

STATE OF NEW YORK

3104--A

2023-2024 Regular Sessions

IN SENATE

January 27, 2023

Introduced by Sen. BRISPORT -- read twice and ordered printed, and when printed to be committed to the Committee on Children and Families -- reported favorably from said committee and committed to the Committee on Judiciary -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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:

1 Section 1. The family court act is amended by adding a new section
2 301.5 to read as follows:

3 § 301.5. Confidentiality of juvenile delinquency records. 1. "Juvenile
4 delinquency record" refers to the records, reports and information main-
5 tained in any form, including electronic, by the family court, juvenile
6 probation, the presentment agency, state criminal justice information
7 systems, law enforcement agencies or any other public servant document-
8 ing the juvenile's contact with the juvenile justice system from the
9 time of investigation and arrest.

10 2. The following records, reports, and information acquired or gener-
11 ated in family court, juvenile probation or by arrests concerning juve-
12 niles shall be confidential and shall not be open to inspection nor
13 released to any person, department, agency, or entity:

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

15 (i) Juvenile delinquency petitions;

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

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

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

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1 (iv) Predisposition reports, including probation investigations and
2 diagnostic assessments;
3 (v) Risk assessment instruments;
4 (vi) Notices;
5 (vii) Motions;
6 (viii) Legal memoranda; and
7 (ix) Orders.

8 (b) Law enforcement records, including but not limited to:
9 (i) Fingerprints, photographs, palmprints;
10 (ii) DNA samples;
11 (iii) Arrest records;
12 (iv) Demographic information that identifies a juvenile or the family
13 of a juvenile; and
14 (v) State criminal justice information system records.
15 (c) Personal social records, including but not limited to:
16 (i) Records of juvenile probation officers;
17 (ii) Medical records;
18 (iii) Psychiatric or psychological records;
19 (iv) Reports of preliminary inquiries and predisposition reports;
20 (v) Supervision records;
21 (vi) Birth certificates;
22 (vii) Individualized service plans;
23 (viii) Detention records; and
24 (ix) Demographic information that identifies a juvenile or the family
25 of a juvenile.

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

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

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

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

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

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

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

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

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

51 4. An officer of the court with whom the proceedings pursuant to this
52 article are filed, or his or her clerk, either before or after the
53 conclusion of such proceedings, shall not permit a copy of any of the
54 documents relating to such proceedings to be taken or seen by any person
55 other than the respondent, the attorney for the child, an attorney

1 employed by the presentment agency, or an official employed by the
2 probation service, except by order of the court.

3 5. Notwithstanding the provisions of subdivision three of this
4 section, an officer of the court, or his or her clerk, shall not permit
5 access of any person to a record which has been expunged pursuant to
6 section 375.1 or section 375.2 of this article.

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

9 § 2. The section heading and subdivisions 1 and 2 of section 354.1 of
10 the family court act, the section heading as added by chapter 920 of the
11 laws of 1982 and subdivisions 1 and 2 as amended by chapter 810 of the
12 laws of 2021, are amended and two new subdivisions 8 and 9 are added to
13 read as follows:

14 Retention and destruction of fingerprints; DNA and other genetic mate-
15 rial of persons alleged to be juvenile delinquents. 1. If a person
16 whose fingerprints, palmprints or photographs were taken pursuant to
17 section 306.1 of this article or who was initially fingerprinted as a
18 juvenile or adolescent offender and the action is subsequently removed
19 to a family court pursuant to article seven hundred twenty-five or arti-
20 cle seven hundred twenty-two of the criminal procedure law is adjudi-
21 cated to be a juvenile delinquent for a felony, the family court shall
22 forward or cause to be forwarded to the division of criminal justice
23 services notification of such adjudication and such related information
24 as may be required by such division, provided, however, in the case of a
25 person twelve years of age such notification shall be provided only if
26 the act upon which the adjudication is based would constitute a class A
27 or B felony.

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

45 8. When a person whose fingerprints, palmprints or photographs were
46 taken pursuant to section 306.1 of this article and who is subsequently
47 adjudicated a juvenile delinquent for a felony, but in the case of acts
48 committed when such person was twelve years of age other than an adjudi-
49 cation of juvenile delinquency for a class A or B felony, and the case
50 is expunged pursuant to section 375.1 or section 375.2 of this article,
51 all fingerprints, palmprints, photographs, and related information and
52 copies thereof obtained pursuant to section 306.1 of this article in the
53 possession of the division of criminal justice services, any police
54 department, law enforcement agency or any other agency shall be
55 destroyed forthwith. The division of criminal justice services shall
56 notify the agency or agencies which forwarded fingerprints to such divi-

1 sion pursuant to section 306.1 of this article of their obligation to
2 destroy those records in their possession.

