

6814

I N S E N A T E

March 12, 2014

Introduced by Sen. FELDER -- (at request of the Office of Court Administration) -- read twice and ordered printed, and when printed to be committed to the Committee on Children and Families

AN ACT to amend the family court act, in relation to sealing and 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 S 783. Use of [record] RECORDS in other court; SEALING AND EXPUNGEMENT
4 OF RECORDS. (A) Neither the fact that a person was before the family
5 court under this article for a hearing nor any confession, admission or
6 statement made by him OR HER to the court or to any officer thereof in
7 any stage of the proceeding is admissible as evidence against him or HER
8 OR his OR HER interests in any other court. [Another court, in imposing
9 sentence upon an adult after conviction, may receive and consider the
10 records and information on file with the family court concerning such
11 person when he was a child.]
12 (B) FOR PURPOSES OF THIS SECTION, "SEALING" SHALL MEAN THAT ALL OFFI-
13 CIAL RECORDS AND PAPERS, INCLUDING JUDGMENTS AND ORDERS OF THE COURT,
14 BUT NOT INCLUDING PUBLIC COURT DECISIONS OR OPINIONS OR RECORDS AND
15 BRIEFS ON APPEAL, RELATING TO THE ARREST, THE PROSECUTION AND RECORDS OF
16 THE PROBATION SERVICE AND DESIGNATED LEAD AGENCY, INCLUDING ALL DUPLI-
17 CATES OR COPIES THEREOF, ON FILE WITH THE COURT, POLICE DEPARTMENT OR
18 LAW ENFORCEMENT AGENCY, PROBATION SERVICE, DESIGNATED LEAD AGENCY AND
19 PRESENTMENT AGENCY, IF ANY, SHALL BE PROTECTED FROM PUBLIC INSPECTION
20 AND SHALL NOT BE MADE AVAILABLE TO ANY PERSON OR PUBLIC OR PRIVATE AGEN-
21 CY. SUCH RECORDS SHALL ONLY BE MADE AVAILABLE TO THE RESPONDENT OR HIS
22 OR HER DESIGNATED AGENT.
23 (C) AUTOMATIC SEALING OF A PROCEEDING UNDER THIS ARTICLE THAT IS
24 TERMINATED IN FAVOR OF THE RESPONDENT. (I) UPON TERMINATION OF A
25 PROCEEDING UNDER THIS ARTICLE IN FAVOR OF THE RESPONDENT, THE CLERK OF
26 THE COURT SHALL IMMEDIATELY NOTIFY THE DIRECTORS OF THE APPROPRIATE

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

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1 PROBATION DEPARTMENT, DESIGNATED LEAD AGENCY PURSUANT TO SECTION SEVEN
2 HUNDRED THIRTY-FIVE OF THIS ARTICLE AND, IF A PRESENTMENT AGENCY REPRESENTED THE PETITIONER IN THE PROCEEDING, SUCH AGENCY, THAT THE PROCEEDING
3 HAS TERMINATED IN FAVOR OF THE RESPONDENT AND THAT THE RECORDS OF SUCH
4 ACTION OR PROCEEDING IN THEIR POSSESSION, IF ANY, SHALL BE SEALED. IF
5 THE RESPONDENT HAD BEEN THE SUBJECT OF A WARRANT OR AN ARREST IN
6 CONNECTION WITH THE PROCEEDING, THE NOTICE SHALL ALSO BE SENT TO THE
7 APPROPRIATE POLICE DEPARTMENT OR LAW ENFORCEMENT AGENCY. UPON RECEIPT OF
8 SUCH NOTIFICATION, THE RECORDS SHALL BE SEALED IN ACCORDANCE WITH SUBDIVISION (B) OF THIS SECTION.

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11 (II) FOR THE PURPOSES OF THIS SECTION, A PROCEEDING UNDER THIS ARTICLE
12 SHALL BE CONSIDERED TERMINATED IN FAVOR OF A RESPONDENT WHERE THE
13 PROCEEDING HAS BEEN:

14 (A) ADJUSTED PRIOR TO THE FILING OF A PETITION PURSUANT TO SUBDIVISION
15 (G) OF SECTION SEVEN HUNDRED THIRTY-FIVE OF THIS ARTICLE OR SUBSEQUENT
16 TO THE FILING OF A PETITION PURSUANT TO SUBDIVISION (B) OF SECTION SEVEN
17 HUNDRED FORTY-TWO OF THIS ARTICLE;

18 (B) WITHDRAWN OR DISMISSED FOR FAILURE TO PROSECUTE;

19 (C) DISMISSED FOLLOWING AN ADJOURNMENT IN CONTEMPLATION OF DISMISSAL
20 PURSUANT TO SUBDIVISION (A) OF SECTION SEVEN HUNDRED FORTY-NINE OF THIS
21 ARTICLE; OR

22 (D) DISMISSED PURSUANT TO SECTION SEVEN HUNDRED FIFTY-ONE OR SEVEN
23 HUNDRED SIXTY-TWO OF THIS ARTICLE.

