

2017 Regular Session

HOUSE BILL NO. 506

BY REPRESENTATIVES JEFFERSON AND JACKSON

(On Recommendation of the Louisiana State Law Institute)

1 AN ACT

2 To amend and reenact Children's Code Articles 412(A), (D)(9), (10), (11), and (12), (E),
3 (G)(4), (H), (I), (J), and (K), 414(A), 728(2), 736.1, 737(A)(4), 738(B) and (C),
4 742(B), 917, 918, 919, 920(A) and (B), 921, 922, and 923(E), R.S. 15:576(2), 579,
5 593, and 614(B), and R.S. 44:4.1(B)(39), to enact Children's Code Articles 412(L)
6 and (M), 737(D), 740(A)(6), 782(A)(7), Chapter 15-A of Title VII of the Children's
7 Code, to be comprised of Articles 792 and 793, and Children's Code Articles 901(G),
8 903(B)(7) and (G), 922(B), 924, 925, and 926, to repeal Children's Code Article
9 738(D), and to provide comments to Children's Code Articles 733, 733.1, 735, 736,
10 and 758, relative to juvenile records and proceedings; to provide for the disclosure
11 of juvenile records for sentencing purposes; to provide comments; to provide for the
12 confidentiality of records; to provide for the records relating to placement when a
13 child is taken into custody; to provide guidelines to the court in a juvenile disposition
14 proceeding; to provide relative to the expungement and sealing of court and agency
15 records; to provide for the waiver of costs and fees; to provide forms; to provide for
16 the removal of records from the state police database; to provide citations in the
17 Public Records Law to certain exceptions; and to provide for related matters.

18 Be it enacted by the Legislature of Louisiana:

19 Section 1. Children's Code Articles 412(A), (D)(9), (10), (11), and (12), (E), (G)(4),
20 (H), (I), (J), and (K), 414(A), 728(2), 736.1, 737(A)(4), 738(B) and (C), 742(B), 917, 918,
21 919, 920(A) and (B), 921, 922, and 923(E) are hereby amended and reenacted and Children's

1 Code Articles 412(L) and (M), 737(D), 740(A)(6), 782(A)(7), Chapter 15-A of Title VII of
2 the Children's Code, comprised of Articles 792 and 793, and Children's Code Articles
3 901(G), 903(B)(7) and (G), 922(B), 924, 925, and 926 are hereby enacted to read as follows:

4 Art. 412. Confidentiality of records; disclosure exceptions; sanctions

5 A. Records and reports concerning all matters or proceedings before the
6 juvenile court, except traffic violations, are confidential and shall not be disclosed
7 except as expressly authorized by this Code. Any person authorized to review or
8 receive confidential information shall preserve its confidentiality ~~in the absence of~~
9 ~~express authorization for sharing with others~~ unless a court order authorizes them to
10 share with others.

11 * * *

12 D. When such information is relevant and necessary to the performance of
13 their respective duties and enhances services to the child or his family, the court may
14 authorize the release of records, reports, or certain information contained therein,
15 limited to the specific purpose for which the court authorizes release, to appropriate
16 individuals representing who represent any of the following when they are providing
17 services to the child whose records are disclosed during the pendency of the matter
18 about which the records are disclosed:

19 * * *

20 (9) ~~A truancy and assessment center.~~

21 ~~(10) Other child serving agencies or programs.~~

22 ~~(11) The attorney general's office.~~

23 ~~(12)~~ (10) A district public defender or the district public defender's
24 representative, or the representative of a public defender program established
25 pursuant to the Louisiana Public Defender Act of 2007.

26 E.(1) For good cause when the information is material and necessary to a
27 specific investigation or proceeding, the court may order the release of individual
28 records and reports, or certain information contained therein, to a petitioner, limited
29 to the specific purpose for which the court authorizes release.

