

# STATE OF NEW YORK

8010

## IN SENATE

January 5, 2024

Introduced by Sen. BRISPORT -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the family court act, in relation to 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, as amended by a chap-  
2 ter of the laws of 2023 amending the family court act relating to  
3 expungement of records in persons in need of supervision cases in the  
4 family court, as proposed in legislative bills numbers S. 7444 and A.  
5 6544, is amended to read as follows:

6 § 783. Use of records in other court; expungement of records. (a)  
7 Neither the fact that a person was before the family court under this  
8 article for a hearing nor any confession, admission or statement made by  
9 him or her to the court or to any officer thereof in any stage of the  
10 proceeding is admissible as evidence against him or her or his or her  
11 interests in any other court.

12 (b) For purposes of this section, "expungement" shall mean that all  
13 official records and papers, including judgments and orders of the  
14 court, but not including public court decisions or opinions or records  
15 and 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 destroyed and, except for records sealed as provided in paragraphs (v)  
21 and (vi) of subdivision (c) of this section, shall not be made available  
22 to any person or public or private agency. Provided, however, that  
23 foster care and preventive service records maintained by social services  
24 departments relating to a proceeding under this article shall not be  
25 subject to expungement or sealing under this section and shall be held  
26 confidential in accordance with article six of the social services law.

27 (c) Automatic expungement of records of a proceeding under this arti-  
28 cle that is terminated in favor of the respondent. (i) Upon termination

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

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1 of a proceeding under this article in favor of the respondent, the clerk  
2 of the court shall immediately notify and direct the directors of the  
3 appropriate probation department, designated lead agency pursuant to  
4 section seven hundred thirty-five of this article, a local educational  
5 agency if an official of such agency was the petitioner pursuant to  
6 section seven hundred thirty-three 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 expunged. If the respondent had been the subject of a warrant  
11 or an arrest in connection with the proceeding, or law enforcement was  
12 the referring agency or petitioner pursuant to section seven hundred  
13 thirty-three of this article, the notice shall also be sent to the  
14 appropriate police department or law enforcement agency. Upon receipt of  
15 such notification, the records shall be expunged in accordance with  
16 subdivision (b) of this section. The attorney for the respondent shall  
17 be notified by the clerk of the court in writing of the date and agen-  
18 cies and 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 former section 221.05 or section 230.00 of the penal law;  
33 provided, however, that with respect to findings under this paragraph,  
34 the expungement required by this section shall not take place until the  
35 conclusion of the period of any disposition or extension under this  
36 article.

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

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

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

9 (v) Where a proceeding has been diverted pursuant to subparagraph (A)  
10 of paragraph (ii) of this subdivision or where a proceeding has been  
11 referred for the filing of a petition but the potential petitioner or,  
12 if represented by a presentment agency, such agency, elects not to file  
13 a petition in accordance with paragraph (iv) of this subdivision, upon  
14 receipt of written notice the designated lead agency shall seal [~~its~~]  
15 any records related to the proceeding under this section that are in its  
16 possession, but shall have access to [~~its-own~~] such records solely for  
17 the following purposes:

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

20 (B) where the information is necessary for such department to deter-  
21 mine what services had been arranged or provided to the family or where  
22 the commissioner determines that the information is necessary in order  
23 for the commissioner of such department to comply with section four  
24 hundred twenty-two-a of the social services law.

25 (vi) Records [~~expunged-or~~] sealed under this section shall be made  
26 available to the juvenile or his or her agent and, where the petitioner  
27 or potential petitioner is a parent or other person legally responsible  
28 for the juvenile's care, such parent or other person. No statement made  
29 to a designated lead agency by the juvenile or his or her parent or  
30 other person legally responsible that is contained in a record expunged  
31 or sealed under this section shall be admissible in any court proceed-  
32 ing, except upon the consent or at the request, respectively, of the  
33 juvenile or his or her parent or other person legally responsible for  
34 the juvenile's care.

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

46 (d) Motion to expunge after an adjudication and disposition. (i) If an  
47 action has resulted in an adjudication and disposition under this arti-  
48 cle, the court may, in the interest of justice and upon motion of the  
49 respondent, order the expungement of the records and proceedings.

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

1 represented by a presentment agency, such agency. Answering affidavits  
2 shall be served at least two days before the return date.

3 (iii) The court shall set forth in a written order its reasons for  
4 granting or denying the motion. If the court grants the motion, all  
5 court records, as well as all records in the possession of the desig-  
6 nated lead agency, the probation service, the presentment agency, if  
7 any, and, if the respondent had been the subject of a warrant or an  
8 arrest in connection with the proceeding, or if the police or law  
9 enforcement agency was the referring agency or petitioner pursuant to  
10 section seven hundred thirty-three of this article, the appropriate  
11 police or law enforcement agency, shall be expunged in accordance with  
12 subdivision (b) of this section.

13 (e) Automatic expungement of court records. All records under this  
14 article shall be automatically expunged upon the respondent's twenty-  
15 first birthday unless earlier expunged under this section, provided that  
16 expungement under this paragraph shall not take place until the conclu-  
17 sion of the period of any disposition or extension under this article.

18 (f) Expungement of court records; inherent power. Nothing contained  
19 in this article shall preclude the court's use of its inherent power to  
20 order the expungement of court records.

21 § 2. This act shall take effect on the same day and in the same manner  
22 as a chapter of the laws of 2023 amending the family court act relating  
23 to expungement of records in persons in need of supervision cases in the  
24 family court, as proposed in legislative bills numbers S. 7444 and A.  
25 6544, takes effect.