

STATE OF NEW YORK

7621--A

Cal. No. 436

2021-2022 Regular Sessions

IN ASSEMBLY

May 19, 2021

Introduced by M. of A. HEVESI, ABINANTI, SEAWRIGHT -- (at request of the Office of Court Administration) -- read once and referred to the Committee on Children and Families -- reported and referred to the Committee on Codes -- recommitted to the Committee on Codes in accordance with Assembly Rule 3, sec. 2 -- reported from committee, advanced to a third reading, amended and ordered reprinted, retaining its place on the order of third reading

AN ACT to amend the family court act, in relation to expungement of records in persons in need of supervision cases in the family court

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Section 783 of the family court act is amended to read as
2 follows:

3 § 783. Use of [~~record~~] records in other court; expungement of records.

4 (a) Neither the fact that a person was before the family court under
5 this article for a hearing nor any confession, admission or statement
6 made by him or her to the court or to any officer thereof in any stage
7 of the proceeding is admissible as evidence against him or her or his or
8 her interests in any other court. [~~Another court, in imposing sentence~~
9 ~~upon an adult after conviction, may receive and consider the records and~~
10 ~~information on file with the family court concerning such person when he~~
11 ~~was a child.~~]

12 (b) For purposes of this section, "expungement" shall mean that all
13 official records and papers, including judgments and orders of the
14 court, but not including public court decisions or opinions or records
15 and briefs on appeal, relating to the arrest, prosecution and court
16 proceedings and records of the probation service and designated lead
17 agency, including all duplicates or copies thereof, on file with the
18 court, police department and law enforcement agency, probation service,
19 designated lead agency and presentment agency, if any, shall be
20 destroyed and, except for records sealed as provided in paragraphs (v).

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[~~-~~] is old law to be omitted.

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1 and (vi) of subdivision (c) of this section, shall not be made available
2 to any person or public or private agency.

3 (c) Automatic expungement of records of a proceeding under this arti-
4 cle that is terminated in favor of the respondent. (i) Upon termination
5 of a proceeding under this article in favor of the respondent, the clerk
6 of the court shall immediately notify and direct the directors of the
7 appropriate probation department, designated lead agency pursuant to
8 section seven hundred thirty-five of this article and, if a presentment
9 agency represented the petitioner in the proceeding, such agency, that
10 the proceeding has terminated in favor of the respondent and that the
11 records, if any, of such action or proceeding on file with such offices
12 shall be expunged. If the respondent had been the subject of a warrant
13 or an arrest in connection with the proceeding, or law enforcement was
14 the referring agency or petitioner pursuant to section seven hundred
15 thirty-three of this article, the notice shall also be sent to the
16 appropriate police department or law enforcement agency. Upon receipt of
17 such notification, the records shall be expunged in accordance with
18 subdivision (b) of this section. The attorney for the respondent shall
19 be notified by the clerk of the court in writing of the date and agen-
20 cies and departments to which such notifications were sent.

21 (ii) For the purposes of this section, a proceeding under this article
22 shall be considered terminated in favor of a respondent where the
23 proceeding has been:

24 (A) diverted prior to the filing of a petition pursuant to subdivision
25 (g) of section seven hundred thirty-five of this article or subsequent
26 to the filing of a petition pursuant to subdivision (b) of section seven
27 hundred forty-two of this article; or

28 (B) withdrawn or dismissed for failure to prosecute, or for any other
29 reason at any stage; or

30 (C) dismissed following an adjournment in contemplation of dismissal
31 pursuant to subdivision (a) of section seven hundred forty-nine of this
32 article; or

33 (D) resulted in an adjudication where the only finding was for a
34 violation of former section 221.05 or section 230.00 of the penal law;
35 provided, however, that with respect to findings under this paragraph,
36 the expungement required by this section shall not take place until the
37 conclusion of the period of any disposition or extension under this
38 article.

39 (iii) If, with respect to a respondent who had been the subject of a
40 warrant or an arrest in connection with the proceeding, or law enforce-
41 ment was the referring agency, the designated lead agency diverts a case
42 either prior to or subsequent to the filing of a petition under this
43 article, the designated lead agency shall notify the appropriate
44 probation service and police department or law enforcement agency in
45 writing of such diversion. Such notification may be on a form
46 prescribed by the chief administrator of the courts. Upon receipt of
47 such notification, the probation service and police department or law
48 enforcement agency shall expunge any records in accordance with subdivi-
49 sion (b) of this section in the same manner as is required thereunder
50 with respect to an order of a court.

