of Services  
17 proceedings are confidential, and any violation of this confidentiality may subject  
18 the violator to penalties. See Children's Code Article 412.

19 \* \* \*

20 Art. 758. Advice of rights at appearance to answer petition

21 \* \* \*

22 Comments - 2017

23 The list of advisements in Article 740 include instructing the child as to the  
24 nature of Families in Need of Services matters and records pursuant to Article 792.

25 \* \* \*

26 Section 4. R.S. 15:593 and 614(B) are hereby amended and reenacted to read as  
27 follows:

28 §593. Prohibition against destruction of records

29 Notwithstanding the provisions of Code of Criminal Procedure Articles 893  
30 and 894 ~~of the Code of Criminal Procedure~~ and R.S. 40:983, and except in  
31 accordance with the provisions set forth in ~~R.S. 44:9~~ Children's Code Articles 917  
32 through 926, no judge or other official shall order the expungement, sealing,

1 alteration, or destruction of any report or record of the bureau or of any agency  
2 subject to reporting requirements of the bureau.

3 \* \* \*

4 §614. Removal of records

5 \* \* \*

6 B. The state police shall remove all reports and records and identifiable  
7 information in the data base or data bank pertaining to the person and destroy all  
8 samples from the person upon receipt of a written request for the removal of the  
9 report and record and a certified court order of expungement and sealing properly  
10 obtained, including those obtained pursuant to the provisions of ~~R.S. 44:9~~ Children's  
11 Code Articles 917 through 926.

12 Section 5. Children's Code Article 923 is hereby repealed in its entirety.

13 Section 6. Children's Code Article 738(D) is hereby repealed in its entirety.

14 Section 7. The provisions of Sections 2 and 5 of this Act shall become effective if  
15 and when the Act that originated as Senate Bill No. 54 of the 2017 Regular Session is  
16 enacted and becomes effective. If the provisions of Sections 2 and 5 of this Act become  
17 effective, they shall prevail over any conflicting provisions in Section 1 of this Act.

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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 506 Original

2017 Regular Session

Jefferson

**Abstract:** Provides relative to juvenile records and proceedings.

Present law (Ch.C. Art. 414) provides that disclosure of juvenile records shall be released to the sentencing judge and district attorney when necessary for sentencing purposes.

Proposed law retains present law but deletes the requirement that the records be released to the district attorney for use in sentencing.

Present law (Ch.C. Art. 728) defines “child” for purposes of present law Title VII regarding Families in Need of Services.

Proposed law amends the present law definition of "child" to clarify that this definition applies only to the provisions of the Children's Code regarding FINS and that FINS proceedings are not criminal or delinquent in nature.

Present law (Ch.C. Art. 736.1) provides immunity from civil liability for a law enforcement officer acting in good faith upon the request of a parent or guardian, exercising due care in the taking into custody of a runaway child, or providing assistance in this regard.

Proposed law retains present law, but exempts from this immunity liability for violations of the present law requirements of confidentiality.

Present law (Ch.C. Arts. 737 and 738) provides relative to the placement of a child taken into custody while awaiting a hearing in a FINS proceeding.

Proposed law amends present law to provide that the child may only be held in a secure detention facility until a hearing is held within 24 hours pursuant to present law if both of the following conditions exist:

- (1) Non-secure placement is not available to meet the child's need for protection or control.
- (2) There are reasonable grounds to believe that the child is a runaway, ungovernable, or otherwise at substantial risk of failing to appear at the next scheduled hearing if released to the custody of a parent or guardian.

Proposed law (Ch.C. Art. 792) provides that FINS proceedings are civil in nature, and actions taken pursuant to such proceedings, including the taking into custody and detention of a child, are not considered juvenile delinquency or criminal matters.

Proposed law (Ch.C. Art. 793) provides that FINS records, including the existence of such records, shall remain confidential and shall not be disclosed without the consent of the child or order of the court pursuant to present law. Further provides that such records shall not be identified, maintained, or otherwise handled as a juvenile delinquency or criminal matter.

