STATE OF NEW YORK

9228

IN SENATE

May 12, 2022

Introduced by Sen. BRISPORT -- 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 the confidentiality and expungement of records in juvenile delinquency cases in the family court

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 301.5 to read as follows:

§ 301.5. Confidentiality of juvenile delinquency records. 1. "Juvenile delinquency record" refers to the records, reports and information maintained in any form, including electronic, by the family court, juvenile probation, the presentment agency, state criminal justice information systems, law enforcement agencies or any other public servant documenting the juvenile's contact with the juvenile justice system from the time of investigation and arrest.

2. The following records, reports, and information acquired or generated in family court, juvenile probation or by arrests concerning juveniles shall be confidential and shall not be open to inspection nor released to any person, department, agency, or entity:

(a) Juvenile legal files, including but not limited to:

(i) Juvenile delinquency petitions;

(ii) Adolescent offender petitions if the action is transferred or removed to family court pursuant to article seven hundred twenty-two of the criminal procedure law;

(iii) Juvenile offender petitions if the action is removed to family court pursuant to article seven hundred twenty-five of the criminal procedure law;

(iv) Predisposition reports, including probation investigations and diagnostic assessments;

(v) Risk assessment instruments;

(vi) Notices;

(vii) Motions;

(viii) Legal memoranda; and

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

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(ix) Orders.

(b) Law enforcement records, including but not limited to:

(i) Fingerprints, photographs, palmprints;

(ii) DNA samples;

(iii) Arrest records;

(iv) Demographic information that identifies a juvenile or the family of a juvenile; and

(v) State criminal justice information system records.

(c) Personal social records, including but not limited to:

(i) Records of juvenile probation officers;

(ii) Medical records;

(iii) Psychiatric or psychological records;

(iv) Reports of preliminary inquiries and predisposition reports;

(v) Supervision records;

(vi) Birth certificates;

(vii) Individualized service plans;

(viii) Detention records; and

(ix) Demographic information that identifies a juvenile or the family of a juvenile.

3. Upon a written petition and a finding of compelling interest, and in accordance with the conditions below, the juvenile court may order release of the juvenile name and designated portions of the records, reports, and information described in paragraphs (a) through (c) of subdivision two of this section to another person, department, entity, or agency.

(a) The requesting party shall provide notice to the juvenile and his or her attorney of the petition and an opportunity to object.

(b) The court shall hold a hearing on the petition if requested by the petitioner or juvenile.

(c) The petition filed with the court and served on the juvenile and his or her attorney shall state the following:

(i) The reason the person, department, entity, or agency is requesting the information;

(ii) The use to be made of the information, including any intended re-disclosure; and

(iii) The names of those persons within the department, entity, or agency who will have access to the information.

(d) In ruling on the petition, the court shall consider the privacy interests of the juvenile and potential risk of harm to the juvenile, whether a compelling reason exists for release of the information, and whether the release is necessary for the protection of an important interest.

(e) The court may impose restrictions on the use and re-disclosure of the released information.

4. 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 such proceedings, shall not permit a copy of any of the documents relating to such proceedings 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.

5. Notwithstanding the provisions of subdivision three 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 expunged pursuant to section 375.1 or section 375.2 of this article.

6. A violation of this section shall create a cause of action for civil damages of up to one thousand dollars.

§ 2. The section heading and subdivisions 1 and 2 of section 354.1 of the family court act, the section heading and subdivision 1 as added by chapter 920 of the laws of 1982 and subdivision 2 as amended by chapter 645 of the laws of 1996, are amended and two new subdivisions 8 and 9 are added to read as follows:

Retention and destruction of fingerprints**; DNA and other genetic material** of persons alleged to be juvenile delinquents.

1. If a person whose fingerprints, palmprints or photographs were taken pursuant to section 306.1 **of this article** or **who** was initially fingerprinted as a juvenile **or adolescent** offender and the action is subsequently removed to a family court pursuant to article seven hundred twenty-five **or article seven hundred twenty-two** of the criminal procedure law is adjudicated to be a juvenile delinquent for a felony, the family court shall forward or cause to be forwarded to the division of criminal justice services notification of such adjudication and such related information as may be required by such division, provided, however, in the case of a person [~~eleven or~~] twelve years of age such notification shall be provided only if the act upon which the adjudication is based would constitute a class A or B felony.