30 (2) The petition must:

1 ~~the intent to distribute a controlled dangerous substance as defined in R.S. 40:961 et~~
 2 ~~seq. In order to assist in finding and taking into custody a child wanted for a felony-~~
 3 ~~grade delinquent act involving an offense against the person or involving a~~
 4 ~~dangerous weapon, law enforcement agencies may release to the public identifying~~
 5 ~~information regarding the child if a court has issued an order for taking the child into~~
 6 ~~custody pursuant to Article 813, or if probable cause that the child committed the~~
 7 ~~alleged delinquent act has already been established pursuant to Article 820.~~
 8 ~~Identifying information may include the child's name, age, alleged delinquent act,~~
 9 ~~physical description, and photograph.~~

10 I. ~~In order to assist in finding and taking into custody a child wanted for a~~
 11 ~~felony-grade delinquent act involving an offense against the person or involving a~~
 12 ~~dangerous weapon, law enforcement agencies may release to the public identifying~~
 13 ~~information regarding the child if a court has issued an order for taking the child into~~
 14 ~~custody pursuant to Article 813, or if probable cause that the child committed the~~
 15 ~~alleged delinquent act has already been established pursuant to Article 820.~~
 16 ~~Identifying information may include the child's name, age, alleged delinquent act,~~
 17 ~~physical description, photograph, address, and, when appropriate, social security~~
 18 ~~number and driver's license number. Any violation of the confidentiality provisions~~
 19 ~~of this Article shall be punishable as a constructive contempt of court pursuant to~~
 20 ~~Article 1509(E).~~

21 J. ~~Any violation of the confidentiality provisions of this Article shall be~~
 22 ~~punishable as a constructive contempt of court pursuant to Article 1509(E).~~
 23 ~~Whenever a child escapes from a juvenile detention center, law enforcement~~
 24 ~~agencies are hereby authorized to release to the public the child's name, age, physical~~
 25 ~~description, and photograph.~~

26 K. ~~Whenever a child escapes from a juvenile detention center, law~~
 27 ~~enforcement agencies are hereby authorized to release to the public the child's name,~~
 28 ~~age, physical description, and photograph. Every person, other than the juvenile,~~
 29 ~~parents of the juvenile, and attorney for the juvenile, to whom a juvenile record or~~
 30 ~~information from a juvenile is disclosed pursuant to this Article shall execute a non-~~

1 disclosure agreement that certifies the person is familiar with the applicable
2 disclosure provisions and agrees not to disclose any information to unauthorized
3 persons.

4 L. Juvenile records or information from juvenile records disclosed pursuant
5 to this Article shall be marked "UNLAWFUL DISSEMINATION OF THIS
6 INFORMATION IS PUNISHABLE AS A CONSTRUCTIVE CONTEMPT OF
7 COURT PURSUANT TO LOUISIANA CHILDREN'S CODE ARTICLE 1509(E)".

8 M. Records of juvenile criminal conduct shall not be made a part of any state
9 or local criminal background check.

10 Art. 414. Disclosure of records for sentencing; ~~habitual offender proceedings~~

11 A. Notwithstanding any provision of law to the contrary, upon written
12 request, reports and records concerning juvenile court proceedings shall be released
13 to the sentencing judge when necessary for sentencing ~~and released to the district~~
14 ~~attorney for purposes of charging a person as a habitual offender pursuant to R.S.~~
15 ~~15:529.1.~~

16 * * *

17 Comments - 2017

18 The former provision pertaining to the use of juvenile delinquency records
19 for sentencing under the habitual offender law has been removed in keeping with the
20 holding of *State v. Brown*, 879 So. 2d 1276 (La. 2004).

21 * * *

22 Art. 728. Definitions

23 As used in this Title:

24 * * *

25 (2) "Child" means a person under eighteen years of age who, prior to
26 juvenile proceedings under this Title, has not been judicially emancipated or
27 emancipated by marriage.

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Comments - 2017

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.

