STATE OF NEW YORK

3603

2021-2022 Regular Sessions

IN SENATE

January 30, 2021

Introduced by Sen. BAILEY -- 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 providing for the confidentiality, sealing, and expungement of juvenile delinquency records; and to repeal section 375.3 of the family court act relating thereto

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

Section 1. The family court act is amended by adding a new section 301.6 to read as follows:

§ 301.6. Juvenile delinquency records. 1. An officer of the court with whom the proceedings pursuant to this article are filed, or his or her clerk, either before or after the conclusion of said proceeding, shall not permit a copy of any of the documents relating to such proceeding to be taken or seen by any person other than the respondent, the attorney for the child, an attorney employed by the presentment agency, or an official employed by the probation service, except by order of the court.

2. Notwithstanding the provisions of subdivision one of this section, an officer of the court, or his or her clerk, shall not permit access of any person to a record which has been sealed pursuant to section 375.1, 375.2, or 375.3.

§ 2. Section 375.1 of the family court act, as added by chapter 920 of the laws of 1982, subdivision 1 as amended by chapter 41 of the laws of 2010, paragraphs (d), (f) and (h) of subdivision 2 and subdivision 3 as amended and paragraph (i) of subdivision 2 as added by chapter 398 of the laws of 1983, is amended to read as follows:

§ 375.1. Order upon termination of a delinquency action in favor of the respondent. 1. Upon termination of a delinquency proceeding against a respondent in favor of such respondent, **pursuant to subdivision three of this section except paragraphs (g) and (h) of such subdivision,** unless the presentment agency upon written motion with not less than eight days notice to such respondent demonstrates to the satisfaction of the court that the interests of justice require otherwise or the court

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

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on its own motion with not less than eight days notice to such respondent determines that the interest of justice require otherwise and states the reason for such determination on the record, [~~the clerk of~~] the court shall [~~immediately notify the counsel for the child, the director of the appropriate presentment agency, and the heads of the appropriate probation department and police department or other law enforcement agency, that the proceeding has terminated in favor of the respondent and, unless the court has directed otherwise, that the records of such action or proceeding, other than those destroyed pursuant to section 354.1 of this act, shall be sealed. Upon receipt of such notification 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, the prosecution and the probation service proceedings, including all duplicates or copies thereof, on file with the court, police agency, probation service and presentment agency shall be sealed and not made available to any person or public or private agency. Such records shall remain sealed during the pendency of any motion made pursuant to this subdivision~~] enter an order sealing the appropriate records.

2. Upon entry of an order pursuant to subdivision one or pursuant to section 375.2 or 375.3 the clerk of court shall immediately seal the relevant court records and shall immediately notify the director of the appropriate presentment agency, and the heads of the appropriate probation department, detention facility, police department or other law enforcement agency that, unless the court has directed otherwise, the records of such action or proceeding, other than those destroyed pursuant to section 354.1, shall be sealed.

3. For the purposes of subdivision one, a delinquency proceeding shall be considered terminated in favor of a respondent where:

(a) the petition is withdrawn; or

(b) the petition is dismissed under section 315.1 or 315.2 and the presentment agency has not appealed from such order or the determination of an appeal or appeals from such order has been against the presentment agency; or

(c) the petition has been deemed to have been dismissed under section 315.3 and the presentment agency has not appealed from such order or the determination of an appeal or appeals from such order has been against the presentment agency; or

(d) the petition is dismissed without prejudice under subdivision four of section 325.3 and the presentment agency has not appealed from such order or the determination of an appeal or appeals from such order has been against the presentment agency; or

(e) the entire petition has been dismissed under subdivision two of section 345.1; or

(f) the petition is dismissed under subdivision two of section 352.1; or

(g) prior to the filing of a petition, the probation department has adjusted the case or terminated the case without adjustment; or

(h) prior to the filing of a petition the presentment agency chooses not to proceed to petition; or

(i) the petition is dismissed pursuant to a motion made in accordance with subdivision eight, nine or ten of section 332.1.

[~~3.~~] 4. Records sealed pursuant to subdivision one shall be made available to the respondent or his designated agent and the records and papers of a probation service shall be available to any probation

service for the purpose of complying with subdivision four of section 308.1.

[~~4.~~] **5.** If prior to the filing of a petition the presentment agency elects not to commence a delinquency action it shall serve a certification of such disposition upon the appropriate probation service and the appropriate police department or law enforcement agency, which, upon receipt thereto, shall comply with the provision of subdivision one in the same manner as is required with respect to an order of the court.

[~~5.~~] **6.** If the probation service adjusts a delinquency case it shall serve a certification of such disposition upon the appropriate police department or law enforcement agency which, upon receipt thereof, shall comply with the provisions of subdivision one in the same manner as is required thereunder with respect to an order of a court.

