

STATE OF NEW YORK

7621

2021-2022 Regular Sessions

IN ASSEMBLY

May 19, 2021

Introduced by M. of A. HEVESI -- (at request of the Office of Court Administration) -- read once and referred 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:

§ 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, except as provided in paragraphs (v) and (vi) of subdivision (c) of this section, shall not be made 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; or

31 (D) resulted in an adjudication where the only finding was for a
32 violation of section 221.05 or 230.00 of the penal law; provided, howev-
33 er, that with respect to findings under this paragraph, the sealing
34 required by this section shall not take place until the conclusion of
35 the period of any disposition or extension under this article.

36 (iii) If, with respect to a respondent who had been the subject of a
37 warrant or an arrest in connection with the proceeding, or law enforce-
38 ment was the referring agency, the designated lead agency diverts a case
39 either prior to or subsequent to the filing of a petition under this
40 article, the designated lead agency shall notify the appropriate
41 probation service and police department or law enforcement agency in
42 writing of such diversion. Such notification may be on a form
43 prescribed by the chief administrator of the courts. Upon receipt of
44 such notification, the probation service and police department or law
45 enforcement agency shall seal any records in accordance with subdivision
46 (b) of this section in the same manner as is required thereunder with
47 respect to an order of a court.

48 (iv) If, following the referral of a proceeding under this article for
49 the filing of a petition, the petitioner or, if represented by a
50 presentment agency, such agency, elects not to file a petition under
51 this article, the petitioner or, if applicable, the presentment agency,
52 shall notify the appropriate probation service and designated lead agen-
53 cy of such determination. Such notification may be on a form prescribed
54 by the chief administrator of the courts and may be transmitted by elec-
55 tronic means. If the respondent had been the subject of a warrant or an
56 arrest in connection with the proceeding, or law enforcement was the

1 referring agency, the notification shall also be sent to the appropriate
2 police department or law enforcement agency. Upon receipt of such
3 notification, the records shall be sealed in accordance with subdivision
4 (b) of this section in the same manner as is required thereunder with
5 respect to an order of a court, provided, however, that the designated
6 lead agency may have access to its own records in accordance with para-
7 graph (v) of this subdivision.

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

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

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

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

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

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

47 (ii) Such motion must be in writing and may be filed at any time
48 subsequent to the conclusion of the disposition, including, but not
49 limited to, the expiration of the period of placement, suspended judg-
50 ment, order of protection or probation or any extension thereof. Notice
51 of such motion shall be served not less than eight days prior to the
52 return date of the motion upon the petitioner or, if the petitioner was
53 represented by a presentment agency, such agency. Answering affidavits
54 shall be served at least two days before the return date.

55 (iii) The court shall set forth in a written order its reasons for
56 granting or denying the motion. If the court grants the motion, all

1 court records, as well as all records in the possession of the desig-
2 nated lead agency, the probation service, the presentment agency, if
3 any, and, if the respondent had been the subject of a warrant or an
4 arrest in connection with the proceeding, or if the police or law
5 enforcement agency was the referring agency or petitioner pursuant to
6 section seven hundred thirty-three of this article, the appropriate
7 police or law enforcement agency, shall be sealed in accordance with
8 subdivision (b) of this section.

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

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

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

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