* * *

Art. 736.1. Immunity

Any law enforcement officer acting in good faith upon the request of a parent or guardian, exercising due care in the taking into custody a runaway child, or providing assistance thereto, pursuant to the provisions of this Title shall have immunity from any civil liability that otherwise might be incurred or imposed because of the report, taking into custody, or assistance provided. The limitation of liability provided by this Article shall not extend to acts constituting negligence, ~~or a violation of the law, or a violation of the confidentiality provisions of this Code,~~ including those contained in Article 412.

Comments - 2017

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.

Art. 737. Place of prehearing placement upon a taking into custody

A. When taken into custody, the child shall be placed in the least restrictive prehearing placement consistent with the child's need for protection or control, in the following order of priority:

* * *

(4) A secure detention facility, until a hearing is held within twenty-four hours after the child's entry into custody in accordance with Article 739, if the child can be detained separately from children who have been adjudicated delinquent and ~~any both~~ both of the following apply:

- (a) ~~The child is a runaway.~~ Non-secure placement is not available to meet the child's need for protection or control.
- (b) ~~The child is ungovernable.~~ There are reasonable grounds to believe that the child is a runaway, ungovernable, or otherwise at substantial risk of failing to

1 Art. 740. Advice of rights

2 A. At the continued custody hearing, the court shall advise the parents and
3 the child, in terms understandable by the child, of:

4 * * *

5 (6) The nature of Families in Need of Services proceedings as set forth in
6 Article 792 and the confidentiality of Families in Need of Services records as set
7 forth in Article 793.

8 * * *

9 Comments - 2017

10 Because Families in Need of Services cases may originate with a taking into
11 custody and detention, it is important that the court instruct the child as to the
12 distinction between Families in Need of Services matters and juvenile delinquency
13 or criminal matters.

14 * * *

15 Art. 742. Place of continued custody

16 * * *

17 B. The court may detain the child in a secure detention facility for up to
18 twenty-four hours, excluding weekends and holidays, only for the purpose of
19 providing adequate time to arrange for an appropriate non-secure alternative
20 placement in accordance with Article 737 pending the adjudication hearing.

21 * * *

22 Comments - 2017

23 The 2017 amendment clarifies that secure placement is intended to be
24 short-term pending non-secure placement.

25 * * *

26 Art. 782. Judgment of disposition

27 A. The court shall enter into the record a written judgment of disposition
28 specifying the following:

29 * * *

1 (7) The nature of Families in Need of Services proceedings in accordance
2 with Article 792 and the confidentiality of Families in Need of Services records in
3 accordance with Article 793.

4 * * *

5 Comments - 2017

6 The judgment of disposition must include notice that these proceedings and
7 records relative thereto are not, nor should they be treated as, juvenile delinquency
8 or criminal proceedings and records. See Children's Code Articles 792 and 793.

9 * * *

10 CHAPTER 15-A. NATURE OF PROCEEDINGS AND RECORDS

11 Art. 792. Nature of proceedings

12 Families in Need of Services proceedings are civil in nature, and actions
13 taken pursuant to this Title, including taking into custody and detention, shall not be
14 considered juvenile delinquency or criminal matters.

15 Comments - 2017

16 This Article does not change the law. This Article simply clarifies the nature
17 of Families in Need of Services proceedings as distinct from juvenile delinquency
18 or criminal proceedings. The taking into custody of a child based on grounds of
19 Families in Need of Services is not an arrest, except for the purpose of determining
20 its validity under the Constitution of the United States or the Constitution of
21 Louisiana.

22 Art. 793. Records

23 A. The confidentiality of Family in Need of Services records, including the
24 existence of such records, shall be preserved and shall not be disclosed by any record
25 custodian without the consent of the child or order of the court in accordance with
26 Article 412.

27 B. Records and reports concerning any Families in Need of Services matter
28 shall not be identified, maintained, or otherwise handled by the court or by any other
29 agency or person as a juvenile delinquency or criminal matter.

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Comments - 2017

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.

* * *

Art. 901. Disposition guidelines; generally

* * *

G. The court shall notify the child in writing of the expungement and sealing procedures set forth in Article 917 et seq.

