

# STATE OF NEW YORK

4766

2017-2018 Regular Sessions

## IN SENATE

February 27, 2017

Introduced by Sen. AVELLA -- (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 § 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, except as provided in paragraphs  
21 (v) and (vi) of subdivision (c) of this section, shall not be made  
22 available to any person or public or private agency.

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 notify the appropriate  
36 probation service and police department or law enforcement agency in  
37 writing of such diversion. Upon receipt of such notification, 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 notify the appropriate probation service and designated lead agen-  
47 cy of such determination. Such notification may be on a form prescribed  
48 by the chief administrator of the courts and may be transmitted by elec-  
49 tronic means. If the respondent had been the subject of a warrant or an  
50 arrest in connection with the proceeding, or law enforcement was the  
51 referring agency, the notification shall also be sent to the appropriate  
52 police department or law enforcement agency. Upon receipt of such  
53 notification, the records shall be sealed in accordance with subdivision  
54 (b) of this section in the same manner as is required thereunder with  
55 respect to an order of a court, provided, however, that the designated

1 lead agency may have access to its own records in accordance with para-  
2 graph (v) of this subdivision.

3 (v) Where a proceeding has been diverted pursuant to subparagraph (A)  
4 of paragraph (ii) of this subdivision or where a proceeding has been  
5 referred for the filing of a petition but the potential petitioner or,  
6 if represented by a presentment agency, such agency, elects not to file  
7 a petition in accordance with paragraph (iv) of this subdivision, the  
8 designated lead agency shall seal its records under this section, but  
9 shall have access to its own records:

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

12 (B) in a proceeding in which the designated lead agency is the local  
13 department of social services, where the information is necessary for  
14 such department to determine what services had been arranged or provided  
15 to the family or where the commissioner determines that the information  
16 is necessary in order for the commissioner of such department to comply  
17 with section four hundred twenty-two-a of the social services law.

18 (vi) Records sealed under this section shall be made available to the  
19 juvenile or his or her agent and, where the petitioner or potential  
20 petitioner is a parent or other person legally responsible for the juve-  
21 nile's care, such parent or other person. No statement made to a desig-  
22 nated lead agency by the juvenile or his or her parent or other person  
23 legally responsible that is contained in a record sealed under this  
24 section shall be admissible in any court proceeding, except upon the  
25 consent or at the request, respectively, of the juvenile or his or her  
26 parent or other person legally responsible for the juvenile's care.

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

38 (d) Motion to seal after an adjudication and disposition. (i) If an  
39 action has resulted in an adjudication and disposition under this arti-  
40 cle, the court may, in the interest of justice and upon motion of the  
41 respondent, order the sealing of the records and proceedings.

42 (ii) Such motion must be in writing and may be filed at any time  
43 subsequent to the conclusion of the period of the disposition, includ-  
44 ing, but not limited to, the expiration of the period of placement,  
45 suspended judgment, order of protection or probation or any extension  
46 thereof. Notice of such motion shall be served not less than eight days  
47 prior to the return date of the motion upon the petitioner or, if the  
48 petitioner was represented by a presentment agency, such agency. Answer-  
49 ing affidavits shall be served at least two days before the return date.

50 (iii) The court shall set forth in a written order its reasons for  
51 granting or denying the motion. If the court grants the motion, all  
52 court records, as well as all records in the possession of the desig-  
53 nated lead agency, the probation service, the presentment agency, if  
54 any, and, if the respondent had been the subject of a warrant or an  
55 arrest in connection with the proceeding, or if the police or law  
56 enforcement agency was the referring agency or petitioner pursuant to

1 section seven hundred thirty-three of this article, the appropriate  
2 police or law enforcement agency, shall be sealed in accordance with  
3 subdivision (b) of this section.

4 (e) Expungement of court records. Nothing contained in this article  
5 shall preclude the court's use of its inherent power to order the  
6 expungement of court records.

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

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

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