2017 Regular Session

HOUSE BILL NO. 506

### BY REPRESENTATIVES JEFFERSON AND JACKSON

(On Recommendation of the Louisiana State Law Institute)

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

CHILDRENS CODE: Provides relative to juvenile records and proceedings

1 AN ACT 2 To amend and reenact Children's Code Articles 414(A), 728(2), 736.1, 737(A)(4), 738(B) 3 and (C), 742(B), 917, 918, 919, 920(A) and (B), 921, 922, and 923(E), R.S. 15:593 4 and 614(B), and R.S. 44:4.1(B)(39), to enact Children's Code Articles 737(D), 5 740(A)(6), 782(A)(7), Chapter 15-A of Title VII of the Children's Code, to be comprised of Articles 792 and 793, and Children's Code Articles 901(G), 924, 925, 6 7 and 926, to repeal Children's Code Articles 738(D) and 923, and to provide comments to Children's Code Articles 733, 733.1, 735, 736, and 758, relative to 8 9 juvenile records and proceedings; to provide for the disclosure of juvenile records 10 for sentencing purposes; to provide comments; to provide for the confidentiality of 11 records; to provide for the records relating to placement when a child is taken into 12 custody; to provide guidelines to the court in a juvenile disposition proceeding; to 13 provide relative to the expungement and sealing of court and agency records; to 14 provide for the waiver of costs and fees; to provide forms; to provide for the removal 15 of records from the state police database; to provide citations in the Public Records 16 Law to certain exceptions; to provide for effectiveness; and to provide for related 17 matters. 18 Be it enacted by the Legislature of Louisiana: 19 Section 1. Children's Code Articles 414(A), 728(2), 736.1, 737(A)(4), 738(B) and 20 (C), 742(B), 917, 918, 919, 920(A) and (B), 921, 922, and 923(E) are hereby amended and

# Page 1 of 26

CODING: Words in struck through type are deletions from existing law; words <u>underscored</u> are additions.

1	reenacted and Children's Code Articles 737(D), 740(A)(6), 782(A)(7), Chapter 15-A of Title		
2	VII of the Children's Code, comprised of Articles 792 and 793, and Children's Code Articles		
3	901(G), 924, 925, and 926 are hereby enacted to read as follows:		
4	Art. 414. Disclosure of records for sentencing; habitual offender proceedings		
5	A. Notwithstanding any provision of law to the contrary, upon written		
6	request, reports and records concerning juvenile court proceedings shall be released		
7	to the sentencing judge when necessary for sentencing and released to the district		
8	attorney for purposes of charging a person as a habitual offender pursuant to R.S.		
9	<del>15:529.1</del> .		
10	* * *		
11	Comments - 2017		
12 13 14	The former provision pertaining to the use of juvenile delinquency records for sentencing under the habitual offender law has been removed in keeping with the holding of <i>State v. Brown</i> , 879 So. 2d 1276 (La. 2004).		
15	* * *		
16	Art. 728. Definitions		
17	As used in this Title:		
18	* * *		
19	(2) "Child" means a person under eighteen years of age who, prior to		
20	juvenile proceedings under this Title, has not been judicially emancipated or		
21	emancipated by marriage.		
22	* * *		
23	Comments - 2017		
24 25 26 27	The definition of the term "child" has been amended to remove the reference to "juvenile" proceedings, which generally connote juvenile delinquency. Article 792 provides that Families in Need of Services matters are neither juvenile delinquency nor criminal in nature.		
28	* * *		
29	Art. 736.1. Immunity		
30	Any law enforcement officer acting in good faith upon the request of a parent		
31	or guardian, exercising due care in the taking into custody a runaway child, or		
32	providing assistance thereto, pursuant to the provisions of this Title shall have		

CODING: Words in struck through type are deletions from existing law; words <u>underscored</u> are additions.

1	immunity from any civil liability that otherwise might be incurred or imposed		
2	because of the report, taking into custody, or assistance provided. The limitation of		
3	liability provided by this Article shall not extend to acts constituting negligence, or		
4	a violation of the law, or a violation of the confidentiality provisions of this Code		
5	including those contained in Article 412.		
6	Comments - 2017		
7 8 9	All records and reports regarding Families in Need of Services proceedings are confidential, and any violation of this confidentiality may subject the violator to penalties. See Children's Code Article 412.		
10	Art. 737. Place of prehearing placement upon a taking into custody		
11	A. When taken into custody, the child shall be placed in the least restrictive		
12	prehearing placement consistent with the child's need for protection or control, in the		
13	following order of priority:		
14	* * *		
15	(4) A secure detention facility, until a hearing is held within twenty-four		
16	hours after the child's entry into custody in accordance with Article 739, if the child		
17	can be detained separately from children who have been adjudicated delinquent and		
18	any both of the following apply:		
19	(a) The child is a runaway. Non-secure placement is not available to meet		
20	the child's need for protection or control.		
21	(b) The child is ungovernable. There are reasonable grounds to believe that		
22	the child is a runaway, ungovernable, or otherwise at substantial risk of failing to		
23	appear at the next scheduled hearing if released to the custody of a parent or		
24	guardian.		
25	(c) The child has previously failed to appear at a scheduled juvenile court		
26	hearing.		
27	* * *		
28	D. Any records and reports related to placement of a child into custody under		
29	any of the provisions of this Title shall be confidential and shall not be disclosed		
30	unless specifically authorized by provisions of this Code, including Article 412.		