51 (iv) If, following the referral of a proceeding under this article for
52 the filing of a petition, the petitioner or, if represented by a
53 presentment agency, such agency, elects not to file a petition under
54 this article, the petitioner or, if applicable, the presentment agency,
55 shall notify the appropriate probation service and designated lead agen-
56 cy of such determination. Such notification may be on a form prescribed

1 by the chief administrator of the courts and may be transmitted by elec-
2 tronic means. If the respondent had been the subject of a warrant or an
3 arrest in connection with the proceeding, or law enforcement was the
4 referring agency, the notification shall also be sent to the appropriate
5 police department or law enforcement agency. Upon receipt of such
6 notification, the records shall be expunged in accordance with subdivi-
7 sion (b) of this section in the same manner as is required thereunder
8 with respect to an order of a court, provided, however, that the desig-
9 ated lead agency may have access to its own records in accordance with
10 paragraph (v) of this subdivision.

11 (v) Where a proceeding has been diverted pursuant to subparagraph (A)
12 of paragraph (ii) of this subdivision or where a proceeding has been
13 referred for the filing of a petition but the potential petitioner or,
14 if represented by a presentment agency, such agency, elects not to file
15 a petition in accordance with paragraph (iv) of this subdivision, the
16 designated lead agency shall seal its records under this section, but
17 shall have access to its own records solely for the following purposes:

18 (A) where there is continuing or subsequent contact with the child
19 under this article; or

20 (B) where the information is necessary for such department to deter-
21 mine what services had been arranged or provided to the family or where
22 the commissioner determines that the information is necessary in order
23 for the commissioner of such department to comply with section four
24 hundred twenty-two-a of the social services law.

25 (vi) Records expunged or sealed under this section shall be made
26 available to the juvenile or his or her agent and, where the petitioner
27 or potential petitioner is a parent or other person legally responsible
28 for the juvenile's care, such parent or other person. No statement made
29 to a designated lead agency by the juvenile or his or her parent or
30 other person legally responsible that is contained in a record expunged
31 or sealed under this section shall be admissible in any court proceed-
32 ing, except upon the consent or at the request, respectively, of the
33 juvenile or his or her parent or other person legally responsible for
34 the juvenile's care.

35 (vii) A respondent in whose favor a proceeding was terminated prior to
36 the effective date of this paragraph may, upon motion, apply to the
37 court, upon not less than twenty days notice to the petitioner or (where
38 the petitioner is represented by a presentment agency) such agency, for
39 an order granting the relief set forth in paragraph (i) of this subdivi-
40 sion. Where a proceeding under this article was terminated in favor of
41 the respondent in accordance with paragraph (iii) or (iv) of this subdivi-
42 vision prior to the effective date of this paragraph, the respondent may
43 apply to the designated lead agency, petitioner or presentment agency,
44 as applicable, for a notification as described in such paragraphs grant-
45 ing the relief set forth therein and such notification shall be granted.

46 (d) Motion to expunge after an adjudication and disposition. (i) If an
47 action has resulted in an adjudication and disposition under this arti-
48 cle, the court may, in the interest of justice and upon motion of the
49 respondent, order the expungement of the records and proceedings.

50 (ii) Such motion must be in writing and may be filed at any time
51 subsequent to the conclusion of the disposition, including, but not
52 limited to, the expiration of the period of placement, suspended judg-
53 ment, order of protection or probation or any extension thereof. Notice
54 of such motion shall be served not less than eight days prior to the
55 return date of the motion upon the petitioner or, if the petitioner was

1 represented by a presentment agency, such agency. Answering affidavits
2 shall be served at least two days before the return date.

3 (iii) The court shall set forth in a written order its reasons for
4 granting or denying the motion. If the court grants the motion, all
5 court records, as well as all records in the possession of the desig-
6 nated lead agency, the probation service, the presentment agency, if
7 any, and, if the respondent had been the subject of a warrant or an
8 arrest in connection with the proceeding, or if the police or law
9 enforcement agency was the referring agency or petitioner pursuant to
10 section seven hundred thirty-three of this article, the appropriate
11 police or law enforcement agency, shall be expunged in accordance with
12 subdivision (b) of this section.

13 (e) Automatic expungement of court records. All records under this
14 article shall be automatically expunged upon the respondent's twenty-
15 first birthday unless earlier expunged under this section, provided that
16 expungement under this paragraph shall not take place until the conclu-
17 sion of the period of any disposition or extension under this article.

18 (f) Expungement of court records; inherent power. Nothing contained
19 in this article shall preclude the court's use of its inherent power to
20 order the expungement of court records.

21 § 2. Section 784 of the family court act is amended to read as
22 follows:

23 § 784. Use of police records. All police records relating to the
24 arrest and disposition of any person under this article shall be kept in
25 files separate and apart from the arrests of adults and shall be with-
26 held from public inspection, but such records shall be open to
27 inspection upon good cause shown by the parent, guardian, next friend or
28 attorney of that person upon the written order of a judge of the family
29 court in the county in which the order was made [~~or, if the person is~~
30 ~~subsequently convicted of a crime, of a judge of the court in which he~~
31 ~~was convicted~~].

32 § 3. This act shall take effect on the ninetieth day after it shall
33 have become a law.