

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 CHAPTER 15-A. NATURE OF PROCEEDINGS AND RECORDS

2 Art. 792. Nature of proceedings

3 Families in Need of Services proceedings are civil in nature, and actions
4 taken pursuant to this Title, including taking into custody and detention, shall not be
5 considered juvenile delinquency or criminal matters.

6 Comments - 2017

7 This Article does not change the law. This Article simply clarifies the nature
8 of Families in Need of Services proceedings as distinct from juvenile delinquency
9 or criminal proceedings. The taking into custody of a child based on grounds of
10 Families in Need of Services is not an arrest, except for the purpose of determining
11 its validity under the Constitution of the United States or the Constitution of
12 Louisiana.

13 Art. 793. Records

14 A. The confidentiality of Family in Need of Services records, including the
15 existence of such records, shall be preserved and shall not be disclosed by any record
16 custodian without the consent of the child or order of the court in accordance with
17 Article 412.

18 B. Records and reports concerning any Families in Need of Services matter
19 shall not be identified, maintained, or otherwise handled by the court or by any other
20 agency or person as a juvenile delinquency or criminal matter.

21 Comments - 2017

22 This Article does not change the law. This Article provides for the
23 confidentiality of Families in Need of Services records as distinct from delinquency
24 or criminal records. Except upon order of the court or consent of the child, neither
25 the existence nor content of Families in Need of Services records shall ever be
26 disclosed.

27 * * *

28 Art. 901. Disposition guidelines; generally

29 * * *

30 G. The court shall notify the child in writing of the expungement and sealing
31 procedures set forth in Article 917 et seq.

32 * * *

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

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 and sealing; motions; order

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

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

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

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

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

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

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

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

26 * * *

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

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

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

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

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

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

26 D. A copy of the ~~judgment ordering destruction~~ order of expungement and
27 sealing may be maintained by the custodian of ~~reports and~~ records and reports of the
28 agency or office. However, the custodian ~~must shall~~ not disclose to anyone the fact
29 that such ~~judgment order~~ order is maintained or that the ~~destroyed reports or~~ expunged and

1 Comments - 2017

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

4 Art. 925. Expungement and sealing; forms

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

8 MOTION FOR EXPUNGEMENT AND SEALING

9 NOW INTO COURT COMES _____, in
10 proper person or through undersigned counsel, and herein moves this Honorable
11 Court:

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

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

26 I.

27 Full name of mover:

28 _____

29 SEX: { } Male { } Female Social Security Number: _____

30 Race/Ethnicity: _____ Date of Birth: ____ / ____ / ____

1 AND the mover has attained the age of seventeen years, or six months have elapsed
2 since the court exercising juvenile jurisdiction has ceased to exercise such in
3 accordance with Children's Code Article 313.

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

6 { } This matter resulted in a felony adjudication.

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

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

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

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

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

19 Respectfully submitted,

20 _____
21 Name of Mover or Attorney

22 _____
23 Address

24 _____
25 City/State/Zip

26 _____
27 Phone

28 ORDER

29 CONSIDERING the above and foregoing:

30 IT IS ORDERED that a contradictory hearing be and is hereby set for the

31 day of _____, 20 at _____ in Section _____.

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

1 _____, Louisiana this _____ day of _____ 20____.

2 _____
3 JUDGE

4 Note: Please add any additional necessary agencies below.

5 PLEASE SERVE:

6 Parish of _____

7 District Attorney _____

8 Clerk of Court _____

9 Sheriff _____

10 Bureau of Identification and Information

11 Attn: Expungement

12 7919 Independence Blvd.

13 Baton Rouge, Louisiana 70806

14 and

15 _____
16 Name of Agency _____ Name of Agency _____

17 _____
18 Attn: _____ Attn: _____

19 _____
20 Address _____ Address _____

21 _____
22 City/State/Zip _____ City/State/Zip _____

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

24 ORDER OF EXPUNGEMENT AND SEALING

25 CONSIDERING the Motion for Expungement and Sealing and the evidence
26 adduced as to the following described matter, and as to the following described
27 conduct or conditions:

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

1 Sheriff

2 Bureau of Identification & Information

3 Attn: Expungements

4 7919 Independence Blvd.