1	Comments - 2017			
2 3 4 5	The provisions of Paragraph D are consistent with Article 793, which provides that all records and reports regarding Families in Need of Service proceedings are confidential. Any violation of this confidentiality may subject the violator to penalties. See Children's Code Article 412.			
6	Art. 738. Release from custody			
7	* * *			
8	B. If the court finds that these conditions are insufficient to assure the			
9	presence of the child at later proceedings, the court may require the posting of ba			
10	in accordance with Title VIII.			
11	C. If the court finds that release under neither Paragraph A nor B of this			
12	Article is appropriate inappropriate, it may authorize the continued custody of the			
13	child pending the holding of a continued custody hearing within the time limitations			
14	established in Article 739.			
15	D.C. An appropriate representative of the arresting agency that took the child			
16	into custody shall be responsible for transporting the child to the adjudication or			
17	disposition hearing, or both, and transporting the child back to the shelter care			
18	facility or secure detention facility as determined by the court through its order or			
19	judgment of disposition.			
20	* * *			
21	Art. 740. Advice of rights			
22	A. At the continued custody hearing, the court shall advise the parents and			
23	the child, in terms understandable by the child, of:			
24	* * *			
25	(6) The nature of Families in Need of Services proceedings as set forth in			
26	Article 792 and the confidentiality of Families in Need of Services records as set			
27	forth in Article 793.			
28	* * *			

1	Comments - 2017			
2 3 4 5	Because Families in Need of Services cases may originate with a taking into custody and detention, it is important that the court instruct the child as to the distinction between Families in Need of Services matters and juvenile delinquency or criminal matters.			
6	* * *			
7	Art. 742. Place of continued custody			
8	* * *			
9	B. The court may detain the child in a secure detention facility for up to			
10	twenty-four hours, excluding weekends and holidays, only for the purpose of			
1	providing adequate time to arrange for an appropriate non-secure alternative			
12	placement in accordance with Article 737 pending the adjudication hearing.			
13	* * *			
14	Comments - 2017			
15 16	The 2017 amendment clarifies that secure placement is intended to be short-term pending non-secure placement.			
17	* * *			
18	Art. 782. Judgment of disposition			
19	A. The court shall enter into the record a written judgment of disposition			
20	specifying the following:			
21	* * *			
22	(7) The nature of Families in Need of Services proceedings in accordance			
23	with Article 792 and the confidentiality of Families in Need of Services records in			
24	accordance with Article 793.			
25	* * *			
26	Comments - 2017			
27 28 29	The judgment of disposition must include notice that these proceedings and records relative thereto are not, nor should they be treated as, juvenile delinquency or criminal proceedings and records. See Children's Code Articles 792 and 793.			
20	* * *			

1	CHAPTER 15-A. NATURE OF PROCEEDINGS AND RECORDS				
2	Art. 792. Nature of proceedings				
3	Families in Need of Services proceedings are civil in nature, and actions				
4	taken pursuant to this Title, including taking into custody and detention, shall not be				
5	considered juvenile delinquency or criminal matters.				
6	Comments - 2017				
7 8 9 10 11	This Article does not change the law. This Article simply clarifies the nature of Families in Need of Services proceedings as distinct from juvenile delinquency or criminal proceedings. The taking into custody of a child based on grounds of Families in Need of Services is not an arrest, except for the purpose of determining its validity under the Constitution of the United States or the Constitution of Louisiana.				
13	Art. 793. Records				
14	A. The confidentiality of Family in Need of Services records, including the				
15	existence of such records, shall be preserved and shall not be disclosed by any record				
16	custodian without the consent of the child or order of the court in accordance with				
17	Article 412.				
18	B. Records and reports concerning any Families in Need of Services matter				
19	shall not be identified, maintained, or otherwise handled by the court or by any other				
20	agency or person as a juvenile delinquency or criminal matter.				
21	Comments - 2017				
22 23 24 25 26	This Article does not change the law. This Article provides for the confidentiality of Families in Need of Services records as distinct from delinquency or criminal records. Except upon order of the court or consent of the child, neither the existence nor content of Families in Need of Services records shall ever be disclosed.				
27	* * *				
28	Art. 901. Disposition guidelines; generally				
29	* * *				
30	G. The court shall notify the child in writing of the expungement and sealing				
31	procedures set forth in Article 917 et seq.				
32	* * *				

1	Art. 917. Expungement and sealing; generally	
2	A person seventeen years of age or older may move for expungement of	
3	records of juvenile criminal conduct pursuant to this Chapter. This Chapter provides	
4	the exclusive procedure by which records and reports of proceedings under Title VIII	
5	of this Code may be expunged and sealed.	
6	Art. 918. Grounds	
7	A. Records concerning conduct or conditions and reports of a delinquency	
8	matter that did not result in adjudication may be expunged and sealed at any time.	
9	B. Records and reports of a matter that resulted in a finding of Families in	
10	Need of Services may be expunged and sealed only if the court exercising juvenile	
11	jurisdiction has ceased to exercise such jurisdiction in accordance with Article 313	
12	C. Records concerning conduct or conditions Except as otherwise provided	
13	in Paragraph E of this Article, records and reports of a matter that resulted in	
14	misdemeanor delinquency adjudication for a misdemeanor offense may be expunged	
15	and sealed only if two or more years have elapsed since the person satisfied the most	
16	recent judgment against him. all of the following circumstances exist:	
17	(1) The person seeking expungement and sealing has attained the age of	
18	seventeen years, or six months have elapsed since the court exercising juvenile	
19	jurisdiction ceased to exercise such jurisdiction in accordance with Article 313.	
20	(2) The court exercising juvenile jurisdiction has ceased to exercise such	
21	jurisdiction in accordance with Article 313.	
22	C.D. Records concerning conduct or conditions Except as otherwise	
23	provided in Paragraph E of this Article, records and reports of a matter that resulted	
24	in a felony delinquency adjudication for a felony offense may be expunged and	
25	sealed only if all of the following circumstances exist:	
26	(1) The <u>delinquency</u> adjudication was not for murder, manslaughter, <del>any</del>	
27	sexual crime, an offense requiring registration as a sex offender under R.S. 15:542,	
28	kidnapping, or armed robbery.	