* * *

Art. 903. Judgment of disposition

* * *

B. The court shall enter into the record a written judgment of disposition specifying all of the following:

* * *

(7) An order of expungement to be made executory at the end of the disposition unless, at the end of the disposition, a person or agency files an objection using the form provided in Art. 925 on any of the following grounds:

(a) The adjudication was for murder, manslaughter, an offense requiring registration as a sex offender under R.S. 15:542, kidnapping, or armed robbery.

(b) The child has a criminal court felony conviction or a criminal court conviction for a misdemeanor involving a firearm against a person.

(c) 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.

* * *

G.(1) The court shall provide to the child, in plain language, the following information:

(a) Information regarding the rights and procedures of expungement and sealing of juvenile records.

1 (1) ~~The adjudication was not for murder, manslaughter, any sexual crime,~~
 2 ~~kidnapping, or armed robbery.~~

3 (2) ~~Five or more years have elapsed since the person satisfied the most recent~~
 4 ~~judgment against him.~~

5 (3)(1) The person seeking expungement and sealing has no criminal court
 6 felony convictions and no criminal court convictions for misdemeanors against a
 7 person involving a ~~weapon~~ firearm.

8 (4)(2) The person seeking expungement and sealing has no ~~outstanding~~
 9 pending indictment or bill of information charging him.

10 D. ~~Records concerning conduct or conditions that resulted in a misdemeanor~~
 11 ~~or felony adjudication for R.S. 14:82, 83.3, 83.4, 89, or 89.2 may be expunged upon~~
 12 ~~petition to the court and upon a showing that, during the time of the commission of~~
 13 ~~the offense, the person seeking the expungement was a victim of trafficking of~~
 14 ~~children for sexual purposes pursuant to R.S. 14:46.3(E) provided that the person has~~
 15 ~~no outstanding indictment or bill of information charging him. If the adjudication~~
 16 ~~was for murder, manslaughter, a sex offense requiring registration under R.S. 15:542,~~
 17 ~~kidnapping, or armed robbery, the child may petition the court for an expungement~~
 18 ~~of his juvenile record when the court has ceased to exercise jurisdiction in~~
 19 ~~accordance with Article 313 and all of the following conditions are met:~~

20 (1) Five or more years have elapsed since the person seeking expungement
 21 and sealing satisfied the most recent judgment against him.

22 (2) The person seeking expungement and sealing has no criminal court felony
 23 convictions and no criminal court convictions for misdemeanors against a person
 24 involving a firearm.

25 (3) The person seeking expungement and sealing has no pending indictment
 26 or bill of information.

27 Art. 919. Procedure for expungement and sealing; motions; order

28 A. A person ~~seventeen years of age or older~~ may move for the expungement
 29 and sealing of his records and reports ~~concerning the person's juvenile criminal~~
 30 ~~conduct or conditions.~~

1 B. The motion for expungement and sealing ~~must be in writing and must~~
 2 shall be substantially in the form provided in Article 925 and shall state facts that
 3 constitute grounds for expungement and sealing under Article 918.

4 C. The motion for expungement ~~must~~ and sealing shall be filed with the
 5 court possessing the records and reports ~~the person seeks to expunge~~, or with the
 6 court ~~having~~ exercising juvenile jurisdiction over the arresting agency.

7 D. The motion ~~must~~ shall be served personally or by domiciliary service, or
 8 by ~~certified~~ United States mail or electronic means, on the district attorney, the clerk
 9 of the court whose records and reports are sought to be expunged and sealed, and the
 10 head of any agency whose ~~reports and records~~ and reports are sought to be expunged
 11 and sealed, including but not limited to the Federal Bureau of Investigation, the
 12 Louisiana Bureau of Criminal Identification and Information, the Department of
 13 Public Safety and Corrections, office of juvenile justice, and local law enforcement
 14 agencies.

