

GREEN SHEET REDIGEST

HB 506

2017 Regular Session

Jefferson

(KEYWORD, SUMMARY, AND DIGEST as amended by Senate committee amendments)

CHILDRENS CODE: Provides relative to juvenile records and proceedings

DIGEST

Present law (Ch.C. Art. 412) provides that records of matters before a juvenile court are confidential and cannot be disclosed except as specifically authorized by present law. Further provides that any person authorized to review and receive confidential information must preserve its confidentiality in the absence of expressed authorization to share.

Proposed law retains present law but requires a court order for persons authorized to review and receive confidential information to share it.

Present law provides that if confidential information of a juvenile record is necessary, the court may authorize the release of the record to certain individuals representing certain entities.

Proposed law provides that the court's release of confidential information must be limited to a specific purpose, regarding a specific child and otherwise retains present law.

Present law provides that confidential information of juvenile matters can be released, limited to a specific purpose, to a petitioner for good cause shown.

Proposed law retains present law and adds requirements for the petition and considerations for the court in determining if confidential information will be released.

Present law provides that the district attorney, law enforcement agency, or court may release the following public identifying information concerning an alleged or adjudicated delinquent child, provided the child was at least 14 years of age at the time of the commission of the delinquent act:

- (1) The name, age, and delinquent act for which the child is being charged whenever the court has found probable cause that the child committed a crime of violence or second or subsequent felony grade offense.
- (2) The name, age, delinquent act and disposition of child whenever the child has been adjudicated delinquent for a crime of violence, for a second or subsequent felony-grade offense, or for the distribution or possession with the intent to distribute a controlled dangerous substance.

Proposed law deletes present law.

Present law provides that, to assist in finding and taking into custody a child wanted for a felony-grade equivalent act, law enforcement may release to the public the child's name, age, alleged delinquent act, physical description, photograph, address, social security number or driver's license number.

Proposed law re-designates but otherwise retains present law with the exception of deleting the authorization for the release of the child's address, social security number, and driver's license number.

Present law provides that any violation of the confidentiality provisions of present law shall be punishable as a constructive contempt of court.

Proposed law re-designates but otherwise retains present law.

Present law provides that whenever a child escapes from a juvenile detention center, law enforcement agencies are authorized to release to the public the child's name, age, physical description, and photograph.

Proposed law re-designates but otherwise retains present law.

Proposed law requires all persons to whom juvenile records are disclosed to execute a nondisclosure agreement. Further provides that the juvenile, parents of the juvenile, and attorney for the juvenile are exempt from the nondisclosure agreement requirement.

Proposed law requires that all information from a juvenile record or a juvenile record disclosed must be marked with language stating the prohibition and consequences of dissemination of the records.

Proposed law provides that no records of juvenile criminal conduct be included in the results of a state or local background check.

Present law (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.

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

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

Proposed law amends the present law 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.

Present law (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.

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

Present law (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.

Proposed law amends present law 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.

Present law (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.

Proposed law retains present law 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 proposed law. Further requires this information to be included in the judgment of disposition as well.

Proposed law adds comments to present law (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.

Proposed law (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.

Proposed law (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 present law. Further provides that such records shall not be identified, maintained, or otherwise handled as a juvenile delinquency or criminal matter.

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

Proposed law add a requirement that the court notify the child in writing of the expungement and sealing procedures set forth in proposed law.

Present law (Ch.C. Art. 903) provides that the court enter into the record a written judgment of disposition specifying certain factors, including the offense for which the child has been adjudicated, the nature of the disposition, the agency, institution or person to whom the child is assigned, the conditions of probation, if applicable, any other applicable terms and conditions regarding the disposition, and the maximum duration of the disposition and if committed to DPSC, the maximum term of commitment.

Proposed law retains present law and adds the requirement of an order of expungement to be made executory at the end of the disposition unless there is an objection filed by a person or agency. Provides that such person or agency can file an objection on one the following grounds:

- (1) The adjudication was for murder, manslaughter, an offense requiring registration as a sex offender, kidnapping, or armed robbery.
- (2) The child has a criminal court felony conviction or a criminal court conviction for a misdemeanor involving a firearm against a person.
- (3) The child has an outstanding indictment or bill of information for a felony charge or a charge of a misdemeanor involving a firearm against a person.

Proposed law requires that the court provide to a child, in plain language, information regarding the rights and procedures of expungement and sealing of records of juvenile criminal conduct. Provides that the failure of the court to inform the child of their right to petition for expungement shall not constitute grounds for a reversal, new trial, or an appeal.

