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## DIGEST

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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.