[~~6.~~] **7.** A respondent in whose favor a delinquency proceeding was terminated prior to the effective date of this section may upon motion apply to the court, upon not less than twenty days notice to the presentment agency, for an order granting him the relief set forth in subdivision one, and such order shall be granted unless the presentment agency demonstrates to the satisfaction of the court that the interests of justice require otherwise. A respondent in whose favor a delinquency action or proceeding was terminated as defined by subdivisions [~~four and~~] five **and six**, prior to the effective date of this section, may apply to the appropriate presentment agency or probation service for a certification as described in such subdivisions granting him the relief set forth therein and such certification shall be granted by such presentment agency or probation service.

§ 3. Subdivisions 1, 5 and 6 of section 375.2 of the family court act, subdivisions 1 and 5 as added by chapter 920 of the laws of 1982, and subdivision 6 as amended by section 77 of part WWW of chapter 59 of the laws of 2017, are amended to read as follows:

1. If an action has resulted in a finding of delinquency pursuant to subdivision one of section 352.1, [~~other than a finding that the respondent committed a designated felony act,~~] **and the records have not been sealed pursuant to section 375.1 or 375.3,** the court may, in the interest of justice and upon motion of the respondent, order the sealing of appropriate records pursuant to subdivision one of section 375.1.

5. The court shall not order the sealing of any record except as prescribed by this section or section 375.1 **or 375.3**.

6. [~~Such a motion cannot be filed until the respondent's sixteenth birthday, or, commencing October first, two thousand eighteen, the respondent's seventeenth birthday, or commencing October first, two thousand nineteen, the respondent's eighteenth birthday~~] **If the finding relates to an act committed before the respondent attained age sixteen such a motion cannot be filed until the respondent's sixteenth birthday. If the finding related to an act committed subsequent to the respondent's sixteenth birthday, such motion cannot be filed until the respondent has attained age eighteen**.

§ 4. Section 375.3 of the family court act is REPEALED and a new section 375.3 is added to read as follows:

§ 375.3. Post-finding sealing. 1. If an action has resulted in a finding of delinquency pursuant to subdivision one of section 352.1 and every specific count of the petition upon which the fact-finding order entered pursuant to section 345.1 constitutes a misdemeanor if committed by an adult, and four years have elapsed since the finding was entered, the court shall enter an order sealing the appropriate records pursuant to subdivision one of section 375.1 and the clerk shall immediately

transmit the notifications pursuant to subdivision two of section 375.1, and section 375.4.

2. If after an action has resulted in a finding of delinquency pursuant to subdivision one of section 352.1 and every specific count or counts of the petition upon which the order entered pursuant to section 345.1 constitute a misdemeanor or a non-violent felony if committed by an adult, and: (a) five years have elapsed since the finding was entered; (b) the respondent has had no subsequent adjudication of juvenile delinquency or a criminal conviction; and (c) no juvenile delinquency or criminal proceeding is then pending, the court shall, upon motion of the respondent, order the sealing of appropriate records pursuant to subdivision one of section 375.1 and the clerk of court shall immediately transmit the notifications pursuant to subdivision two of section 375.1, and section 375.4.

§ 5. The family court act is amended by adding a new section 375.4 to read as follows:

§ 375.4. Notice of sealing. Upon entering an order sealing appropriate records pursuant to sections 375.1, 375.2 and 375.3 the clerk of court shall serve the respondent and the attorney for the child with a copy of such order by ordinary mail sent to the last known address of the respondent and the attorney for the child.

§ 6. The family court act is amended by adding a new section 375.5 to read as follows:

§ 375.5. Expungement. 1. The court shall order the expungement of court records, and the records of the appropriate presentment agency and probation department, when the entire petition has been dismissed under subdivision two of section 345.1.

2. Upon expiration of one year after termination of a delinquency proceeding in favor of a child under paragraph (g) or (h) of subdivision three of section 375.1 the director of the appropriate presentment agency, and/or the head of the appropriate probation department, shall destroy the agency's records of such proceeding when the highest charge made by the police department is a class E felony or a misdemeanor, and the child was less than thirteen years of age when the alleged act occurred. As appropriate, the presentment agency shall serve a certification of disposition upon the appropriate probation service, which shall destroy the probation service's records in the same manner required with respect to an order for the court.

3. Upon the filing of a written motion by the respondent on notice to the appropriate presentment agency, the court shall order the expungement of court records, and/or the records of the appropriate presentment agency or probation department, when:

(a) the respondent has no juvenile delinquency or criminal history aside from the proceeding in which the motion is made;

(b) the proceeding did not result in a felony finding; and

(c) respondent has reached the age of twenty-one.

4. In all other cases except those in which a designated felony finding was made, the court, upon the filing of a written motion by the respondent on notice to the appropriate presentment agency, has the authority to order in its discretion and in the interests of justice, the expungement of court records, and/or the records of the appropriate presentment agency or probation department.

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