Present law (Ch.C. Art. 918) provides that records concerning conduct or conditions that did not result in adjudication may be expunged and that, provided there are no outstanding indictments or bills of information, records concerning delinquency adjudication for certain enumerated crimes associated with human trafficking may be expunged when the person seeking the expungement was a victim of human trafficking at the time of the offense.

Proposed law retains present law without the requirement that the person seeking the expungement be a victim of human trafficking at the time of the offense.

Present law provides that records concerning conduct or conditions that resulted in a misdemeanor adjudication may be expunged only if two or more years have elapsed since the person satisfied the most recent judgment against him.

Proposed law deletes present law and provides that records and reports of a matter that resulted in a finding of FINS or an adjudication for any charge other than murder,

manslaughter, an offense requiring registration as a sex offender, kidnapping, or armed robbery shall be expunged and sealed only if the court exercising jurisdiction has ceased to exercise jurisdiction in accordance with present law.

Present law provides that records concerning conduct or conditions that resulted in a felony adjudication may be expunged only if:

- (1) The adjudication was not for murder, manslaughter, any sexual crime, kidnapping, or armed robbery.
- (2) Five or more years have elapsed since the person satisfied the most recent judgment against him.
- (3) The person has no criminal court felony convictions and no criminal court convictions for misdemeanors involving a weapon.
- (4) The person has no outstanding indictment or bill of information charging him.

Proposed law provides that records concerning conduct or conditions that resulted in a adjudication may be expunged and sealed only if both of the following circumstances exist:

- (1) The person seeking the expungement and sealing has no criminal court felony convictions and no criminal court convictions for misdemeanors against a person involving a firearm.
- (2) The person seeking the expungement and sealing has no pending indictment or bill of information.

Proposed law further provides that if the adjudication was for murder, manslaughter, a sex offense requiring registration, kidnapping, or armed robbery, the child may petition the court for an expungement of his juvenile record when the court has ceased to exercise jurisdiction in accordance with present law and all of the following conditions are met:

- (1) Five or more years have elapsed since the person seeking the expungement and sealing has satisfied the most recent judgment against him.
- (2) The person seeking the expungement and sealing has no criminal court felony convictions and no criminal court convictions for criminal court convictions for misdemeanors against a person involving a firearm.
- (3) The person seeking the expungement has no pending indictment or bill of information.

Present law (Ch.C. Art. 917 and 919) provide that a person 17 years of age or older may move for the expungement of records and reports concerning the person's juvenile criminal conduct or conditions.

Proposed law removes requirement that the person be 17 years of age.

Present law provides that a motion for expungement must be in writing and must state facts that constitute grounds for expungement as authorized in present law.

Proposed law adds that the form provided in proposed law must be used.

Present law provides that the motion for expungement must be filed with the court possessing the records the person seeks to expunge, or with the court having jurisdiction over the arresting agency. Provides that the motion must be served personally or by domiciliary service or by certified mail on the district attorney, the clerk of the court whose records are sought to be expunged, and the head of any agency whose reports and records are sought to be expunged, including but not limited to the Federal Bureau of Investigation, the Louisiana

Bureau of Criminal Identification and Information, the Department of Public Safety and Corrections, and local law enforcement agencies.

Proposed law retains present law and adds authority to serve the motion by electronic means and adds the office of juvenile justice to the list of agencies with records and reports.

Present law provides that unless waived by consent of the parties, a contradictory hearing must be conducted with the district attorney and any agency whose records are sought to be expunged. Provides that if the court finds that the grounds have been established, and that the person is entitled to expungement, the court may order expungement.

Proposed law removes authority for a party to waive a contradictory hearing and requires that any party or agency that objects to the granting of the motion to file a form provided in proposed law.

Present law provides that an order for the expungement of juvenile court records must be in writing and must require that the clerk of court destroy all records relating to the conduct or conditions referred to in the motion for expungement, including but not limited to pleadings, exhibits, reports, minute entries, correspondence, and all other documents.

Proposed law retains present law but requires the form in proposed law be used.

Present law requires that references, documents, recordings, or other materials that cannot be destroyed may be maintained and that under no circumstances may any undestroyed information be released.

Proposed law provides that references, documents, recording, or other materials shall be expunged and sealed and under no circumstance may any expunged and sealed information be released.

Present law provides that the court may maintain a confidential record, such as a minute entry, of the fact of an adjudication and that the information may be released only upon written motion of a court exercising criminal jurisdiction over the person whose record is sought and then only for the purposes authorized by the Code of Criminal Procedure.