1	(2) Five or more The person seeking expungement and sealing has attained	
2	the age of seventeen years, or two years have elapsed since the person satisfied the	
3	most recent judgment against him the court exercising juvenile jurisdiction ceased	
4	to exercise such jurisdiction in accordance with Article 313.	
5	(3) The person seeking expungement and sealing has no eriminal court adult	
6	felony convictions and no criminal court adult convictions for misdemeanors against	
7	<u>a person</u> involving a weapon firearm.	
8	(4) The person seeking expungement and sealing has no outstanding pending	
9	indictment or bill of information <del>charging him</del> .	
10	D.E. Records concerning conduct or conditions and reports of a matter that	
11	resulted in a misdemeanor or felony adjudication for R.S. 14:82, 83.3, 83.4, 89, or	
12	89.2 may be expunged and sealed upon petition to the court and upon a showing that,	
13	during the time of the commission of the offense, the person seeking the	
14	expungement and sealing was a victim of trafficking of children for sexual purposes	
15	pursuant to R.S. 14:46.3(E) provided that the person has no outstanding pending	
16	indictment or bill of information charging against him.	
17	Art. 919. Procedure for expungement and sealing; motions; order	
18	A. A person seventeen years of age or older may move for the expungement	
19	and sealing of his records and reports concerning the person's juvenile criminal	
20	conduct or conditions.	
21	B. The motion for expungement and sealing must be in writing and must	
22	shall be substantially in the form provided in Article 925 and shall state facts that	
23	constitute grounds for expungement and sealing under Article 918.	
24	C. The motion for expungement must and sealing shall be filed with the	
25	court possessing the records and reports the person seeks to expunge, or with the	
26	court having exercising juvenile jurisdiction over the arresting agency.	
27	D. The motion must shall be served personally or by domiciliary service, or	
28	by certified United States mail or electronic means, on the district attorney, the clerk	
29	of the court whose records and reports are sought to be expunged and sealed, and the	

25

26

1	head of any agency whose reports and records and reports are sought to be expunged			
2	and sealed, including but not limited to the Federal Bureau of Investigation, the			
3	Louisiana Bureau of Criminal Identification and Information, the Department of			
4	Public Safety and Corrections, office of juvenile justice, and local law enforcement			
5	agencies.			
6	E. Unless waived by consent of the parties, Any person or agency that			
7	objects to the granting of the motion for a matter that resulted in a delinquency			
8	adjudication for a misdemeanor offense or for a felony offense shall file an affidavit			
9	of response in the form provided in Article 926, and a contradictory hearing must			
10	shall be conducted with the district attorney and any agency whose records and			
11	<u>reports</u> are sought to be expunged <u>and sealed</u> .			
12	F. If the court finds that the grounds have been established, and that the			
13	person is entitled to expungement and sealing, the court may shall order			
14	expungement and sealing.			
15	Art. 920. Order of expungement and sealing; court records			
16	A. An order for the expungement and sealing of juvenile court records and			
17	reports must shall be in writing and, the form provided in Article 925 and, except as			
18	hereinafter provided, must otherwise provided by law, shall require that the clerk of			
19	court destroy expunge and seal all records and reports relating to the conduct or			
20	conditions referred to in the motion for expungement <u>and sealing</u> , including but not			
21	limited to pleadings, exhibits, reports, minute entries, correspondence, and all other			
22	documents.			
23	B. References, documents, recordings, or other materials that cannot be			

may any undestroyed expunged and sealed information be released.

destroyed may be maintained shall be expunged and sealed. Under no circumstances

2	A. An order for the expungement <u>and sealing</u> of juvenile records <u>and reports</u>			
3	must shall be in writing and must the form provided in Article 925 and shall require			
4	that both of the following occur:			
5	(1) Except as otherwise provided by law, all officials, agencies, institutions,			
6	boards, systems, and law enforcement offices, and their employees, agents, and			
7	consultants, destroy all reports and expunge and seal all records and reports, whether			
8	in any form, on microfilm, computer memory device, or tape, or and any other			
9	photographic, fingerprint, <u>DNA</u> , or any other information of any kind and all kinds			
10	or descriptions relating to the conduct or conditions referred to in the motion for			
11	expungement and sealing.			
12	(2) Any and all such All agencies and law enforcement offices file with the			
13	court an affidavit with the court attesting to the fact effect that such records and			
14	reports have been destroyed expunged and sealed and that no notation or references			
15	have been retained in any central depository which will or might lead to the inference			
16	that any record <u>or report</u> ever was on file with that agency or law enforcement office.			
17	A copy of the affidavit of expungement and sealing shall be retained by the court.			
18	B. The order must shall specify the time within which the destruction			
19	expungement and sealing is to be effected. The order must shall also specify the			
20	limitations on information which that may be maintained in accordance with this			
21	Article.			
22	C. An order for expungement must and sealing shall be served in the manner			
23	provided for service of the motion on both the district attorney and the head of the			
24	each agency whose reports or records or reports are to be destroyed expunged and			
25	sealed.			
26	D. A copy of the judgment ordering destruction order of expungement and			
27	sealing may be maintained by the custodian of reports and records and reports of the			
28	agency or office. However, the custodian must shall not disclose to anyone the fact			
29	that such judgment order is maintained or that the destroyed reports or expunged and			