24 (III) IF, WITH RESPECT TO A RESPONDENT WHO HAD BEEN THE SUBJECT OF A
25 WARRANT OR AN ARREST IN CONNECTION WITH THE PROCEEDING, THE DESIGNATED
26 LEAD AGENCY ADJUSTS A CASE EITHER PRIOR OR SUBSEQUENT TO THE FILING OF A
27 PETITION UNDER THIS ARTICLE, THE DESIGNATED LEAD AGENCY SHALL SERVE A
28 CERTIFICATION OF SUCH ADJUSTMENT UPON THE APPROPRIATE PROBATION SERVICE
29 AND POLICE DEPARTMENT OR LAW ENFORCEMENT AGENCY. UPON RECEIPT OF SUCH
30 CERTIFICATION, THE RECORDS SHALL BE SEALED IN ACCORDANCE WITH SUBDIVISION (B) OF THIS SECTION IN THE SAME MANNER AS IS REQUIRED THEREUNDER
31 WITH RESPECT TO AN ORDER OF A COURT.

32
33 (IV) IF, FOLLOWING THE REFERRAL OF A PROCEEDING UNDER THIS ARTICLE FOR
34 THE FILING OF A PETITION, THE PETITIONER OR, IF REPRESENTED BY A
35 PRESENTMENT AGENCY, SUCH AGENCY, ELECTS NOT TO FILE A PETITION UNDER
36 THIS ARTICLE, THE PETITIONER OR, IF APPLICABLE, THE PRESENTMENT AGENCY,
37 SHALL SERVE A CERTIFICATION OF SUCH DETERMINATION UPON THE APPROPRIATE
38 PROBATION SERVICE AND DESIGNATED LEAD AGENCY. IF THE RESPONDENT HAD BEEN
39 THE SUBJECT OF A WARRANT OR AN ARREST IN CONNECTION WITH THE PROCEEDING,
40 THE CERTIFICATION SHALL ALSO BE SENT TO THE APPROPRIATE POLICE DEPARTMENT OR LAW ENFORCEMENT AGENCY. UPON RECEIPT OF SUCH CERTIFICATION, THE
41 RECORDS SHALL BE SEALED IN ACCORDANCE WITH SUBDIVISION (B) OF THIS
42 SECTION IN THE SAME MANNER AS IS REQUIRED THEREUNDER WITH RESPECT TO AN
43 ORDER OF A COURT.

44
45 (V) A RESPONDENT IN WHOSE FAVOR A PROCEEDING WAS TERMINATED PRIOR TO
46 THE EFFECTIVE DATE OF THIS PARAGRAPH MAY, UPON MOTION, APPLY TO THE
47 COURT, UPON NOT LESS THAN TWENTY DAYS NOTICE TO THE PETITIONER OR (WHERE
48 THE PETITIONER IS REPRESENTED BY A PRESENTMENT AGENCY) SUCH AGENCY, FOR
49 AN ORDER GRANTING THE RELIEF SET FORTH IN PARAGRAPH (I) OF THIS SUBDIVISION. WHERE A PROCEEDING UNDER THIS ARTICLE WAS TERMINATED IN FAVOR OF
50 THE RESPONDENT IN ACCORDANCE WITH PARAGRAPH (III) OR (IV) OF THIS SUBDIVISION PRIOR TO THE EFFECTIVE DATE OF THIS PARAGRAPH, THE RESPONDENT MAY
51 APPLY TO THE DESIGNATED LEAD AGENCY, PETITIONER OR PRESENTMENT AGENCY,
52 AS APPLICABLE, FOR A CERTIFICATION AS DESCRIBED IN SUCH PARAGRAPHS
53 GRANTING THE RELIEF SET FORTH THEREIN AND SUCH CERTIFICATION SHALL BE
54 GRANTED.

1 (D) MOTION TO SEAL AFTER AN ADJUDICATION AND DISPOSITION. (I) IF AN
2 ACTION HAS RESULTED IN AN ADJUDICATION AND DISPOSITION UNDER THIS ARTI-
3 CLE, THE COURT MAY, IN THE INTEREST OF JUSTICE AND UPON MOTION OF THE
4 RESPONDENT, ORDER THE SEALING OF THE RECORDS AND PROCEEDINGS.

5 (II) SUCH MOTION MUST BE IN WRITING AND MAY BE FILED AT ANY TIME
6 SUBSEQUENT TO THE ENTERING OF THE DISPOSITION. NOTICE OF SUCH MOTION
7 SHALL BE SERVED NOT LESS THAN EIGHT DAYS PRIOR TO THE RETURN DATE OF THE
8 MOTION UPON THE PETITIONER OR, IF THE PETITIONER WAS REPRESENTED BY A
9 PRESENTMENT AGENCY, SUCH AGENCY. ANSWERING AFFIDAVITS SHALL BE SERVED AT
10 LEAST TWO DAYS BEFORE THE RETURN DATE.

11 (III) THE COURT SHALL STATE, ON THE RECORD, ITS REASONS FOR GRANTING
12 OR DENYING THE MOTION. IF THE COURT GRANTS THE MOTION, ALL COURT
13 RECORDS, AS WELL AS ALL RECORDS IN THE POSSESSION OF THE DESIGNATED LEAD
14 AGENCY, THE PROBATION SERVICE, THE PRESENTMENT AGENCY, IF ANY, AND, IF
15 THE RESPONDENT HAD BEEN THE SUBJECT OF A WARRANT OR AN ARREST IN
16 CONNECTION WITH THE PROCEEDING, THE POLICE OR LAW ENFORCEMENT AGENCY,
17 SHALL BE SEALED IN ACCORDANCE WITH SUBDIVISION (B) OF THIS SECTION.

18 (E) EXPUNGEMENT OF COURT RECORDS. NOTHING CONTAINED IN THIS ARTICLE
19 SHALL PRECLUDE THE COURT'S USE OF ITS INHERENT POWER TO ORDER THE
20 EXPUNGEMENT OF COURT RECORDS.

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

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