

RÉSUMÉ DIGEST

ACT 362 (HB 506)

2017 Regular Session

Jefferson

Existing law (Ch.C. Arts. 412 and 414) provides relative to the confidentiality and disclosure of juvenile records.

New law provides as follows with regard to the confidentiality of juvenile records:

- (1) Provides that when the court authorizes the release of juvenile records, the release of information is limited to the specific purpose for which the court authorizes release and to those individuals who represent the child only when they are providing services to the child and only during the pendency of the matter about which the records are disclosed.
- (2) Removes truancy and assessment centers and other child serving agencies or programs from the list of individuals who are authorized to receive juvenile records.
- (3) Provides certain requirements for the petition for release of juvenile records and certain factors the court must consider in determining whether to order the release of the records.
- (4) Authorizes law enforcement agencies to release to the public certain identifying information regarding a child wanted for a felony-grade delinquent act involving an offense against the person or involving a dangerous weapon if the court has issued an order for taking the child into custody or if probable cause that the child committed the alleged delinquent act has already been established.
- (5) Requires every person, other than the parents of the juvenile and the attorney for the juvenile, to whom a juvenile record or information from a juvenile is disclosed to execute a non-disclosure agreement.
- (6) Deletes the present law requirement that the records be released to the district attorney for use in sentencing.

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

New law amends the 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.

Existing 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.

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

Existing 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.

New law provides 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; and (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.

New 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.

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

Existing 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.

New law retains existing 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 new law. Further requires this information to be included in the judgment of disposition as well.

New law adds comments to existing 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.

Existing law (Ch.C. Art. 903) provides relative to a judgment of disposition and provides that certain information be included in the judgment.

New law does all of the following in this regard:

- (1) Requires the court's written judgment of disposition to include an order of expungement to be made executory at the end of the disposition unless objected to on the grounds that the adjudication is for murder, manslaughter, a sex offense requiring registration under existing law, kidnapping, or armed robbery; the child has a criminal court felony conviction or a criminal court conviction for a misdemeanor involving a firearm against a person; or 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.
- (2) Requires the court to provide the child with information regarding his rights and the procedures for expungement and sealing of juvenile records.

Existing law (Ch.C. Art. 917 et seq.) provides relative to the expungement of juvenile records.

New law does all of the following relative to the expungement and sealing of juvenile records:

- (1) Provides that records concerning delinquent adjudications for certain prostitution-related offenses and the offense of crime against nature may be expunged and sealed at any time.
- (2) Provides that records and reports of a matter that resulted in a finding of FINS or an adjudication for a charge other than murder, manslaughter, a sex offense, kidnapping, or armed robbery shall be expunged and sealed only if the court exercising jurisdiction has ceased to exercise jurisdiction and certain conditions are met.
- (3) Provides that if the adjudication was for murder, manslaughter, a sex offense, kidnapping, or armed robbery, the child may petition the court for an expungement when the court has ceased to exercise jurisdiction and certain conditions are met, including the condition that five years have elapsed since the child satisfied the most recent judgement against him.
- (4) Requires the motion for expungement and sealing and any objections to the motion to be on the forms provided for by new law.
- (5) Requires a contradictory hearing on the motion only if a person or agency objects to the granting of the motion.
- (6) Requires the order of expungement to be on the forms provided for by new law and requires the order to state that the expungement and sealing is to be effected no later than 30 days from the date of the order.
- (7) Provides that a person whose record has been expunged and sealed does not have to disclose that fact to any person. Further provides that the child and the child's parents

cannot be found guilty of perjury or otherwise giving false statements by reason of the child's failure to recite or acknowledge his expunged record in response to any inquiry made of the child or the child's parent for any purpose, unless the child is a witness in a criminal or juvenile delinquency matter.

- (8) 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.

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

New law retains existing law and adds juvenile records that have been expunged and sealed pursuant to existing law (Ch.C. Arts. 917 et seq.) to the list of exceptions to this prohibition on the expungement of bureau and agency records.

New law also provides that records of juvenile criminal conduct shall not be made a part of any state or local criminal background check, and for purposes of criminal background checks, amends the definition of "criminal history record" to exclude records of juvenile criminal conduct.

New law further requires the bureau's rules and regulations to be consistent with the La. Constitution, the Code of Criminal Procedure, the La. Children's Code, and the La. Revised Statutes of 1950.

Existing 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.

New law retains existing law and includes orders of expungement of juvenile records issued pursuant to existing law (Ch.C. Arts. 917 et seq.).

Existing 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.

New law adds to the existing Public Records Law to include references to new law.

Effective August 1, 2017.

(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))