

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), R.S. 15:593

4 and 614(B), and R.S. 44:4.1(B)(39), to enact Children's Code Articles 737(D),

5 740(A)(6), 782(A)(7), Chapter 15-A of Title VII of the Children's Code, to be

6 comprised of Articles 792 and 793, and Children's Code Articles 901(G), 924, 925,

7 and 926, to repeal Children's Code Articles 738(D) and 923, and to provide

8 comments to Children's Code Articles 733, 733.1, 735, 736, and 758, relative to

9 juvenile records and proceedings; to provide for the disclosure of juvenile records

10 for sentencing purposes; to provide comments; to provide for the confidentiality of

11 records; to provide for the records relating to placement when a child is taken into

12 custody; to provide guidelines to the court in a juvenile disposition proceeding; to

13 provide relative to the expungement and sealing of court and agency records; to

14 provide for the waiver of costs and fees; to provide forms; to provide for the removal

15 of records from the state police database; to provide citations in the Public Records

16 Law to certain exceptions; to provide for effectiveness; and to provide for related

17 matters.

18 Be it enacted by the Legislature of Louisiana:

19 Section 1. Children's Code Articles 414(A), 728(2), 736.1, 737(A)(4), 738(B) and

20 (C), 742(B), 917, 918, 919, 920(A) and (B), 921, 922, and 923(E) are hereby amended and

1 reenacted and Children's Code Articles 737(D), 740(A)(6), 782(A)(7), Chapter 15-A of Title
2 VII of the Children's Code, comprised of Articles 792 and 793, and Children's Code Articles
3 901(G), 924, 925, and 926 are hereby enacted to read as follows:

4 Art. 414. Disclosure of records for sentencing, ~~habitual offender proceedings~~

5 A. Notwithstanding any provision of law to the contrary, upon written
6 request, reports and records concerning juvenile court proceedings shall be released
7 to the sentencing judge when necessary for sentencing ~~and released to the district~~
8 ~~attorney for purposes of charging a person as a habitual offender pursuant to R.S.~~
9 ~~15:529.1.~~

10 * * *

11 Comments - 2017

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

15 * * *

16 Art. 728. Definitions

17 As used in this Title:

18 * * *

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

22 * * *

23 Comments - 2017

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

28 * * *

29 Art. 736.1. Immunity

30 Any law enforcement officer acting in good faith upon the request of a parent
31 or guardian, exercising due care in the taking into custody a runaway child, or
32 providing assistance thereto, pursuant to the provisions of this Title shall have

1 immunity from any civil liability that otherwise might be incurred or imposed
2 because of the report, taking into custody, or assistance provided. The limitation of
3 liability provided by this Article shall not extend to acts constituting negligence, ~~or~~
4 a violation of the law, or a violation of the confidentiality provisions of this Code,
5 including those contained in Article 412.

6 Comments - 2017

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

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

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

14 * * *

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

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

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

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

27 * * *

28 D. Any records and reports related to placement of a child into custody under
29 any of the provisions of this Title shall be confidential and shall not be disclosed
30 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 * * *

1 Comments - 2017

2 Because Families in Need of Services cases may originate with a taking into
3 custody and detention, it is important that the court instruct the child as to the
4 distinction between Families in Need of Services matters and juvenile delinquency
5 or criminal matters.

6 * * *

7 Art. 742. Place of continued custody

8 * * *

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

13 * * *

14 Comments - 2017

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

17 * * *

18 Art. 782. Judgment of disposition

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

21 * * *

22 (7) The nature of Families in Need of Services proceedings in accordance
23 with Article 792 and the confidentiality of Families in Need of Services records in
24 accordance with Article 793.

25 * * *

26 Comments - 2017

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

30 * * *

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

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 sealed records or reports previously existed ~~to anyone~~ except upon written order of
2 the court.

3 Art. 922. Expungement and sealing order; effect

4 Except for the limited purposes stated in Articles 920 and 921, upon an order
5 of expungement and sealing, the ~~conduct and conditions~~ records and reports
6 expunged and sealed and the underlying conduct and conditions are considered
7 nonexistent and ~~are to be treated as such upon inquiry~~ shall not be made available to
8 any person. No person whose juvenile records and reports have been expunged and
9 sealed shall be required to disclose to any person that he was arrested or adjudicated
10 or that the records and reports of arrest or adjudication have been expunged and
11 sealed.

12 Art. 923. Expungement and sealing of adjudications involving human trafficking
13 victims

14 * * *

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

19 Art. 924. Fees

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

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

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

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 Address: Street: _____ Apt. #: _____

2 City/State: _____ Zip: _____

3 NOTE: A separate page shall be completed for EACH of the charges for
4 which expungement and sealing is sought. Failure to provide ALL of the
5 requested information may result in dismissal of the motion for insufficiency.

