

## HOUSE SUMMARY OF SENATE AMENDMENTS

HB 506

2017 Regular Session

Jefferson

CHILDRENS CODE: Provides relative to juvenile records and proceedings

**Synopsis of Senate Amendments**

1. Adds changes to present law regarding confidentiality of juvenile records including the following:
  - (a) Provides certain limitations on the release of juvenile records and reports, including limitations on the purpose for the release and individuals to whom the information may be released.
  - (b) Provide relative to the release of certain identifying information by law enforcement agencies.
  - (c) Requires each person, other than the parent or attorney of the child, to whom a juvenile record or information is disclosed to execute a non-disclosure agreement.
  - (d) Excludes records of juvenile criminal conduct from any state or local criminal background check.
2. Requires the court to provide the child with information regarding his rights and the procedures for expungement and sealing of records, and requires the court's written judgment of disposition to include an order of expungement to be made executory at the end of disposition unless objected to on certain specified grounds.
3. Provides relative to the expungement and sealing of records concerning delinquent adjudications for certain prostitution-related offenses and crime against nature.
4. Provides relative to the expungement and sealing of records regarding a finding of Families in Need of Services or a delinquency adjudication for a charge other than murder, manslaughter, a sex offense, kidnapping, or armed robbery; and provides the procedure for obtaining an expungement and sealing of records of a delinquency adjudication for murder, manslaughter, a sex offense, kidnapping, or armed robbery.
5. Provides that the child and the child's parents cannot be found guilty of perjury or otherwise giving false statements by reason of the child's or his parent's failure to recite or acknowledge his expunged record, unless the child is a witness in a criminal or juvenile delinquency matter.
6. Makes corrections to the proposed law forms to conform with these changes.
7. Removes proposed changes to the present law grounds for seeking an expungement and sealing of a juvenile record that was contingent upon the enactment of Senate Bill No. 54 of the 2017 R.S.
8. Removes the proposed repeal of present law regarding the expungement of adjudications involving human trafficking victims.

### **Digest of Bill as Finally Passed by Senate**

Present law (Ch. C. Arts. 412 and 414) provides relative to the confidentiality and disclosure of juvenile records.

Proposed law amends present law to provide as follows with regard to the confidentiality of juvenile records:

- (1) Provides that when the court authorizes the release of juvenile records, the release of such information is limited to the specific purpose for which the court authorizes release and to those individuals who represent the child only when they are providing services to the child and only during the pendency of the matter about which the records are disclosed.
- (2) Removes truancy and assessment centers and other child serving agencies or programs from the list of individuals who are authorized to receive juvenile records.
- (3) Provides certain requirements for the petition for release of juvenile records and certain factors the court must consider in determining whether to order the release of the records.
- (4) Authorizes law enforcement agencies to release to the public certain identifying information regarding a child wanted for a felony-grade delinquent act involving an offense against the person or involving a dangerous weapon if the court has issued an order for taking the child into custody or if probable cause that the child committed the alleged delinquent act has already been established.
- (5) Requires every person, other than the parents of the juvenile and the attorney for the juvenile, to whom a juvenile record or information from a juvenile is disclosed to execute a non-disclosure agreement.
- (6) Deletes the present law 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 (FINS).

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 any 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 if both of the following conditions exist: (1) non-secure placement is not available to meet the child's need for protection or control; and (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 judgment 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. 903) provides relative to a judgment of disposition and provides that certain information be included in the judgment.

Proposed law amends present law to do all of the following:

- (1) Require the court's written judgment of disposition to include an order of expungement to be made executory at the end of the disposition unless objected to on the grounds that he adjudication is for murder, manslaughter, a sex offense requiring registration under present law, kidnapping, or armed robbery; the child has a criminal court felony conviction or a criminal court conviction for a misdemeanor involving a firearm against a person; or the child has an outstanding indictment or bill of information for a felony charge or a charge of a misdemeanor involving a firearm against a person.
- (2) Require the court to provide the child with information regarding his rights and the procedures for expungement and sealing of juvenile records.

Present law (Ch.C. Art.917 et seq.) provides relative to the expungement of juvenile records.

Proposed law amends present law to provide for the expungement and sealing of juvenile records and reports as follows:

- (1) Provides that records concerning delinquent adjudications for certain prostitution-related offenses and the offense of crime against nature may be expunged and sealed at any time.
- (2) Provides that records and reports of a matter that resulted in a finding of FINS or an adjudication for a charge other than murder, manslaughter, a sex offense, kidnapping, or armed robbery shall be expunged and sealed only if the court exercising jurisdiction has ceased to exercise jurisdiction and certain conditions are met.
- (3) Provides that if the adjudication was for murder, manslaughter, a sex offense, kidnapping, or armed robbery, the child may petition the court for an expungement when the court has ceased to exercise jurisdiction and certain conditions are met, including the condition that five years have elapsed since the child satisfied the most recent judgement against him.
- (4) Requires the motion for expungement and sealing and any objections to the motion to be on the forms provided for by proposed law.

- (5) Requires a contradictory hearing on the motion only if a person or agency objects to the granting of the motion.
- (6) Requires the order of expungement to be on the forms provided for by proposed law and requires the order to state that the expungement and sealing is to be effected no later than 30 days from the date of the order.
- (7) Provides that a person whose record has been expunged and sealed does not have to disclose that fact to any person. Further provides that the child and the child's parents cannot be found guilty of perjury or otherwise giving false statements by reason of the child's failure to recite or acknowledge his expunged record in response to any inquiry made of the child or the child's parent for any purpose, unless the child is a witness in a criminal or juvenile delinquency matter.
- (8) 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 (bureau) 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 present law (Ch.C. Arts. 917 et seq.) to the list of exceptions to this prohibition on the expungement of bureau and agency records.

Proposed law also provides that records of juvenile criminal conduct shall not be made a part of any state or local criminal background check, and for purposes of criminal background checks, amends the definition of "criminal history record" to exclude records of juvenile criminal conduct.

Proposed law further requires the bureau's rules and regulations to be consistent with the La. Constitution, the Code of Criminal Procedure, the La. Children's Code, and the La. Revised Statutes of 1950.

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 present law (Ch.C. Arts. 917 et seq.).

Present law (R.S. 44:4.1—Public Records Law) enumerates a list of recognized exceptions, exemptions, and limitations to the laws pertaining to public records.

Proposed law amends present law to include references to proposed law.

(Amends Ch.C. Arts. 412(A), (D)(9), (10), (11), and (12), (E), (G), (H), (I), (J), and (K), 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), R.S. 15:576(2), 579, 593, and 614(B), and R.S. 44:4.1(B)(39); Adds Ch.C. Arts. 737(D), 740(A)(6), 782(A)(7), 792, 793, 901(G), 903(B)(7) and (G), 822(B), 924, 925, and 926; Repeals Ch.C. Arts. 738(D))