Proposed law retains present law.

Present law (Ch.C. 921) provides that an order for the expungement of juvenile records must be in writing and must require that both of the following occur:

- (1) Except as otherwise provided by present law, all officials, agencies, institutions, boards, systems, and law enforcement offices, and their employees, agents, and consultants, destroy all reports and records whether on microfilm, computer memory device, or tape, or any other photographic, fingerprint, or any other information of any kind and all kinds or descriptions relating to the conduct or conditions referred to in the motion for expungement.
- (2) Any and all such agencies and law enforcement offices file an affidavit with the court attesting to the fact that such records have been destroyed and that no notation or references have been retained in any central depository which will or might lead to the inference that any record ever was on file with that agency or law enforcement office.

Proposed law retains present law and adds DNA to the list of records and report to be expunged and sealed.

Present law provides that an order specify the time within which the destruction of records is to take place and specify any applicable limitations on information.

Proposed law provides that an order of expungement and sealing must be effected no later than 30 days from the date of the order and must specify any applicable limitations on information.

Present law (Ch.C. Art. 922) provides that except for certain limited purposes in present law, upon an order of expungement, the conduct and conditions expunged are considered nonexistent and are to be treated as such upon inquiry.

Proposed law further provides that no person whose juvenile records and reports have been expunged and sealed shall be required to disclose to any persons that he was arrested or adjudicated or that the records and reports of arrest or adjudication have been expunged and sealed. Also provides that a child that is the subject of any expunged record or the child's parent shall not be found guilty of perjury or otherwise giving false statements by reason of the child's failure to disclose. However, proposed law provides that if the child is a witness in a criminal or juvenile delinquency matter, the child may be ordered to testify regarding his expunged record.

Present law (R.S. 15:576(2)) defines "criminal history record" or "criminal history record information" as information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notation of arrests, detentions, indictments, bills of information, or any formal criminal charges, and any disposition arising therefrom, including sentencing, correctional supervision and release.

Proposed law provides an exception to present law definition for records of juvenile criminal conduct.

Present law (R.S. 15:579) provides that the Louisiana Bureau of Criminal Identification and Information issue rules and regulations, consistent with the United States Dept. of Justice requirements governing the privacy and security of criminal history records; governing restriction to access to and use of records maintained by the central repository; governing restrictions to access and use by authorized agencies or individuals of any state owned or operated system of communications utilized for transmitting criminal history record information to or from the bureau; and governing the purging of any information maintained by the bureau as permitted by law.

Proposed law adds the following bodies of law that the rules and regulations must comply: the state constitution; the Louisiana Code of Criminal Procedure; the Louisiana Children's Code; and the Revised Statutes. Also adds the records of juvenile criminal conduct to the records the bureau's rules must maintain privacy and security thereof and specifically provides that records of juvenile criminal conduct shall not be made part of any state or local criminal background check.

Present law (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.

Proposed law retains present law 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.

Present law (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.

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

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

(Amends Ch.C. Arts. 412(A), (D)(9), (10), (11), and (12), (E), (G)(4), (H), (I), (J), and (K), 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. 15:576(2), 579, 593, and 614(B), and R.S. 44:4.1(B)(39); Adds Ch.C. Arts. 412(L) and (M), 737(D), 740(A)(6), 782(A)(7), 792, 793, 901(G), 903(B)(7) and (G), 922(B), 924, 925, and 926; Repeals Ch.C. Arts. 738(D))

Summary of Amendments Adopted by House

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

1. Make a correction to clarify the proposed law expungement provisions apply to the reports as well as the records of the agency.
2. Amend the proposed law expungement forms to conform with the provisions of proposed law and make other technical corrections to the proposed law 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 present law 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 House Committee on House and Governmental Affairs to the engrossed 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.

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Judiciary B to the re-engrossed bill

1. Adds provisions requiring a court order for the release of records by an agency.
2. Adds provisions providing the requirements of petition and process for the release records by an agency.
3. Adds provisions regarding information law enforcement may release to public in certain situations.
4. Adds provisions regarding requirement of a nondisclosure agreement.
5. Adds provisions excepting juvenile criminal records from state or local criminal background check.

6. Add provisions requiring an order of expungement to be made executory at the end of the disposition and requiring court instructions to the child regarding such.
7. Removes age requirements for person seeking expungement.
8. Adds requirement that agency has 30 days from date of court order to expunge and seal records.
9. Adds provision prohibiting a conviction of perjury or otherwise giving a false statement on the subject of an expunged record.
10. Removes provisions contingent on the passage of Senate Bill 54.