2. If a person whose fingerprints, palmprints or photographs were taken pursuant to section 306.1 **of this article** or **who** was initially fingerprinted as a juvenile **or adolescent** offender and the action is subsequently removed to family court pursuant to article seven hundred twenty-five **or article seven hundred twenty-two** of the criminal procedure law has had all petitions disposed of by the family court in any manner other than an adjudication of juvenile delinquency for a felony, but in the case of acts committed when such person was [~~eleven or~~] twelve years of age [~~which would constitute~~] **other than an adjudication of juvenile delinquency for** a class A or B felony [~~only~~], all such fingerprints, palmprints, photographs, and copies thereof, and all information relating to such allegations obtained by the division of criminal justice services pursuant to section 306.1 **of this article** shall be destroyed forthwith. The clerk of the court shall notify the commissioner of the division of criminal justice services and the heads of all police departments and law enforcement agencies having copies of such records, who shall destroy such records without unnecessary delay.

8. When a person whose fingerprints, palmprints or photographs were taken pursuant to section 306.1 of this article and who is subsequently adjudicated a juvenile delinquent for a felony, but in the case of acts committed when such person was twelve years of age other than an adjudication of juvenile delinquency for a class A or B felony, and the case is expunged pursuant to section 375.1 or section 375.2 of this article, all fingerprints, palmprints, photographs, and related information and copies thereof obtained pursuant to section 306.1 of this article in the possession of the division of criminal justice services, any police department, law enforcement agency or any other agency shall be destroyed forthwith. The division of criminal justice services shall notify the agency or agencies which forwarded fingerprints to such division pursuant to section 306.1 of this article of their obligation to destroy those records in their possession.

9. If any DNA or other genetic material was obtained from a juvenile by any law enforcement officer or other public servant acting in the course of his or her official duties or by a state or local government entity, other than DNA or other genetic material obtained in connection

with a parentage or related proceeding or a juvenile offender or adolescent offender proceeding not removed to the family court, such material and any analyses or reports regarding such material, as well as any record included in any DNA identification index maintained by any government entity, shall be expunged forthwith. Any DNA or other genetic material obtained in connection with a parentage proceeding related thereto or any juvenile offender or adolescent offender proceeding may be used only in connection with such proceeding and may not be disclosed to or utilized by any law enforcement agency or admitted into evidence in any proceeding under this article.

§ 3. Subdivisions 1 and 2 of section 354.1 of the family court act, as amended by chapter 810 of the laws of 2021, are amended to read as follows:

1. If a person whose fingerprints, palmprints or photographs were taken pursuant to section 306.1 of this article or who was initially fingerprinted as a juvenile or adolescent offender and the action is subsequently removed to a family court pursuant to article seven hundred twenty-five or article seven hundred twenty-two of the criminal procedure law is adjudicated to be a juvenile delinquent for a felony, the family court shall forward or cause to be forwarded to the division of criminal justice services notification of such adjudication and such related information as may be required by such division, provided, however, in the case of a person twelve years of age such notification shall be provided only if the act upon which the adjudication is based would constitute a class A or B felony.

2. If a person whose fingerprints, palmprints or photographs were taken pursuant to section 306.1 of this article or who was initially fingerprinted as a juvenile or adolescent offender and the action is subsequently removed to family court pursuant to article seven hundred twenty-five or article seven hundred twenty-two of the criminal procedure law has had all petitions disposed of by the family court in any manner other than an adjudication of juvenile delinquency for a felony, but in the case of acts committed when such person was twelve years of age [~~which would constitute~~] other than an adjudication of juvenile delinquency for a class A or B felony [~~only~~], all such fingerprints, palmprints, photographs, and copies thereof, and all information relating to such allegations obtained by the division of criminal justice services pursuant to section 306.1 of this article shall be destroyed forthwith. The clerk of the court shall notify the commissioner of the division of criminal justice services and the heads of all police departments and law enforcement agencies having copies of such records, who shall destroy such records without unnecessary delay.

§ 4. 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, 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 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~~] **expunged**. 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~~] **expunged,** and not made available to any person or public or private agency**; provided, however, that the probation service may retain a copy of the record under seal solely in order to comply with subdivision four of section 308.1 of this article until the respondent's eighteenth birthday or the conclusion of their probation supervision, at which time all records shall be expunged**. Such records shall remain sealed during the pendency of any motion made pursuant to this subdivision.