6 II.

7 Offense Report #: _____ Offense charged: _____

8 Date of Arrest: ____ / ____ / _____

9 Arresting Agency: _____

10 City/ Parish of Arrest: _____

11 III.

12 Action taken: (Check appropriate action and insert date)

13 { } Charges not filed

14 { } Charges refused on _____ / ____ / _____

15 { } Informal Adjustment Agreement completed on _____ / ____ / _____

16 { } Adjudicated on _____ / ____ / _____

17 { } Dismissed on _____ / ____ / _____

18 { } Continued without date on _____ / ____ / _____

19 IV.

20 Court Docket and Complaint #: _____, # _____

21 V.

22 Authority for motion (Check one only)

23 { } This matter did not result in adjudication.

24 { } This matter resulted in a Families in Need of Services adjudication.

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

27 { } This matter resulted in a misdemeanor adjudication.

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 _____.

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 IT IS ORDERED that the clerk of court expunge and seal all records and
 2 reports, in any medium, including but not limited to pleadings, exhibits, reports,
 3 minute entries, correspondence, and all other documents. The court may maintain
 4 a confidential record of the fact of an adjudication, which may be released only upon
 5 written motion of a court exercising criminal jurisdiction over the mover herein and
 6 then only for purposes authorized by the Code of Criminal Procedure.

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

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

23 Signed at _____, Louisiana this _____ day of _____ 20____.

24 _____
 25 JUDGE

26 *Note: Please add any necessary agencies below.*

27 PLEASE SERVE:

28 Parish of _____

29 District Attorney _____

30 Clerk of Court _____

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

1 Sheriff

2 Bureau of Identification & Information

3 Attn: Expungements

4 7919 Independence Blvd.

5 Baton Rouge, Louisiana 70806

6 and

7 _____ _____

8 Name of Agency

Name of Agency

9 _____ _____

10 Attn:

Attn:

11 _____ _____

12 Address

Address

13 _____ _____

14 City/State/Zip

City/State/Zip

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

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

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

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

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

12 Comments – 2017

13 Former Paragraph D of this Article was repealed along with Article 923. The
14 expungement and sealing of adjudications involving victims of trafficking or other
15 exploitation is now governed by Article 725.8.

16 Section 3. The following comments to Children's Code Articles 733, 733.1, 735,
17 736, and 758 are hereby provided as follows:

18 Art. 733. Instanter orders of custody

19 * * *

20 Comments - 2017

21 (a) In accordance with Article 792, the taking into custody of a child based
22 on grounds of Families in Need of Services is not an arrest and should not be
23 construed to be an arrest. Article 793 further provides that any record thereof shall
24 not be created, maintained, or disclosed as a juvenile delinquency or criminal arrest
25 record.

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

29 Art. 733.1. Stop of child absent from school; transportation to school facility

30 * * *

31 Comments - 2017

32 (a) In accordance with Articles 792 and 793, any stop, detention,
33 questioning, release, or transportation of a child pursuant to this Article shall not be
34 considered an arrest of the child, and any record thereof shall not be created,
35 maintained, or disclosed as an arrest record.

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.

5 * * *

6 §614. Removal of records

7 * * *

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

14 Section 5. R.S. 44:4.1(B)(39) is hereby amended and reenacted to read as
15 follows:

16 §4.1. Exceptions

17 * * *

18 B. The legislature further recognizes that there exist exceptions, exemptions,
19 and limitations to the laws pertaining to public records throughout the revised
20 statutes and codes of this state. Therefore, the following exceptions, exemptions, and
21 limitations are hereby continued in effect by incorporation into this Chapter by
22 citation:

23 * * *

24 (39) Children's Code Articles 328, 404, 412, 424.6, 424.9, 441, 543, 545,
25 615, 616, 616.1, 663, 737, 793, 888, 891, 893, 920, 921, 922, 1007, 1106, 1107,
26 1185, 1186, 1187, 1207, 1213, 1229, 1235, 1252, 1273, 1283.5, 1283.10, 1416, 1453,
27 1568.

28 * * *

- 1 Section 6. Children's Code Article 923 is hereby repealed in its entirety.
- 2 Section 7. Children's Code Article 738(D) is hereby repealed in its entirety.
- 3 Section 8. The provisions of Sections 2 and 6 of this Act shall become
- 4 effective if and when the Act that originated as Senate Bill No. 54 of the 2017
- 5 Regular Session is enacted and becomes effective. If the provisions of Sections 2
- 6 and 6 of this Act become effective, they shall prevail over any conflicting provisions
- 7 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 Reengrossed

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 to the district attorney when necessary for sentencing purposes.

Proposed law 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 (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.
- (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 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 only 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 or bill of information.
- (5) Requires the motion for expungement and sealing and any objections to the motion to be on the forms provided for 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 for by proposed law.
- (8) Provides for the expungement and sealing of DNA information and removes provision for 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.

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. 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. 15:593 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), 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.

The Committee Amendments Proposed by House Committee on House and Governmental Affairs to the engrossed bill:

1. Remove an obsolete citation in present law.
2. Provide references in the Public Records Law to public records exceptions.