15 E. ~~Unless waived by consent of the parties,~~ Any person or agency that
 16 objects to the granting of the motion for a matter that resulted in a delinquency
 17 adjudication for a misdemeanor offense or for a felony offense shall file an affidavit
 18 of response in the form provided in Article 926, and a contradictory hearing ~~must~~
 19 shall be conducted with the district attorney and any agency whose records and
 20 reports are sought to be expunged and sealed.

21 F. If the court finds that the grounds have been established; and that the
 22 person is entitled to expungement and sealing, the court ~~may~~ shall order
 23 expungement and sealing.

24 Art. 920. Order of expungement and sealing; court records

25 A. An order for the expungement and sealing of juvenile court records and
 26 reports must shall be in writing ~~and~~, the form provided in Article 925 and, except as
 27 ~~hereinafter provided, must~~ otherwise provided by law, shall require that the clerk of
 28 court ~~destroy~~ expunge and seal all records and reports relating to the conduct or
 29 conditions referred to in the motion for expungement and sealing, including ~~but not~~

1 ~~limited to~~ pleadings, exhibits, reports, minute entries, correspondence, and all other
2 documents.

3 B. References, documents, recordings, or other materials ~~that cannot be~~
4 ~~destroyed may be maintained~~ shall be expunged and sealed. Under no circumstances
5 may any ~~undestroyed~~ expunged and sealed information be released.

6 * * *

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

8 A. An order for the expungement and sealing of juvenile records and reports
9 ~~must~~ shall be in ~~writing and must~~ the form provided in Article 925 and shall require
10 that both of the following occur:

11 (1) Except as otherwise provided by law, all officials, agencies, institutions,
12 boards, systems, and law enforcement offices, and their employees, agents, and
13 consultants, ~~destroy all reports and~~ expunge and seal all records and reports, whether
14 in any form, on microfilm, computer memory device, or tape, or and any other
15 photographic, fingerprint, DNA, or any other information of any kind and all kinds
16 or descriptions relating to the conduct or conditions referred to in the motion for
17 expungement and sealing.

18 (2) ~~Any and all such~~ All agencies and law enforcement offices file with the
19 court an affidavit ~~with the court attesting~~ to the ~~fact~~ effect that such records and
20 reports have been ~~destroyed~~ expunged and sealed and that no notation or references
21 have been retained in any central depository which will or might lead to the inference
22 that any record or report ever was on file with that agency or law enforcement office.
23 A copy of the affidavit of expungement and sealing shall be retained by the court.

24 B. The order ~~must~~ shall ~~specify the time within which the destruction state~~
25 that the expungement and sealing is to be effected no later than thirty days from the
26 date of the order. The order ~~must~~ shall also specify the limitations on information
27 ~~which that~~ that may be maintained in accordance with this Article.

28 C. An order for expungement ~~must~~ and sealing shall be served in the manner
29 provided for service of the motion on both the district attorney and the head of ~~the~~

1 each agency whose ~~reports or records~~ or reports are to be ~~destroyed~~ expunged and
2 sealed.

3 D. A copy of the ~~judgment ordering destruction~~ order of expungement and
4 sealing may be maintained by the custodian of ~~reports and records~~ and reports of the
5 agency or office. However, the custodian ~~must~~ shall not disclose to anyone the fact
6 that such ~~judgment order~~ is maintained or that the ~~destroyed reports or expunged and~~
7 sealed records or reports previously existed to ~~anyone~~ except upon written order of
8 the court.

9 Art. 922. Expungement and sealing order; effect

10 A. Except for the limited purposes stated in Articles 920 and 921, upon an
11 order of expungement and sealing, the ~~conduct and conditions~~ records and reports
12 expunged and sealed and the underlying conduct and conditions are considered
13 nonexistent and ~~are to be treated as such upon inquiry~~ shall not be made available to
14 any person. No person whose juvenile records and reports have been expunged and
15 sealed shall be required to disclose to any person that he was arrested or adjudicated
16 or that the records and reports of arrest or adjudication have been expunged and
17 sealed.