Art. 921. Order of expungement and sealing; agency records

2	the court.		
3	Art. 922. Expungement and sealing order; effect		
4	Except for the limited purposes stated in Articles 920 and 921, upon an order		
5	of expungement and sealing, the conduct and conditions records and reports		
6	expunged and sealed and the underlying conduct and conditions are considered		
7	nonexistent and are to be treated as such upon inquiry shall not be made available to		
8	any person. No person whose juvenile records and reports have been expunged and		
9	sealed shall be required to disclose to any person that he was arrested or adjudicated		
10	or that the records and reports of arrest or adjudication have been expunged and		
11	sealed.		
12	Art. 923. Expungement and sealing of adjudications involving human trafficking		
13	victims		
14	* * *		
15	E. If the motion is granted, the court shall order the expungement and sealing		
16	of the record and report of the delinquency juvenile proceedings including but not		
17	limited to all records and files related to the child's arrest, citation, investigation,		
18	charge, delinquency proceedings, adjudication, and probation for the offense.		
19	Art. 924. Fees		
20	A. No court costs or fees shall be allowed against any party to a proceeding		
21	for an expungement and sealing.		
22	B. The court may waive all or any part of any other fees or costs associated		
23	with the expungement and sealing and shall waive those fees and costs upon finding		
24	that the applicant is indigent.		
25	C. Notwithstanding any provision of law to the contrary, a child who has		
26	successfully completed a juvenile drug court program operated by a court of this		
27	state shall be exempt from payment of any processing or filing fees or other costs		
28	associated with the expungement and sealing of his related juvenile records and		
29	reports.		

sealed records or reports previously existed to anyone except upon written order of

1	Comments - 2017			
2 3	For the procedure for determining indigency in accordance with Paragraph B of this Article, see Article 320.			
4	Art. 925. Expungement and sealing; forms			
5	A. The following form shall be used for filing a motion, setting a			
6	contradictory hearing, and ordering the expungement and sealing of records and			
7	reports:			
8	MOTION FOR EXPUNGEMENT AND SEALING			
9	NOW INTO COURT COMES , in			
10	proper person or through undersigned counsel, and herein moves this Honorable			
11	Court:			
12	(1) To order the expungement and sealing of all records and reports,			
13	including but not limited to the record of arrest and order of disposition concerning			
14	the below-described conduct or condition, and directing all officials, agencies,			
15	institutions, boards, and systems, including their employees, agents, consultants, and			
16	special committees, to expunge and seal any record, in any form, concerning the			
17	arrest of mover, and any other photographic, fingerprint, DNA, or any other			
18	information of any and all kinds or descriptions; and			
19	(2) To direct each agency and law enforcement office having any such			
20	records, including but not limited to the above named entities, to file a sworn			
21	affidavit with the clerk of court to the effect that such records have been expunged			
22	and sealed and that no notation or reference has been retained in any central			
23	depository which could or might lead to the inference that the expunged and sealed			
24	record was ever on file with that agency or law enforcement office, except as			
25	otherwise specifically provided by law.			
26	<u>I.</u>			
27	Full name of mover:			
28				
29	SEX: { } Male { } Female Social Security Number:			
30	Race/Ethnicity: Date of Birth: / /			

1	Address: Street:	Apt. #:
2	City/State: Zip:	
3	NOTE: A separate page shall be completed for EACH of the charges for	
4	which expungement and sealing is sought. Failu	re to provide ALL of the
5	requested information may result in dismissal of the	e motion for insufficiency.
6	<u>II.</u>	
7	Offense Report #: Offense char	ged:
8	Date of Arrest: / /	
9	Arresting Agency:	
10	City/ Parish of Arrest:	
11	<u>III.</u>	
12	Action taken: (Check appropriate action and insert date)	
13	{ } Charges not filed	
14	{ } Charges refused on	/
15	{ } Informal Adjustment Agreement completed on	/
16	{ } Adjudicated on	/
17	{ } Dismissed on	/
18	{ } Continued without date on	/
19	<u>IV.</u>	
20	Court Docket and Complaint #: , #	
21	<u>V.</u>	
22	Authority for motion (Check one only)	
23	{ } This matter did not result in adjudication.	
24	{ } This matter resulted in a Families in Need of Services adjudication.	
25	AND the court which had exercised juvenile jurisdiction has ceased to exercise such	
26	in accordance with Children's Code Article 313.	
27	{ } This matter resulted in a misdemeanor adjudication.	