2. **The effect of having a record expunged, whether pursuant to subdivision one of this section or pursuant to section 375.2 of this part, shall be that all juvenile records shall be destroyed and thereafter no person or agency shall be allowed to release any information concerning such record, except as provided by this section. The court, juvenile probation office, law enforcement offices, presentment agency and any other relevant agency shall reply to an inquiry that no juvenile record exists with respect to the person whose record was expunged.**

3. With respect to the matter in which the record was expunged and any preceding action resulting from the same alleged conduct, the person who is the subject of the record and the person's parent shall not be held thereafter under any provision of law to be guilty of perjury or otherwise giving a false statement by reason of the person's failure to recite or acknowledge such record.

4. For the purposes of subdivision one **of this section**, 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 **of this article** 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**; provided, however, that an agreement to prevent expungement under this section may not be required as a condition of an adjournment in contemplation of dismissal under section 315.3 of this article**; or

(d) the petition is dismissed without prejudice under subdivision four of section 325.3 **of this article** 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 **of this article**; or

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

(j) following an arrest, the arresting police agency, prior to the filing of an accusatory instrument in court, elects not to proceed further; or

(k) the respondent was adjudicated for an act that if committed by an adult would constitute a crime under former sections 221.15, 221.20, 221.35, 221.40 or 240.37 or section 240.36 of the penal law; or

(l) the respondent was adjudicated for an act that was committed when the respondent was under the age of twelve, other than the acts enumerated in subparagraph (iii) of paragraph (a) of subdivision one of section 301.2 of this article.

5. When a person was previously adjudicated delinquent as described in paragraph (k) or (l) of subdivision four of this section, the chief administrative judge of the state of New York shall, in accordance with this section, automatically vacate, dismiss, and expunge such adjudication, and the office of court administration shall immediately notify the state division of criminal justice services, directing that such agency notify all relevant police and law enforcement agencies of their duty to destroy all records related to such case.

[~~3.~~] 6. 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 of this article.

[~~4.~~] 7. 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~~] thereof, shall comply with the provision of subdivision one of this section in the same manner as is required with respect to an order of the court.

[~~5.~~] 8. 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 of this section in the same manner as is required thereunder with respect to an order of a court.

[~~6.~~] 9. 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, 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.

10. The chief administrative judge of the state of New York shall, in accordance with this section, automatically expunge the juvenile record of a respondent in whose favor a delinquency proceeding was terminated prior to the effective date of this subdivision, and the office of court administration shall immediately notify the state division of criminal justice services, directing that such agency notify all relevant police and law enforcement agencies of their duty to destroy all records related to such case.

§ 5. Section 375.2 of the family court act, as added by chapter 920 of the laws of 1982, subdivision 6 as amended by section 77 of part WWW of chapter 59 of the laws of 2017, and subdivision 7 as added by chapter 813 of the laws of 2021, is amended to read as follows:

§ 375.2. Motion to [~~seal~~] **expunge and automatic expungement** after a finding. 1. If an action has resulted in a finding of delinquency pursuant to subdivision one of section 352.1 **of this article**, [~~other than a finding that the respondent committed a designated felony act,~~] the court may, in the interest of justice and upon motion of the respondent, order the [~~sealing~~] **expungement** of appropriate records pursuant to subdivision one of section 375.1 **of this part**.

2. Such motion must be in writing and may be filed at any time subsequent to the [~~entering of such finding~~] **conclusion of the period of any disposition, including, but not limited to, the expiration of the period of placement, conditional discharge, order of protection, order of restitution, order of probation or any extension thereof**. Notice of such motion shall be served upon the presentment agency not less than eight days prior to the return date of the motion. Answering affidavits shall be served at least two days before such time. **The court shall rule on the expungement after considering the following:**

(a) the best interests of the person;

(b) the age of the person during his or her contact with the family court or law enforcement agency;

(c) the nature of the offense;

(d) the disposition of the case;

(e) the manner in which the person participated in any court ordered rehabilitative programming or supervised services;

(f) the time during which the person has been without contact with the juvenile court;

(g) whether the person has any subsequent criminal convictions; and

(h) the adverse consequences the person will suffer as a result of retention of his or her record.

3. The court shall state on the record its reasons for granting or denying the motion.

4. [~~If such motion is denied, it may not be renewed for a period of one year, unless the order of denial permits renewal at an earlier time.~~

~~5.~~] The court shall not order the [~~sealing~~] **expungement** of any record except as prescribed by this section or section 375.1 **of this part**.