Present law (Ch.C. Arts. 740 and 782) requires the court to advise a child of certain rights and to include certain information in a judgment of disposition.

Proposed law retains present law and provides that a child shall also be advised of the nature of a FINS proceeding and the confidentiality of FINS records as provided by proposed law. Further requires this information to be included in the judgement of disposition as well.

Proposed law adds comments to present law (Ch.C. Arts. 733, 733.1, 735, and 736) to clarify that in FINS cases, questioning a child or taking a child into custody is not an arrest and records thereof shall not be created or disclosed.

Present law (Ch.C. Art. 901) provides guidelines for the court when considering its options for disposition of a case.

Proposed law retains present law and requires the court to notify the child of the expungement and sealing procedure.

Present law (Ch.C. Art.917) authorizes a person seventeen years of age or older to move for expungement of his juvenile records pursuant to present law.

Proposed law amends present law by provides for the following procedures and requirements for the expungement and sealing of juvenile records, which shall be the exclusive procedure for the expungement and sealing of juvenile records:

- (1) Amends the present law (Ch.C. Art. 918) grounds and requirements for expungement of juvenile records to add that records and reports of a FINS matter may be expunged and sealed if the court exercising jurisdiction has ceased to exercise such jurisdiction.

- (2) Amends the requirements for the expungement of records relative to an adjudication of a misdemeanor offense to provide that the records may be expunged and sealed if the court exercising jurisdiction has ceased to exercise jurisdiction and the person has reached the age of 17 or six months have elapsed since the court ceased in exercising its jurisdiction.
- (3) Adds an adjudication of a felony offense that requires registration as a sex offender to the list of offenses for which a child cannot get an expungement.
- (4) Amends the requirements for the expungement of records relative to an adjudication of a felony offense to provide that the records may be expunged and sealed if:
  - (a) The court exercising jurisdiction has cased to exercise such jurisdiction.
  - (b) The person has reached the age of 17 or two years (decreased from five years as provided by present law) have elapsed since the court ceased in exercising its jurisdiction.
  - (c) The person has no adult felony convictions or adult convictions for misdemeanors against a person involving a firearm.
  - (d) The person has no pending indictment of bill of information.
- (5) Requires the motion for expungement and sealing and any objections to the motion to be on the forms provided by proposed law.
- (6) Require a contradictory hearing on the motion only if a person or agency objects to the granting of the motion.
- (7) Requires the court's order for expungement and sealing of court records and the order for expungement and sealing of agency records be on the forms provided by proposed law.
- (8) Provides for the expungement and sealing of DNA and eliminates the destruction of records in favor of expungement and sealing.
- (9) Provides that a person whose record has been expunged and sealed does not have to disclose that fact to any person.
- (10) Prohibits the assessment of court fees and authorizes the court to waive any other fees and costs of expungement and sealing upon a finding that the applicant is indigent. Further exempts an applicant from the costs and fees when he has successfully completed a juvenile drug court program.

Present law (R.S.15:593) prohibits the expungement or destruction of any record of the La. Bureau of Criminal Identification and Information or any agency subject to the reporting requirements of the bureau. Further provides for certain exceptions to this prohibition.

Proposed law retains present law and adds juvenile records that have been expunged and sealed pursuant to Ch.C. Arts. 917 et seq. to the list of exceptions to this prohibition on the expungement of bureau and agency records.

Present law (R.S.15:614) provides for the removal by state police of all DNA records and profiles upon receipt of a court order of expungement.

Proposed law retains present law and includes orders of expungement of juvenile records issued pursuant to Ch.C. Arts. 917 et seq.

(Amends Ch.C. Arts. 414(A), 728(2), 736.1, 737(A)(4), 738(B) and (C), 742(B), 917, 918, 919, 920(A) and (B), 921, 922, and 923(E) and R.S. 15:593 and 614(B); Adds Ch.C. Arts. 737(D), 740(A)(6), 782(A)(7), 792, 793, 901(G), 924, 925, and 926; Repeals Ch.C. Arts. 738(D) and 923)