1	AND the mover has attained the age of seventeen years, or six months have elapsed
2	since the court exercising juvenile jurisdiction has ceased to exercise such in
3	accordance with Children's Code Article 313.
4	AND the court which had exercised juvenile jurisdiction ceased to exercise such in
5	accordance with Children's Code Article 313.
6	{ } This matter resulted in a felony adjudication.
7	AND the mover has attained the age of seventeen years, or two years have elapsed
8	since the court exercising juvenile jurisdiction ceased to exercise such in accordance
9	with Children's Code Article 313.
10	AND the adjudication was not for murder, manslaughter, an offense requiring
11	registration as a sex offender under R.S. 15:542, kidnapping, or armed robbery.
12	AND mover has no adult felony conviction and no adult conviction for a
13	misdemeanor against a person involving a firearm.
14	AND mover has no pending indictment or bill of information against him.
15	WHEREFORE, mover prays that after due proceedings are had, there be an
16	order herein in favor of mover, ordering the clerk of court and all other agencies,
17	offices or organizations to expunge and seal their records or reports concerning the
18	conduct or condition of mover as a child as more fully described herein.
19	Respectfully submitted,
20 21	Name of Mover or Attorney
22 23	Address
24 25	City/State/Zip
26 27	<u>Phone</u>
28	<u>ORDER</u>
29	CONSIDERING the above and foregoing:
30	IT IS ORDERED that a contradictory hearing be and is hereby set for the
31	day of , 20 at in Section .

1		, Louisiana this	day of	20 .
2 3			JUDGI	3
4	Note: Please	add any additional nece	ssary agencies below.	
5	PLEASE SEF	RVE:		
6	Parish of			
7	Distric	ct Attorney		
8	Clerk	of Court		
9	Sherif	f		
10	Bureau of Ide	ntification and Informat	ion_	
11	Attn: Expung	<u>ement</u>		
12	7919 Indepen	dence Blvd.		
13	Baton Rouge,	Louisiana 70806		
14	and			
15 16	Name of Age	ncy	Name of Agen	<u>cy</u>
17 18	Attn:		Attn:	
19 20	Address		Address	
21 22	City/State/Zip	<u>)</u>	City/State/Zip	
23	B. Th	e following form shall b	e used to order the exp	oungement and sealing:
24	<u>(</u>	ORDER OF EXPUNGE	MENT AND SEALIN	<u>IG</u>
25	CONS	SIDERING the Motion for	or Expungement and S	ealing and the evidence
26	adduced as to	the following describe	ed matter, and as to the	ne following described
27	conduct or co	nditions:		
28	<u>Item #s</u>	Offense(s) Charged	Date of Arrest(s)	Arresting Agencies

1	IT IS ORDERED that the clerk of court expunge and seal all records and
2	reports, in any medium, including but not limited to pleadings, exhibits, reports,
3	minute entries, correspondence, and all other documents. The court may maintain
4	a confidential record of the fact of an adjudication, which may be released only upon
5	written motion of a court exercising criminal jurisdiction over the mover herein and
6	then only for purposes authorized by the Code of Criminal Procedure.
7	IT IS FURTHER ORDERED that all officials, agencies, institutions, boards,
8	systems, and law enforcement officers and their employees, agents, and consultants
9	expunge and seal all records and reports, in any form, concerning the above-
10	described matter, and any other photographic, fingerprint, DNA, or any other
11	information of any and all kinds and descriptions. The custodian of records and
12	reports of the agency or office may maintain a copy of this order. However, the
13	custodian shall not disclose to anyone the fact that an order is maintained or that the
14	expunged and sealed records or reports previously existed except upon written order
15	of the court.
16	IT IS FURTHER ORDERED that each agency and law enforcement office
17	herein served and having any records or reports of the conduct or condition file a
18	sworn affidavit with the clerk of court to the effect that the records and reports have
19	been expunged and sealed and that no notation or references have been retained in
20	any central depository which could or might lead to the inference that any report or
21	record was on file with the agency or law enforcement office served, which affidavit
22	shall be filed with the clerk of court within days after service of this order.
23	Signed at , Louisiana this day of 20 .
24 25	<u>JUDGE</u>
26	Note: Please add any necessary agencies below.
27	PLEASE SERVE:
28	Parish of
29	District Attorney
30	Clerk of Court

1	Sheriff	
2	Bureau of Identification & Information	
3	Attn: Expungements	
4	7919 Independence Blvd.	
5	Baton Rouge, Louisiana 70806	
6	<u>and</u>	
7 8	Name of Agency	Name of Agency
9 10	Attn:	Attn:
11 12	Address	Address
13 14	City/State/Zip	City/State/Zip
15	Art. 926. Affidavit of response form	
16	The following form shall be used	for filing an affidavit of response to a
17	motion for expungement and sealing in acc	cordance with Article 919:
18	AFFIDAVIT OF RE	<u>ESPONSE</u>
19	Pursuant to Children's Code Article	e 919, the Respondent agency or office,
20	, acknowledges th	ne following:
21	{ } No Opposition. Respondent has no op	pposition to the motion and respectfully
22	consents to waiver of the contradictory hea	nring.
23	{ } Opposition to the Motion of Exp	ungement and Sealing with Reasons.
24	Respondent respectfully requests a contrad	lictory hearing.
25	As grounds for its objection, the Re	espondent asserts as follows:
26	{ } Insufficient time has passed since the	conclusion of the matter, or the court is
27	still exercising jurisdiction.	
28	{ } The adjudicated offense was for mur	rder, manslaughter, an offense requiring
29	registration as a sex offender under R.S. 15	5:542, kidnapping, or armed robbery and
30	therefore is not eligible for expungement a	nd sealing.