3 9. If any DNA or other genetic material was obtained from a juvenile
4 by any law enforcement officer or other public servant acting in the
5 course of his or her official duties or by a state or local government
6 entity, other than DNA or other genetic material obtained in connection
7 with a parentage or related proceeding or a juvenile offender or adoles-
8 cent offender proceeding not removed to the family court, such material
9 and any analyses or reports regarding such material, as well as any
10 record included in any DNA identification index maintained by any
11 government entity, shall be expunged forthwith. Any DNA or other genetic
12 material obtained in connection with a parentage proceeding related
13 thereto or any juvenile offender or adolescent offender proceeding may
14 be used only in connection with such proceeding and may not be disclosed
15 to or utilized by any law enforcement agency or admitted into evidence
16 in any proceeding under this article.

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

22 § 375.1. Order upon termination of a delinquency action in favor of
23 the respondent. 1. Upon termination of a delinquency proceeding against
24 a respondent in favor of such respondent, unless the presentment agency
25 upon written motion with not less than eight days notice to such
26 respondent demonstrates to the satisfaction of the court that the inter-
27 ests of justice require otherwise or the court on its own motion with
28 not less than eight days notice to such respondent determines that the
29 interest of justice require otherwise and states the reason for such
30 determination on the record, the clerk of the court shall immediately
31 notify the counsel for the child, the director of the appropriate
32 presentment agency, and the heads of the appropriate probation depart-
33 ment and police department or other law enforcement agency, that the
34 proceeding has terminated in favor of the respondent and, unless the
35 court has directed otherwise, that the records of such action or
36 proceeding, other than those destroyed pursuant to section 354.1 of this
37 act, shall be [~~sealed~~] expunged. Upon receipt of such notification all
38 official records and papers, including judgments and orders of the
39 court, but not including public court decisions or opinions or records
40 and briefs on appeal, relating to the arrest, the prosecution and the
41 probation service proceedings, including all duplicates or copies there-
42 of, on file with the court, police agency, probation service and
43 presentment agency shall be [~~sealed~~] expunged, and not made available to
44 any person or public or private agency; provided, however, that the
45 probation service may retain a copy of the record under seal solely in
46 order to comply with subdivision four of section 308.1 of this article
47 until the respondent's eighteenth birthday or the conclusion of their
48 probation supervision, at which time all records shall be expunged.
49 Such records shall remain sealed during the pendency of any motion made
50 pursuant to this subdivision.

51 2. The effect of having a record expunged, whether pursuant to subdi-
52 vision one of this section or pursuant to section 375.2 of this part,
53 shall be that all juvenile records shall be destroyed and thereafter no
54 person or agency shall be allowed to release any information concerning
55 such record, except as provided by this section. The court, juvenile
56 probation office, law enforcement offices, presentment agency and any

1 other relevant agency shall reply to an inquiry that no juvenile record
2 exists with respect to the person whose record was expunged.

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

9 4. For the purposes of subdivision one of this section, a delinquency
10 proceeding shall be considered terminated in favor of a respondent
11 where:

12 (a) the petition is withdrawn; or

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

17 (c) the petition has been deemed to have been dismissed under section
18 315.3 and the presentment agency has not appealed from such order or the
19 determination of an appeal or appeals from such order has been against
20 the presentment agency; provided, however, that an agreement to prevent
21 expungement under this section may not be required as a condition of an
22 adjournment in contemplation of dismissal under section 315.3 of this
23 article; or

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

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

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

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

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

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

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

41 (k) the respondent was adjudicated for an act that if committed by an
42 adult would constitute a crime under former sections 221.15, 221.20,
43 221.35, 221.40 or 240.37 or section 240.36 of the penal law; or

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

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

1 ~~[3-]~~ 6. Records sealed pursuant to subdivision one shall be made
2 available to the respondent or his designated agent and the records and
3 papers of a probation service shall be available to any probation
4 service for the purpose of complying with subdivision four of section
5 308.1 of this article.

6 ~~[4-]~~ 7. If prior to the filing of a petition the presentment agency
7 elects not to commence a delinquency action it shall serve a certifi-
8 cation of such disposition upon the appropriate probation service and
9 the appropriate police department or law enforcement agency, which, upon
10 receipt ~~[thereto]~~ thereof, shall comply with the provision of subdivi-
11 sion one of this section in the same manner as is required with respect
12 to an order of the court.

13 ~~[5-]~~ 8. If the probation service adjusts a delinquency case it shall
14 serve a certification of such disposition upon the appropriate police
15 department or law enforcement agency which, upon receipt thereof, shall
16 comply with the provisions of subdivision one of this section in the
17 same manner as is required thereunder with respect to an order of a
18 court.

