S T A T E O F N E W Y O R K

5020

2015-2016 Regular Sessions

I N S E N A T E

April 28, 2015

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:

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

S 783. Use of [record] RECORDS in other court; SEALING AND EXPUNGEMENT OF RECORDS. (A) Neither the fact that a person was before the family court under this article for a hearing nor any confession, admission or statement made by him OR HER to the court or to any officer thereof in any stage of the proceeding is admissible as evidence against him or HER OR his OR HER interests in any other court. [Another court, in imposing sentence upon an adult after conviction, may receive and consider the records and information on file with the family court concerning such person when he was a child.]

(B) FOR PURPOSES OF THIS SECTION, "SEALING" SHALL MEAN THAT ALL OFFICIAL RECORDS AND PAPERS, INCLUDING JUDGMENTS AND ORDERS OF THE COURT, BUT NOT INCLUDING PUBLIC COURT DECISIONS OR OPINIONS OR RECORDS AND BRIEFS ON APPEAL, RELATING TO THE ARREST, PROSECUTION AND COURT PROCEEDINGS AND RECORDS OF THE PROBATION SERVICE AND DESIGNATED LEAD AGENCY, INCLUDING ALL DUPLICATES OR COPIES THEREOF, ON FILE WITH THE COURT, POLICE DEPARTMENT AND LAW ENFORCEMENT AGENCY, PROBATION SERVICE, DESIGNATED LEAD AGENCY AND PRESENTMENT AGENCY, IF ANY, SHALL BE PROTECTED FROM PUBLIC INSPECTION AND SHALL NOT BE MADE AVAILABLE TO ANY PERSON OR PUBLIC OR PRIVATE AGENCY. SUCH RECORDS SHALL ONLY BE MADE 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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(C) AUTOMATIC SEALING OF A PROCEEDING UNDER THIS ARTICLE THAT IS TERMINATED IN FAVOR OF THE RESPONDENT. (I) UPON TERMINATION OF A PROCEEDING UNDER THIS ARTICLE IN FAVOR OF THE RESPONDENT, THE CLERK OF THE COURT SHALL IMMEDIATELY NOTIFY AND DIRECT THE DIRECTORS OF THE APPROPRIATE PROBATION DEPARTMENT, DESIGNATED LEAD AGENCY PURSUANT TO SECTION SEVEN HUNDRED THIRTY-FIVE OF THIS ARTICLE AND, IF A PRESENTMENT AGENCY REPRESENTED THE PETITIONER IN THE PROCEEDING, SUCH AGENCY, THAT THE PROCEEDING HAS TERMINATED IN FAVOR OF THE RESPONDENT AND THAT THE RECORDS, IF ANY, OF SUCH ACTION OR PROCEEDING ON FILE WITH SUCH OFFICES SHALL BE SEALED. IF THE RESPONDENT HAD BEEN THE SUBJECT OF A WARRANT OR AN ARREST IN CONNECTION WITH THE PROCEEDING, OR LAW ENFORCEMENT WAS THE REFERRING AGENCY OR PETITIONER PURSUANT TO SECTION SEVEN HUNDRED THIRTY-THREE OF THIS ARTICLE, THE NOTICE SHALL ALSO BE SENT TO THE APPROPRIATE POLICE DEPARTMENT OR LAW ENFORCEMENT AGENCY. UPON RECEIPT OF SUCH NOTIFICATION, THE RECORDS SHALL BE SEALED IN ACCORDANCE WITH SUBDIVISION (B) OF THIS SECTION. THE ATTORNEY FOR THE RESPONDENT SHALL BE NOTIFIED BY THE CLERK OF THE COURT IN WRITING OF THE DATE AND AGENCIES AND DEPARTMENTS TO WHICH SUCH NOTIFICATIONS WERE SENT.

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

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

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

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

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

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

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

NOT LESS THAN TWENTY DAYS NOTICE TO THE PETITIONER OR (WHERE THE PETITIONER IS REPRESENTED BY A PRESENTMENT AGENCY) SUCH AGENCY, FOR AN ORDER GRANTING THE RELIEF SET FORTH IN PARAGRAPH (I) OF THIS SUBDIVISION. WHERE A PROCEEDING UNDER THIS ARTICLE WAS TERMINATED IN FAVOR OF THE RESPONDENT IN ACCORDANCE WITH PARAGRAPH (III) OR (IV) OF THIS SUBDIVISION PRIOR TO THE EFFECTIVE DATE OF THE CHAPTER OF THE LAWS OF TWO THOUSAND FIFTEEN WHICH ADDED THIS PARAGRAPH, THE RESPONDENT MAY APPLY TO THE DESIGNATED LEAD AGENCY, PETITIONER OR PRESENTMENT AGENCY, AS APPLICABLE, FOR A CERTIFICATION AS DESCRIBED IN SUCH PARAGRAPHS GRANTING THE RELIEF SET FORTH THEREIN AND SUCH CERTIFICATION SHALL BE GRANTED.

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

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

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

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

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

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

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