1	{ }The adjudication was for a felony offe	nse, and the applicant has an adult felony
2	conviction.	
3	{ }The adjudication was for a felony	offense, and the applicant has an adult
4	conviction for a misdemeanor against a pe	erson involving a firearm.
5	{ }The adjudication was for a felony o	ffense, and the applicant has a pending
6	indictment or bill of information filed aga	inst him.
7	Respectfully submitted,	
8 9	Name of Respondent/Signature of Attorne	<u>ey</u>
10 11	Address	
12 13	City/State/Zip	
14 15	<u>Phone</u>	
16	PLEASE SERVE:	
17	Parish of	
18	District Attorney	-
19	Clerk of Court	
20	Sheriff	
21	Bureau of Identification & Information	
22	Attn: Expungements	
23	7919 Independence Blvd.	
24	Baton Rouge, Louisiana 70806	
25	<u>and</u>	
26 27	Name of Agency	Name of Agency
28 29	Attn:	Attn:
30 31	Address	Address
32 33	City/State/Zip	City/State/Zip

2	follows:
3	Art. 918. Grounds
4	A. Records concerning conduct or conditions and reports of a delinquency
5	matter that did not result in adjudication may be expunged and sealed at any time.
6	B. Records and reports of a matter that resulted in a finding of Families in
7	Need of Services may be expunged and sealed only if the court exercising juvenile
8	jurisdiction has ceased to exercise such jurisdiction in accordance with Article 313.
9	C. Records concerning conduct or conditions and reports of a matter that
10	resulted in a misdemeanor delinquency adjudication for a misdemeanor offense may
11	be expunged and sealed only if all of the following circumstances exist: two or more
12	years have elapsed since the person satisfied the most recent judgment against him.
13	(1) The person seeking expungement and sealing has attained the age of
14	seventeen years, or six months have elapsed since the court exercising juvenile
15	jurisdiction ceased to exercise such jurisdiction in accordance with Article 313.
16	(2) The court exercising juvenile jurisdiction has ceased to exercise such
17	jurisdiction in accordance with Article 313.
18	C.D. Records concerning conduct or conditions and reports of a matter that
19	resulted in a felony delinquency adjudication for a felony offense may be expunged
20	and sealed only if all of the following circumstances exist:
21	(1) The <u>delinquency</u> adjudication was not for murder, manslaughter, <del>any</del>
22	sexual crime, an offense requiring registration as a sex offender under R.S. 15:542,
23	kidnapping, or armed robbery.
24	(2) Five or more The person seeking expungement and sealing has attained
25	the age of seventeen years, or two years have elapsed since the person satisfied the
26	most recent judgment against him the court exercising juvenile jurisdiction ceased
27	to exercise such jurisdiction in accordance with Article 313.

Section 2. Children's Code Article 918 is hereby amended and reenacted to read as

1	(3) The person <u>seeking expungement and sealing</u> has no <u>criminal court adult</u>
2	felony convictions and no criminal court adult convictions for misdemeanors against
3	<u>a person</u> involving a <del>weapon</del> <u>firearm</u> .
4	(4) The person seeking expungement and sealing has no outstanding pending
5	indictment or bill of information charging against him.
6	D. Records concerning conduct or conditions that resulted in a misdemeanor
7	or felony adjudication for R.S. 14:82, 83.3, 83.4, 89, or 89.2 may be expunged upon
8	petition to the court and upon a showing that, during the time of the commission of
9	the offense, the person seeking the expungement was a victim of trafficking of
10	children for sexual purposes pursuant to R.S. 14:46.3(E) provided that the person has
11	no outstanding indictment or bill of information charging him.
12	Comments – 2017
13 14 15	Former Paragraph D of this Article was repealed along with Article 923. The expungement and sealing of adjudications involving victims of trafficking or other exploitation is now governed by Article 725.8.
16	Section 3. The following comments to Children's Code Articles 733, 733.1, 735,
17	736, and 758 are hereby provided as follows:
18	Art. 733. Instanter orders of custody
19	* * *
20	Comments - 2017
21 22 23 24 25	(a) In accordance with Article 792, the taking into custody of a child based on grounds of Families in Need of Services is not an arrest and should not be construed to be an arrest. Article 793 further provides that any record thereof shall not be created, maintained, or disclosed as a juvenile delinquency or criminal arrest record.
26 27 28	(b) All records and reports regarding Families in Need of Services proceedings are confidential, and any violation of this confidentiality may subject the violator to penalties. See Children's Code Article 412.
29	Art. 733.1. Stop of child absent from school; transportation to school facility
30	* * *
31	Comments - 2017
32 33 34 35	(a) In accordance with Articles 792 and 793, any stop, detention, questioning, release, or transportation of a child pursuant to this Article shall not be considered an arrest of the child, and any record thereof shall not be created, maintained, or disclosed as an arrest record.

1 2 3	(b) All records and reports regarding Families in Need of Services proceedings are confidential, and any violation of this confidentiality may subject the violator to penalties. See Children's Code Article 412.
4	* * *
5	Art. 735. Taking child into custody with a court order
6	* * *
7	Comments - 2017
8 9 10	(a) In accordance with Article 792, the taking into custody of a child based on grounds of Families in Need of Services is not an arrest and should not be construed to be an arrest.
11 12 13	(b) All records and reports regarding Families in Need of Services proceedings are confidential, and any violation of this confidentiality may subject the violator to penalties. See Children's Code Article 412.
14	Art. 736. Taking child into custody without a court order
15	* * *
16	Comments - 2017
17 18 19	(a) In accordance with Article 792, the taking into custody of a child based on grounds of Families in Need of Services is not an arrest and should not be construed to be an arrest.
20 21 22	(b) All records and reports regarding Families in Need of Services proceedings are confidential, and any violation of this confidentiality may subject the violator to penalties. See Children's Code Article 412.
23	* * *
24	Art. 758. Advice of rights at appearance to answer petition
25	* * *
26	Comments - 2017
27 28	The list of advisements in Article 740 include instructing the child as to the nature of Families in Need of Services matters and records pursuant to Article 792.
29	* * *
30	Section 4. R.S. 15:593 and 614(B) are hereby amended and reenacted to read as
31	follows:
32	§593. Prohibition against destruction of records
33	Notwithstanding the provisions of <u>Code of Criminal Procedure</u> Articles 893
34	and 894 of the Code of Criminal Procedure and R.S. 40:983, and except in
35	accordance with the provisions set forth in R.S. 44:9 Title XXXIV of the Code of