[~~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.~~

~~7.~~] **5.** Where an order of fact-finding has been issued pursuant to subdivision one of section 345.1 of this article that includes solely a violation as defined in subdivision three of section 10.00 of the penal law committed by a juvenile sixteen years of age or, commencing on Octo-

ber first, two thousand nineteen, seventeen years of age, the records shall be [~~sealed~~] **expunged** automatically at the expiration, as applicable, of a successful period of an adjustment, adjournment in contemplation of dismissal or conditional discharge.

6. If an action has resulted in a finding of delinquency pursuant to subdivision one of section 352.1 of this article, all records of such action or proceeding not already expunged shall be automatically expunged by the court upon the attainment of the respondent's twenty-first birthday.

7. If expungement is obtained automatically or by motion, the court shall order all agencies named in the juvenile court and probation files, including each law enforcement agency, other state agencies which may have records of the juvenile's adjudication, detention and treatment facilities, to send that person's juvenile record to the court. The court shall then destroy the paper and electronic records and mail an affidavit of expungement to the agency. Each agency shall affirm in an affidavit of expungement to the court that it destroyed all paper and electronic copies of the expunged records.

8. An agreement by the respondent to prevent expungement under this section may not be a condition for the respondent to enter an admission to a reduced charge pursuant to section 321.3 of this article.

§ 6. Section 381.2 of the family court act, as added by chapter 920 of the laws of 1982, subdivision 2 as amended by chapter 926 of the laws of 1982, is amended to read as follows:

§ 381.2. Use of records in other courts. 1. 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.

2. Notwithstanding the provisions of subdivision one **of this section**, another court, in imposing sentence upon an adult after conviction may receive and consider the records and information on file with the family court, unless such records and information have been [~~sealed~~] **expunged** pursuant to section 375.1 **or section 375.2 of this article**.

§ 7. Section 381.3 of the family court act, as added by chapter 920 of the laws of 1982, paragraph (b) of subdivision 2 as amended by chapter 926 of the laws of 1982, is amended to read as follows:

§ 381.3. Use of [~~police~~] **law enforcement** records. 1. All [~~police~~] **law enforcement** records relating to the arrest**, detention, apprehension,** 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.

2. **All law enforcement records relating to the arrest, detention, apprehension, and disposition of any juveniles shall be destroyed forthwith upon the occurrence of one of the following:**

(a) After the arrest of such person, the arresting law enforcement agency, prior to the filing of an accusatory instrument in court, elects not to proceed further;

(b) Prior to the filing of a petition, the presentment agency elects not to commence a delinquency action;

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

(d) Termination of the delinquency action in favor of a respondent pursuant to section 375.1 of this article; or

(e) Following a finding of delinquency, sealing or expungement is ordered pursuant to section 375.1 or 375.2 of this article.

3. Law enforcement or other public officials may not access or disclose confidential juvenile records without a court order following notice and a hearing pursuant to subdivision four of section 306.1 of this article.

4. Notwithstanding the provisions of subdivision [~~one~~] **three of this section**, the family court in the county in which the petition was adjudicated may, upon motion and for good cause shown, order such records open:

(a) to the respondent or his **or her** parent or person responsible for his **or her** care; or

(b) if the respondent is subsequently convicted of a crime, to a judge of the court in which he was convicted, unless such record has been [~~sealed~~] **expunged** pursuant to section 375.1 **or section 375.2 of this article**.

[~~3.~~] **5.** An order issued under subdivision [~~two~~] **four** must be in writing.

6. For the purposes of this section, "records" shall include law enforcement files, reports, exhibits or other material which contains information relating to contact with any law enforcement agency and also includes electronic information recorded and stored stemming from an arrest or subsequent interrogations and interviews, and shall also apply to any information that is kept manually, through the use of electronic data processing equipment, through electronic recording or by any other means by a law enforcement agency of the state of New York.

7. Violation of this section shall create a cause of action for civil damages up to one thousand dollars.

§ 8. This act shall take effect on the ninetieth day after it shall have become a law; provided, however, that if chapter 810 of the laws of 2021 shall not have taken effect on or before such date, then section three of this act shall take effect on the same date and in the same manner as chapter of the laws of 2021 takes effect.