

5020

2015-2016 Regular Sessions

I N   S E N A T E

April 28, 2015

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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, 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 PROTECTED FROM PUBLIC INSPECTION AND SHALL NOT BE MADE AVAILABLE TO ANY  
21 PERSON OR PUBLIC OR PRIVATE AGENCY. SUCH RECORDS SHALL ONLY BE MADE  
22 AVAILABLE TO THE RESPONDENT OR HIS OR HER DESIGNATED AGENT.

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

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1 (C) AUTOMATIC SEALING OF A PROCEEDING UNDER THIS ARTICLE THAT IS  
2 TERMINATED IN FAVOR OF THE RESPONDENT. (I) UPON TERMINATION OF A  
3 PROCEEDING UNDER THIS ARTICLE IN FAVOR OF THE RESPONDENT, THE CLERK OF  
4 THE COURT SHALL IMMEDIATELY NOTIFY AND DIRECT THE DIRECTORS OF THE  
5 APPROPRIATE PROBATION DEPARTMENT, DESIGNATED LEAD AGENCY PURSUANT TO  
6 SECTION SEVEN HUNDRED THIRTY-FIVE OF THIS ARTICLE AND, IF A PRESENTMENT  
7 AGENCY REPRESENTED THE PETITIONER IN THE PROCEEDING, SUCH AGENCY, THAT  
8 THE PROCEEDING HAS TERMINATED IN FAVOR OF THE RESPONDENT AND THAT THE  
9 RECORDS, IF ANY, OF SUCH ACTION OR PROCEEDING ON FILE WITH SUCH OFFICES  
10 SHALL BE SEALED. IF THE RESPONDENT HAD BEEN THE SUBJECT OF A WARRANT OR  
11 AN ARREST IN CONNECTION WITH THE PROCEEDING, OR LAW ENFORCEMENT WAS THE  
12 REFERRING AGENCY OR PETITIONER PURSUANT TO SECTION SEVEN HUNDRED THIR-  
13 TY-THREE OF THIS ARTICLE, THE NOTICE SHALL ALSO BE SENT TO THE APPROPRI-  
14 ATE POLICE DEPARTMENT OR LAW ENFORCEMENT AGENCY. UPON RECEIPT OF SUCH  
15 NOTIFICATION, THE RECORDS SHALL BE SEALED IN ACCORDANCE WITH SUBDIVISION  
16 (B) OF THIS SECTION. THE ATTORNEY FOR THE RESPONDENT SHALL BE NOTIFIED  
17 BY THE CLERK OF THE COURT IN WRITING OF THE DATE AND AGENCIES AND  
18 DEPARTMENTS TO WHICH SUCH NOTIFICATIONS WERE SENT.

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

22 (A) DIVERTED PRIOR TO THE FILING OF A PETITION PURSUANT TO SUBDIVISION  
23 (G) OF SECTION SEVEN HUNDRED THIRTY-FIVE OF THIS ARTICLE OR SUBSEQUENT  
24 TO THE FILING OF A PETITION PURSUANT TO SUBDIVISION (B) OF SECTION SEVEN  
25 HUNDRED FORTY-TWO OF THIS ARTICLE; OR

26 (B) WITHDRAWN OR DISMISSED FOR FAILURE TO PROSECUTE, OR FOR ANY OTHER  
27 REASON AT ANY STAGE; OR

28 (C) DISMISSED FOLLOWING AN ADJOURNMENT IN CONTEMPLATION OF DISMISSAL  
29 PURSUANT TO SUBDIVISION (A) OF SECTION SEVEN HUNDRED FORTY-NINE OF THIS  
30 ARTICLE.

31 (III) IF, WITH RESPECT TO A RESPONDENT WHO HAD BEEN THE SUBJECT OF A  
32 WARRANT OR AN ARREST IN CONNECTION WITH THE PROCEEDING, OR LAW ENFORCE-  
33 MENT WAS THE REFERRING AGENCY, THE DESIGNATED LEAD AGENCY DIVERTS A CASE  
34 EITHER PRIOR TO OR SUBSEQUENT TO THE FILING OF A PETITION UNDER THIS  
35 ARTICLE, THE DESIGNATED LEAD AGENCY SHALL SERVE A CERTIFICATION OF SUCH  
36 DIVERSION UPON THE APPROPRIATE PROBATION SERVICE AND POLICE DEPARTMENT  
37 OR LAW ENFORCEMENT AGENCY. UPON RECEIPT OF SUCH CERTIFICATION, THE  
38 PROBATION SERVICE AND POLICE DEPARTMENT OR LAW ENFORCEMENT AGENCY SHALL  
39 SEAL ANY RECORDS IN ACCORDANCE WITH SUBDIVISION (B) OF THIS SECTION IN  
40 THE SAME MANNER AS IS REQUIRED THEREUNDER WITH RESPECT TO AN ORDER OF A  
41 COURT.