Page 21 of 26

CODING: Words in struck through type are deletions from existing law; words  $\underline{\text{underscored}}$  are additions.

1	Criminal Procedure or Children's Code Articles 917 through 926, no judge or other
2	official shall order the expungement, <u>sealing</u> , alteration, or destruction of any <u>report</u>
3	or record of the bureau or of any agency subject to reporting requirements of the
4	bureau.
5	* * *
6	§614. Removal of records
7	* * *
8	B. The state police shall remove all reports and records and identifiable
9	information in the data base database or data bank pertaining to the person and
10	destroy all samples from the person upon receipt of a written request for the removal
11	of the report and record and a certified court order of expungement and sealing
12	properly obtained pursuant to the provisions of R.S. 44:9 <u>Title XXXIV of the Code</u>
13	of Criminal Procedure or Children's Code Articles 917 through 926.
14	Section 5. R.S. 44:4.1(B)(39) is hereby amended and reenacted to read as
15	follows:
16	§4.1. Exceptions
17	* * *
18	B. The legislature further recognizes that there exist exceptions, exemptions,
19	and limitations to the laws pertaining to public records throughout the revised
20	statutes and codes of this state. Therefore, the following exceptions, exemptions, and
21	limitations are hereby continued in effect by incorporation into this Chapter by
22	citation:
23	* * *
24	(39) Children's Code Articles 328, 404, 412, 424.6, 424.9, 441, 543, 545,
25	615, 616, 616.1, 663, <u>737, 793,</u> 888, 891, 893, 920, <u>921, 922,</u> 1007, 1106, 1107,
26	1185, 1186, 1187, 1207, 1213, 1229, 1235, 1252, 1273, 1283.5, 1283.10, 1416, 1453,
27	1568.
28	* * *

- 1 Section 6. Children's Code Article 923 is hereby repealed in its entirety.
- 2 Section 7. Children's Code Article 738(D) is hereby repealed in its entirety.
- 3 Section 8. The provisions of Sections 2 and 6 of this Act shall become effective if
- 4 and when the Act that originated as Senate Bill No. 54 of the 2017 Regular Session is
- 5 enacted and becomes effective. If the provisions of Sections 2 and 6 of this Act become
- 6 effective, they shall prevail over any conflicting provisions in Section 1 of this Act.

#### **DIGEST**

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 506 Re-Reengrossed

2017 Regular Session

Jefferson

**Abstract:** Provides relative to juvenile records and proceedings.

<u>Present law</u> (Ch.C. Art. 414) provides that disclosure of juvenile records shall be released to the sentencing judge and to the district attorney when necessary for sentencing purposes.

<u>Proposed law</u> deletes the requirement that the records be released to the district attorney for use in sentencing.

<u>Present law</u> (Ch.C. Art. 728) defines "child" for purposes of <u>present law</u> Title VII regarding Families in Need of Services (FINS).

<u>Proposed law</u> amends the <u>present law</u> definition of "child" to clarify that this definition applies only to the provisions of the Children's Code regarding FINS and that FINS proceedings are not criminal or delinquent in nature.

<u>Present law</u> (Ch.C. Art. 736.1) provides immunity from civil liability for a law enforcement officer acting in good faith upon the request of a parent or guardian, exercising due care in the taking into custody of a runaway child, or providing assistance in this regard.

<u>Proposed law retains present law</u> but exempts from this immunity any liability for violations of the <u>present law</u> requirements of confidentiality.

<u>Present law</u> (Ch.C. Arts. 737 and 738) provides relative to the placement of a child taken into custody while awaiting a hearing in a FINS proceeding.

<u>Proposed law</u> amends <u>present law</u> to provide that the child may only be held in a secure detention facility until a hearing is held if both of the following conditions exist:

- (1) Non-secure placement is not available to meet the child's need for protection or control.
- (2) There are reasonable grounds to believe that the child is a runaway, ungovernable, or otherwise at substantial risk of failing to appear at the next scheduled hearing if released to the custody of a parent or guardian.

<u>Proposed law</u> (Ch.C. Art. 792) provides that FINS proceedings are civil in nature, and actions taken pursuant to such proceedings, including the taking into custody and detention of a child, are not considered juvenile delinquency or criminal matters.

<u>Proposed law</u> (Ch.C. Art. 793) provides that FINS records, including the existence of such records, shall remain confidential and shall not be disclosed without the consent of the child or order of the court pursuant to <u>present law</u>. Further provides that such records shall not be identified, maintained, or otherwise handled as a juvenile delinquency or criminal matter.

<u>Present law</u> (Ch.C. Arts. 740 and 782) requires the court to advise a child of certain rights and to include certain information in a judgment of disposition.