18 B. A child that is the subject of an expunged record or the child's parent shall
19 not be found guilty of perjury or otherwise giving false statements by reason of the
20 child's failure to recite or acknowledge his expunged record in response to any
21 inquiry made of the child or the child's parent for any purpose. However, if the child
22 is a witness in a criminal or juvenile delinquency matter, the child may be ordered
23 to testify regarding his expunged record.

24 Art. 923. Expungement and sealing of adjudications involving human trafficking
25 victims

26 * * *

27 E. If the motion is granted, the court shall order the expungement and sealing
28 of the record and report of the ~~delinquency juvenile~~ proceedings including ~~but not~~
29 ~~limited to~~ all records and files related to the child's arrest, citation, investigation,
30 charge, delinquency proceedings, adjudication, and probation for the offense.

1 (2) To direct each agency and law enforcement office having any such
 2 records, including but not limited to the above named entities, to file a sworn
 3 affidavit with the clerk of court to the effect that such records have been expunged
 4 and sealed and that no notation or reference has been retained in any central
 5 depository which could or might lead to the inference that the expunged and sealed
 6 record was ever on file with that agency or law enforcement office, except as
 7 otherwise specifically provided by law.

I.

9 Full name of mover:

10 _____

11 SEX: { } Male { } Female Social Security Number: _____

12 Race/Ethnicity: _____ Date of Birth: / / _____

13 Address: Street: _____ Apt. #: _____

14 City/State: _____ Zip: _____

15 *NOTE: A separate page shall be completed for EACH of the charges for*
 16 *which expungement and sealing is sought. Failure to provide ALL of the*
 17 *requested information may result in dismissal of the motion for insufficiency.*

II.

19 Offense Report #: _____ Offense charged: _____

20 Date of Arrest: / / _____

21 Arresting Agency: _____

22 City/ Parish of Arrest: _____

III.

24 Action taken: (Check appropriate action and insert date)

25 { } Charges not filed

26 { } Charges refused on _____ / / _____

27 { } Informal Adjustment Agreement completed on _____ / / _____

28 { } Adjudicated on _____ / / _____

29 { } Dismissed on _____ / / _____

30 { } Continued without date on _____ / / _____

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IV.

Court Docket and Complaint #: _____, # _____

V.

Authority for motion (Check one only)

{ } This matter did not result in adjudication.

{ } This matter resulted in a Families in Need of Services or delinquency
adjudication.

AND the court which had exercised juvenile jurisdiction has ceased to exercise such
in accordance with Children's Code Article 313.

AND the adjudication was not for murder, manslaughter, an offense requiring
registration as a sex offender under R.S. 15:542, kidnapping, or armed robbery.

AND mover has no adult felony conviction and no adult conviction for a
misdemeanor against a person involving a firearm.

AND mover has no pending indictment or bill of information against him.

WHEREFORE, mover prays that after due proceedings are had, there be an
order herein in favor of mover, ordering the clerk of court and all other agencies,
offices or organizations to expunge and seal their records or reports concerning the
conduct or condition of mover as a child as more fully described herein.

Respectfully submitted,

Name of Mover or Attorney

Address

City/State/Zip

Phone

ORDER

CONSIDERING the above and foregoing:

IT IS ORDERED that a contradictory hearing be and is hereby set for the

_____ day of _____, 20____ at _____ in Section _____.

_____, Louisiana this _____ day of _____ 20____.

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JUDGE

Note: Please add any additional necessary agencies below.

PLEASE SERVE:

Parish of _____

District Attorney _____

Clerk of Court _____

Sheriff _____

Bureau of Identification and Information

Attn: Expungement

7919 Independence Blvd.

Baton Rouge, Louisiana 70806

and

Name of Agency

Name of Agency

Attn:

Attn:

Address

Address

City/State/Zip

City/State/Zip

B. The following form shall be used to order the expungement and sealing:

ORDER OF EXPUNGEMENT AND SEALING

CONSIDERING the Motion for Expungement and Sealing and the evidence adduced as to the following described matter, and as to the following described conduct or conditions:

<u>Item #s</u>	<u>Offense(s) Charged</u>	<u>Date of Arrest(s)</u>	<u>Arresting Agencies</u>

IT IS ORDERED that the clerk of court expunge and seal all records and reports, in any medium, including but not limited to pleadings, exhibits, reports,

1 minute entries, correspondence, and all other documents. The court may maintain
2 a confidential record of the fact of an adjudication, which may be released only upon
3 written motion of a court exercising criminal jurisdiction over the mover herein and
4 then only for purposes authorized by the Code of Criminal Procedure.