42 (IV) IF, FOLLOWING THE REFERRAL OF A PROCEEDING UNDER THIS ARTICLE FOR  
43 THE FILING OF A PETITION, THE PETITIONER OR, IF REPRESENTED BY A  
44 PRESENTMENT AGENCY, SUCH AGENCY, ELECTS NOT TO FILE A PETITION UNDER  
45 THIS ARTICLE, THE PETITIONER OR, IF APPLICABLE, THE PRESENTMENT AGENCY,  
46 SHALL SERVE A CERTIFICATION OF SUCH DETERMINATION UPON THE APPROPRIATE  
47 PROBATION SERVICE AND DESIGNATED LEAD AGENCY. IF THE RESPONDENT HAD BEEN  
48 THE SUBJECT OF A WARRANT OR AN ARREST IN CONNECTION WITH THE PROCEEDING,  
49 OR LAW ENFORCEMENT WAS THE REFERRING AGENCY, THE CERTIFICATION SHALL  
50 ALSO BE SENT TO THE APPROPRIATE POLICE DEPARTMENT OR LAW ENFORCEMENT  
51 AGENCY. UPON RECEIPT OF SUCH CERTIFICATION, THE RECORDS SHALL BE SEALED  
52 IN ACCORDANCE WITH SUBDIVISION (B) OF THIS SECTION IN THE SAME MANNER AS  
53 IS REQUIRED THEREUNDER WITH RESPECT TO AN ORDER OF A COURT.

54 (V) A RESPONDENT IN WHOSE FAVOR A PROCEEDING WAS TERMINATED PRIOR TO  
55 THE EFFECTIVE DATE OF THE CHAPTER OF THE LAWS OF TWO THOUSAND FIFTEEN  
56 WHICH ADDED THIS PARAGRAPH MAY, UPON MOTION, APPLY TO THE COURT, UPON

1 NOT LESS THAN TWENTY DAYS NOTICE TO THE PETITIONER OR (WHERE THE PETI-  
2 TIONER IS REPRESENTED BY A PRESENTMENT AGENCY) SUCH AGENCY, FOR AN ORDER  
3 GRANTING THE RELIEF SET FORTH IN PARAGRAPH (I) OF THIS SUBDIVISION.  
4 WHERE A PROCEEDING UNDER THIS ARTICLE WAS TERMINATED IN FAVOR OF THE  
5 RESPONDENT IN ACCORDANCE WITH PARAGRAPH (III) OR (IV) OF THIS SUBDIVI-  
6 SION PRIOR TO THE EFFECTIVE DATE OF THE CHAPTER OF THE LAWS OF TWO THOU-  
7 SAND FIFTEEN WHICH ADDED THIS PARAGRAPH, THE RESPONDENT MAY APPLY TO THE  
8 DESIGNATED LEAD AGENCY, PETITIONER OR PRESENTMENT AGENCY, AS APPLICABLE,  
9 FOR A CERTIFICATION AS DESCRIBED IN SUCH PARAGRAPHS GRANTING THE RELIEF  
10 SET FORTH THEREIN AND SUCH CERTIFICATION SHALL BE GRANTED.

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

15 (II) SUCH MOTION MUST BE IN WRITING AND MAY BE FILED AT ANY TIME  
16 SUBSEQUENT TO THE CONCLUSION OF THE DISPOSITION, INCLUDING, BUT NOT  
17 LIMITED TO, THE EXPIRATION OF THE PERIOD OF PLACEMENT, SUSPENDED JUDG-  
18 MENT, ORDER OF PROTECTION OR PROBATION OR ANY EXTENSION THEREOF. NOTICE  
19 OF SUCH MOTION SHALL BE SERVED NOT LESS THAN EIGHT DAYS PRIOR TO THE  
20 RETURN DATE OF THE MOTION UPON THE PETITIONER OR, IF THE PETITIONER WAS  
21 REPRESENTED BY A PRESENTMENT AGENCY, SUCH AGENCY. ANSWERING AFFIDAVITS  
22 SHALL BE SERVED AT LEAST TWO DAYS BEFORE THE RETURN DATE.

23 (III) THE COURT SHALL SET FORTH IN A WRITTEN ORDER ITS REASONS FOR  
24 GRANTING OR DENYING THE MOTION. IF THE COURT GRANTS THE MOTION, ALL  
25 COURT RECORDS, AS WELL AS ALL RECORDS IN THE POSSESSION OF THE DESIG-  
26 NATED LEAD AGENCY, THE PROBATION SERVICE, THE PRESENTMENT AGENCY, IF  
27 ANY, AND, IF THE RESPONDENT HAD BEEN THE SUBJECT OF A WARRANT OR AN  
28 ARREST IN CONNECTION WITH THE PROCEEDING, OR IF THE POLICE OR LAW  
29 ENFORCEMENT AGENCY WAS THE REFERRING AGENCY OR PETITIONER PURSUANT TO  
30 SECTION SEVEN HUNDRED THIRTY-THREE OF THIS ARTICLE, THE APPROPRIATE  
31 POLICE OR LAW ENFORCEMENT AGENCY, SHALL BE SEALED IN ACCORDANCE WITH  
32 SUBDIVISION (B) OF THIS SECTION.

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

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

38 S 784. Use of police records. All police records relating to the  
39 arrest and disposition of any person under this article shall be kept in  
40 files separate and apart from the arrests of adults and shall be with-  
41 held from public inspection, but such records shall be open to  
42 inspection upon good cause shown by the parent, guardian, next friend or  
43 attorney of that person upon the written order of a judge of the family  
44 court in the county in which the order was made [or, if the person is  
45 subsequently convicted of a crime, of a judge of the court in which he  
46 was convicted].

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