5 Baton Rouge, Louisiana 70806

6 and

<p>7 _____</p> <p>8 <u>Name of Agency</u></p>	<p>7 _____</p> <p>8 <u>Name of Agency</u></p>
---	---

<p>9 _____</p> <p>10 <u>Attn:</u></p>	<p>9 _____</p> <p>10 <u>Attn:</u></p>
---------------------------------------	---------------------------------------

<p>11 _____</p> <p>12 <u>Address</u></p>	<p>11 _____</p> <p>12 <u>Address</u></p>
--	--

<p>13 _____</p> <p>14 <u>City/State/Zip</u></p>	<p>13 _____</p> <p>14 <u>City/State/Zip</u></p>
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15 Art. 926. Affidavit of response form

16 The following form shall be used for filing an affidavit of response to a
17 motion for expungement and sealing in accordance with Article 919:

18 AFFIDAVIT OF RESPONSE

19 Pursuant to Children's Code Article 919, the Respondent agency or office,
20 _____, acknowledges the following:

21 { } No Opposition. Respondent has no opposition to the motion and respectfully
22 consents to waiver of the contradictory hearing.

23 { } Opposition to the Motion of Expungement and Sealing with Reasons.
24 Respondent respectfully requests a contradictory hearing.

25 As grounds for its objection, the Respondent asserts as follows:

26 { } Insufficient time has passed since the conclusion of the matter, or the court is
27 still exercising jurisdiction.

28 { } The adjudicated offense was for murder, manslaughter, an offense requiring
29 registration as a sex offender under R.S. 15:542, kidnapping, or armed robbery and
30 therefore is not eligible for expungement and sealing.

1 { }The adjudication was for a felony offense, and the applicant has an adult felony
2 conviction.

3 { }The adjudication was for a felony offense, and the applicant has an adult
4 conviction for a misdemeanor against a person involving a firearm.

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

7 Respectfully submitted,

8 _____
9 Name of Respondent/Signature of Attorney

10 _____
11 Address

12 _____
13 City/State/Zip

14 _____
15 Phone

16 PLEASE SERVE:

17 Parish of _____

18 District Attorney _____

19 Clerk of Court _____

20 Sheriff _____

21 Bureau of Identification & Information

22 Attn: Expungements

23 7919 Independence Blvd.

24 Baton Rouge, Louisiana 70806

25 and

26 _____ _____
27 Name of Agency Name of Agency

28 _____ _____
29 Attn: Attn:

30 _____ _____
31 Address Address

32 _____ _____
33 City/State/Zip City/State/Zip

1 Section 2. Children's Code Article 918 is hereby amended and reenacted to read as
2 follows:

3 Art. 918. Grounds

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

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

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

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

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

18 C.D. Records ~~concerning conduct or conditions~~ and reports of a matter that
19 resulted in a ~~felony~~ delinquency adjudication for a felony offense may be expunged
20 and sealed only if all of the following circumstances exist:

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

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

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

4 * * *

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

6 * * *

7 Comments - 2017

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

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

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

15 * * *

16 Comments - 2017

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

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

23 * * *

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

25 * * *

26 Comments - 2017

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

29 * * *

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

32 §593. Prohibition against destruction of records

33 Notwithstanding the provisions of Code of Criminal Procedure Articles 893
34 and 894 ~~of the Code of Criminal Procedure~~ and R.S. 40:983, and except in
35 accordance with the provisions set forth in ~~R.S. 44:9~~ Title XXXIV of the Code of

1 Criminal Procedure or Children's Code Articles 917 through 926, no judge or other
 2 official shall order the expungement, sealing, alteration, or destruction of any report
 3 or record of the bureau or of any agency subject to reporting requirements of the
 4 bureau.

* * *

6 §614. Removal of records

* * *

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

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

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

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

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 506 Engrossed 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 and reports, which shall be the exclusive procedure for the expungement and sealing of juvenile records and reports:

- (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 and reports 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 and reports relative to an adjudication of a felony offense to provide that the records and reports may be expunged and sealed if:
 - (a) The court exercising jurisdiction has ceased 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 reports and the order for expungement and sealing of agency records and reports 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)

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Administration of Criminal Justice to the original bill:

1. Make a correction to clarify the proposed expungement provisions apply to the reports as well as the records of the agency.
2. Amend the proposed expungement forms to conform with the provisions of proposed law and make other technical corrections to the proposed expungement forms.
3. With regard to the prohibition against destruction of records and state police's duty to remove all records and identifiable information from its database, correct a citation in present law referencing the provisions that provide for the expungement of records of criminal arrests and convictions.
4. Make other technical corrections.