5 IT IS FURTHER ORDERED that all officials, agencies, institutions, boards,
6 systems, and law enforcement officers and their employees, agents, and consultants
7 expunge and seal all records and reports, in any form, concerning the above-
8 described matter, and any other photographic, fingerprint, DNA, or any other
9 information of any and all kinds and descriptions. The custodian of records and
10 reports of the agency or office may maintain a copy of this order. However, the
11 custodian shall not disclose to anyone the fact that an order is maintained or that the
12 expunged and sealed records or reports previously existed except upon written order
13 of the court.

14 IT IS FURTHER ORDERED that each agency and law enforcement office
15 herein served and having any records or reports of the conduct or condition file a
16 sworn affidavit with the clerk of court to the effect that the records and reports have
17 been expunged and sealed and that no notation or references have been retained in
18 any central depository which could or might lead to the inference that any report or
19 record was on file with the agency or law enforcement office served, which affidavit
20 shall be filed with the clerk of court within _____ days after service of this order.

21 Signed at _____, Louisiana this _____ day of _____ 20____.

22 _____
23 JUDGE

24 *Note: Please add any necessary agencies below.*

25 PLEASE SERVE:

26 Parish of _____

27 District Attorney _____

28 Clerk of Court _____

29 Sheriff _____

30 Bureau of Identification & Information

1 Attn: Expungements
2 7919 Independence Blvd.
3 Baton Rouge, Louisiana 70806
4 and

5	_____	_____
6	<u>Name of Agency</u>	<u>Name of Agency</u>
7	_____	_____
8	<u>Attn:</u>	<u>Attn:</u>
9	_____	_____
10	<u>Address</u>	<u>Address</u>
11	_____	_____
12	<u>City/State/Zip</u>	<u>City/State/Zip</u>

13 Art. 926. Affidavit of response form

14 The following form shall be used for filing an affidavit of response to a
15 motion for expungement and sealing in accordance with Article 919:

16 AFFIDAVIT OF RESPONSE

17 Pursuant to Children's Code Article 919, the Respondent agency or office,
18 _____, acknowledges the following:

19 { } No Opposition. Respondent has no opposition to the motion and respectfully
20 consents to waiver of the contradictory hearing.

21 { } Opposition to the Motion of Expungement and Sealing with Reasons.
22 Respondent respectfully requests a contradictory hearing.

23 As grounds for its objection, the Respondent asserts as follows:

24 { } The court is still exercising jurisdiction.

25 { } The adjudicated offense was for murder, manslaughter, an offense requiring
26 registration as a sex offender under R.S. 15:542, kidnapping, or armed robbery and
27 therefore a hearing is required by law.

28 { } The adjudication was for a felony offense, and the applicant has an adult felony
29 conviction.

30 { } The adjudication was for a felony offense, and the applicant has an adult
31 conviction for a misdemeanor against a person involving a firearm.

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1 { }The adjudication was for a felony offense, and the applicant has a pending
2 indictment or bill of information filed against him.

3 Respectfully submitted,

4 _____
5 Name of Respondent/Signature of Attorney

6 _____
7 Address

8 _____
9 City/State/Zip

10 _____
11 Phone

12 PLEASE SERVE:

13 Parish of _____

14 District Attorney _____

15 Clerk of Court _____

16 Sheriff _____

17 Bureau of Identification & Information

18 Attn: Expungements

19 7919 Independence Blvd.