19 ~~[6-]~~ 9. A respondent in whose favor a delinquency proceeding was
20 terminated prior to the effective date of this section may upon motion
21 apply to the court, upon not less than twenty days notice to the
22 presentment agency, for an order granting him the relief set forth in
23 subdivision one, and such order shall be granted unless the presentment
24 agency demonstrates to the satisfaction of the court that the interests
25 of justice require otherwise. A respondent in whose favor a delinquency
26 action or proceeding was terminated as defined by subdivisions four and
27 five, prior to the effective date of this section, may apply to the
28 appropriate presentment agency or probation service for a certification
29 as described in such subdivisions granting him the relief set forth
30 therein and such certification shall be granted by such presentment
31 agency or probation service.

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

40 § 4. Section 375.2 of the family court act, as added by chapter 920 of
41 the laws of 1982, subdivision 6 as amended by section 77 of part WWW of
42 chapter 59 of the laws of 2017, and subdivision 7 as added by chapter
43 813 of the laws of 2021, is amended to read as follows:

44 § 375.2. Motion to ~~[seal]~~ expunge and automatic expungement after a
45 finding. 1. If an action has resulted in a finding of delinquency pursu-
46 ant to subdivision one of section 352.1 of this article, ~~[other than a~~
47 ~~finding that the respondent committed a designated felony act,~~ the
48 court may, in the interest of justice and upon motion of the respondent,
49 order the ~~[sealing]~~ expungement of appropriate records pursuant to
50 subdivision one of section 375.1 of this part.

51 2. Such motion must be in writing and may be filed at any time subse-
52 quent to the ~~[entering of such finding]~~ conclusion of the period of any
53 disposition, including, but not limited to, the expiration of the period
54 of placement, conditional discharge, order of protection, order of
55 restitution, order of probation or any extension thereof. Notice of such
56 motion shall be served upon the presentment agency not less than eight

1 days prior to the return date of the motion. Answering affidavits shall
2 be served at least two days before such time. The court shall rule on
3 the expungement after considering the following:

- 4 (a) the best interests of the person;
- 5 (b) the age of the person during his or her contact with the family
6 court or law enforcement agency;
- 7 (c) the nature of the offense;
- 8 (d) the disposition of the case;
- 9 (e) the manner in which the person participated in any court ordered
10 rehabilitative programming or supervised services;
- 11 (f) the time during which the person has been without contact with the
12 juvenile court;
- 13 (g) whether the person has any subsequent criminal convictions; and
- 14 (h) the adverse consequences the person will suffer as a result of
15 retention of his or her record.

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

18 4. ~~[If such motion is denied, it may not be renewed for a period of~~
19 ~~one year, unless the order of denial permits renewal at an earlier time.~~
20 ~~5.]~~ The court shall not order the ~~[sealing]~~ expungement of any record
21 except as prescribed by this section or section 375.1 of this part.

22 ~~[6. Such a motion cannot be filed until the respondent's sixteenth~~
23 ~~birthday, or, commencing October first, two thousand eighteen, the~~
24 ~~respondent's seventeenth birthday, or commencing October first, two~~
25 ~~thousand nineteen, the respondent's eighteenth birthday.~~

26 ~~7.]~~ 5. Where an order of fact-finding has been issued pursuant to
27 subdivision one of section 345.1 of this article that includes solely a
28 violation as defined in subdivision three of section 10.00 of the penal
29 law committed by a juvenile sixteen years of age or, commencing on Octo-
30 ber first, two thousand nineteen, seventeen years of age, the records
31 shall be ~~[sealed]~~ expunged automatically at the expiration, as applica-
32 ble, of a successful period of an adjustment, adjournment in contem-
33 plation of dismissal or conditional discharge.

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

39 7. If expungement is obtained automatically or by motion, the clerk of
40 the court shall notify the commissioner of the division of criminal
41 justice services, the attorney for the child, the director of the appro-
42 priate presentment agency, the head of the appropriate probation depart-
43 ment, the heads of all police departments and law enforcement agencies
44 and all other agencies named in the court files, including other state
45 agencies which may have records of the juvenile's adjudication,
46 detention, and treatment facilities, who shall destroy such records
47 without unnecessary delay. Each agency shall affirm in an affidavit of
48 expungement to the court that it destroyed all paper and electronic
49 copies of the expunged records. The division of criminal justice
50 services shall notify the agency or agencies which forwarded any juve-
51 nile records of their obligation to destroy those records in their
52 possession.

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

§ 5. 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.

§ 6. 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 of this section 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

1 arrest or subsequent interrogations and interviews, and shall also apply
2 to any information that is kept manually, through the use of electronic
3 data processing equipment, through electronic recording or by any other
4 means by a law enforcement agency of the state of New York.

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

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