<u>Proposed law</u> retains <u>present law</u> and provides that a child shall also be advised of the nature of a FINS proceeding and the confidentiality of FINS records as provided by <u>proposed law</u>. Further requires this information to be included in the judgment of disposition as well.

<u>Proposed law</u> adds comments to <u>present law</u> (Ch.C. Arts. 733, 733.1, 735, and 736) to clarify that in FINS cases, questioning a child or taking a child into custody is not an arrest and records thereof shall not be created or disclosed.

<u>Present law</u> (Ch.C. Art. 901) provides guidelines for the court when considering its options for disposition of a case.

<u>Proposed law</u> retains <u>present law</u> and requires the court to notify the child of the expungement and sealing procedure.

<u>Present law</u> (Ch.C. Art.917) authorizes a person seventeen years of age or older to move for expungement of his juvenile records pursuant to present law.

<u>Proposed law</u> provides for the following procedures and requirements for the expungement and sealing of juvenile records and reports, which shall be the exclusive procedure for the expungement and sealing of juvenile records and reports:

- (1) Amends the <u>present law</u> (Ch.C. Art. 918) grounds and requirements for expungement of juvenile records to add that records and reports of a FINS matter may be expunged and sealed only if the court exercising jurisdiction has ceased to exercise such jurisdiction.
- (2) Amends the requirements for the expungement of records and reports relative to an adjudication of a misdemeanor offense to provide that the records may be expunged and sealed if the court exercising jurisdiction has ceased to exercise jurisdiction and the person has reached the age of 17 or six months have elapsed since the court ceased in exercising its jurisdiction.
- (3) Adds an adjudication of a felony offense that requires registration as a sex offender to the list of offenses for which a child cannot get an expungement.
- (4) Amends the requirements for the expungement of records and reports relative to an adjudication of a felony offense to provide that the records and reports may be expunged and sealed if:
  - (a) The court exercising jurisdiction has ceased to exercise such jurisdiction.
  - (b) The person has reached the age of 17 or two years (decreased from five years as provided by <u>present law</u>) have elapsed since the court ceased in exercising its jurisdiction.

- (c) The person has no adult felony convictions or adult convictions for misdemeanors against a person involving a firearm.
- (d) The person has no pending indictment or bill of information.
- (5) Requires the motion for expungement and sealing and any objections to the motion to be on the forms provided for by proposed law.
- (6) Require a contradictory hearing on the motion only if a person or agency objects to the granting of the motion.
- (7) Requires the court's order for expungement and sealing of court records and reports and the order for expungement and sealing of agency records and reports be on the forms provided for by proposed law.
- (8) Provides for the expungement and sealing of DNA information and removes provision for the destruction of records in favor of expungement and sealing.
- (9) Provides that a person whose record has been expunged and sealed does not have to disclose that fact to any person.
- (10) Prohibits the assessment of court fees and authorizes the court to waive any other fees and costs of expungement and sealing upon a finding that the applicant is indigent. Further exempts an applicant from the costs and fees when he has successfully completed a juvenile drug court program.

<u>Present law</u> (R.S.15:593) prohibits the expungement or destruction of any record of the La. Bureau of Criminal Identification and Information or any agency subject to the reporting requirements of the bureau. Further provides for certain exceptions to this prohibition.

<u>Proposed law</u> retains <u>present law</u> and adds juvenile records that have been expunged and sealed pursuant to Ch.C. Arts. 917 et seq. to the list of exceptions to this prohibition on the expungement of bureau and agency records.

<u>Present law</u> (R.S.15:614) provides for the removal by state police of all DNA records and profiles upon receipt of a court order of expungement.

<u>Proposed law</u> retains <u>present law</u> and includes orders of expungement of juvenile records issued pursuant to Ch.C. Arts. 917 et seq.

<u>Present law</u> (R.S. 44:4.1–Public Records Law) enumerates a list of recognized exceptions, exemptions, and limitations to the laws pertaining to public records. <u>Proposed law</u> amends present law to include references to proposed law.

(Amends Ch.C. Arts. 414(A), 728(2), 736.1, 737(A)(4), 738(B) and (C), 742(B), 917, 918, 919, 920(A) and (B), 921, 922, and 923(E), R.S. 15:593 and 614(B), and R.S. 44:4.1(B)(39); Adds Ch.C. Arts. 737(D), 740(A)(6), 782(A)(7), 792, 793, 901(G), 924, 925, and 926; Repeals Ch.C. Arts. 738(D) and 923)

# Summary of Amendments Adopted by House

The Committee Amendments Proposed by <u>House Committee on Administration of</u> Criminal Justice to the original bill:

1. Make a correction to clarify the <u>proposed</u> expungement provisions apply to the reports as well as the records of the agency.

- 2. Amend the <u>proposed</u> expungement forms to conform with the provisions of <u>proposed law</u> and make other technical corrections to the <u>proposed</u> expungement forms.
- 3. With regard to the prohibition against destruction of records and state police's duty to remove all records and identifiable information from its database, correct a citation in <u>present law</u> referencing the provisions that provide for the expungement of records of criminal arrests and convictions.
- 4. Make other technical corrections.

The Committee Amendments Proposed by <u>House Committee on House and Governmental Affairs</u> to the <u>engrossed</u> bill:

- 1. Remove an obsolete citation in present law.
- 2. Provide references in the Public Records Law to public records exceptions.

### The House Floor Amendments to the reengrossed bill:

- 1. Clarify that the order of expungement and sealing applies to records and reports in any form.
- 2. Make other technical corrections.