20 Baton Rouge, Louisiana 70806

21 and

22 _____
23 Name of Agency Name of Agency

24 _____
25 Attn: Attn:

26 _____
27 Address Address

28 _____
29 City/State/Zip City/State/Zip

30 Section 2. The following comments to Children's Code Articles 733, 733.1, 735,
31 736, and 758 are hereby provided as follows:

32 Art. 733. Instanter orders of custody

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Comments - 2017

(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.

(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.

Art. 733.1. Stop of child absent from school; transportation to school facility

* * *

Comments - 2017

(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.

(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.

* * *

Art. 735. Taking child into custody with a court order

* * *

Comments - 2017

(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.

(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.

Art. 736. Taking child into custody without a court order

* * *

Comments - 2017

(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.

(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.

* * *

1 Art. 758. Advice of rights at appearance to answer petition

2 * * *

3 Comments - 2017

4 The list of advisements in Article 740 include instructing the child as to the
5 nature of Families in Need of Services matters and records pursuant to Article 792.

6 * * *

7 Section 3. R.S. 15:576(2), 579, 593 and 614(B) are hereby amended and reenacted

8 to read as follows:

9 §576. Definitions

10 As used in this Chapter:

11 * * *

12 (2) The terms "criminal history record" or "criminal history record
13 information" mean information collected by criminal justice agencies on individuals
14 consisting of identifiable descriptions and notations of arrests, detentions,
15 indictments, bills of information, or any formal criminal charges, and any disposition
16 arising therefrom, including sentencing, correctional supervision, and release. The
17 terms do not include intelligence or investigatory purposes, nor does it include any
18 identification information which does not indicate involvement of the individual in
19 the criminal justice system. The terms do not include records of juvenile criminal
20 conduct.

21 * * *

22 §579. Rules and regulations

23 The bureau shall issue rules and regulations, consistent with United States
24 Department of Justice requirements, the constitution of Louisiana, the Louisiana
25 Code of Criminal Procedure, the Louisiana Children's Code, and the Louisiana
26 Revised Statutes of 1950, governing the maintenance of privacy and security of
27 criminal history records and records of juvenile criminal conduct; governing access
28 to and use of records maintained by the central repository; governing restrictions to
29 access and use by authorized agencies or individuals of any state owned or operated
30 system of communications utilized for transmitting criminal history record

1 information to or from the bureau; and governing the purging of any information
2 maintained by the bureau as permitted by law. Records of juvenile criminal conduct
3 shall not be made a part of any state or local criminal background check.

4 * * *

5 §593. Prohibition against destruction of records

6 Notwithstanding the provisions of Code of Criminal Procedure Articles 893
7 and 894 ~~of the Code of Criminal Procedure and R.S. 40:983,~~ and except in
8 accordance with the provisions set forth in ~~R.S. 44:9~~ Title XXXIV of the Code of
9 Criminal Procedure or Children's Code Articles 917 through 926, no judge or other
10 official shall order the expungement, sealing, alteration, or destruction of any report
11 or record of the bureau or of any agency subject to reporting requirements of the
12 bureau.

13 * * *

14 §614. Removal of records

15 * * *

16 B. The state police shall remove all reports and records and identifiable
17 information in the ~~data base~~ database or data bank pertaining to the person and
18 destroy all samples from the person upon receipt of a written request for the removal
19 of the report and record and a certified court order of expungement and sealing
20 properly obtained pursuant to the provisions of ~~R.S. 44:9~~ Title XXXIV of the Code
21 of Criminal Procedure or Children's Code Articles 917 through 926.

22 Section 4. R.S. 44:4.1(B)(39) is hereby amended and reenacted to read as follows:

23 §4.1. Exceptions

24 * * *

25 B. The legislature further recognizes that there exist exceptions, exemptions,
26 and limitations to the laws pertaining to public records throughout the revised
27 statutes and codes of this state. Therefore, the following exceptions, exemptions, and
28 limitations are hereby continued in effect by incorporation into this Chapter by
29 citation:

30 * * *

