

Expungement Reform Helps Those with Juvenile Records



By Hector A. Linares III

Given the rehabilitative purpose of juvenile court, many assume delinquency records are confidential in a manner that prevents them from following children into adulthood and serving as obstacles to leading a productive life. The truth is, however, records of juvenile arrests or adjudications can come to light in a number of ways, creating collateral consequences that hamper the ability to move on with one's life. Even once a case is long over, a juvenile record can still negatively affect the ability to access higher education, job opportunities with both private and public employers, government benefits like housing assistance, and other opportunities like admission to the Bar.¹ Recognizing that these collateral consequences are counterproductive to the goal of rehabilitation, there has been a national movement towards helping youth wipe their slates clean by expanding and simplifying the expungement of delinquency records and generally strengthening the confidentiality protections related to juvenile proceedings.²

Louisiana recently joined this movement when a series of changes to the juvenile expungement and confidentiality articles contained in the Children's Code went into effect in August 2017. The new law, known as Act 362, both expanded the list of eligible offenses and created a uniform process for expungement that will allow the state's youth to expunge and seal their juvenile records sooner, more cheaply, and, in many cases, without the assistance of an attorney. The reforms also strengthened the confidentiality of juvenile records as a whole by creating a strict process with new limitations for sharing various kinds of juvenile records that are not expunged. Juvenile, criminal and civil legal aid attorneys alike should become familiar with these new rules and procedures to better help and advise clients whose juvenile records are creating unnecessary barriers to opportunities that will enhance their lives.

New Expungement Rules and Procedures

Under the new expungement proce-

dures, the juvenile court can expunge and seal records at any time if they are related to matters that did not result in an adjudication or to matters that did result in an adjudication if it is for certain prostitution-related offenses where children by their very nature are also victims.³ Records involving misdemeanor and most felony adjudications can now be expunged as soon as the juvenile court has ceased to exercise jurisdiction in those matters.⁴ Also, records involving adjudications for murder, manslaughter, sex offenses requiring registration, kidnapping and armed robbery can now be expunged five years after the person satisfies the most recent judgment against him or her.⁵ For all adjudications, the requirement remains that the person seeking expungement may not have any criminal court felony convictions, criminal court misdemeanor convictions for firearm offenses against a person, or a pending indictment or bill of information.⁶ These provisions greatly expand the availability of expungement under the prior law, which imposed two-year waiting periods for misdemeanors, five-year waiting periods for most felonies, and prohibited expungement altogether for other felony offenses.

Expanding eligible offenses and shortening timelines for expungement is of little use, however, if the process is too complicated or expensive for most people to avail themselves of it. In order to make the procedure more accessible, the new law implemented several changes. First, juveniles must now be notified in writing of the procedures for expunging and sealing their juvenile records at disposition.⁷ Second, the Children's Code now provides a fill-in-the-blank form that must now serve as the exclusive motion for the expungement and sealing of records and reports in all juvenile court jurisdictions.⁸ The mover can now also serve all necessary parties by the much cheaper methods of U.S. mail or electronic means in addition to the personal service or certified mail that was required previously.⁹ Furthermore, for all offenses except those serious offenses subject to the five-year waiting period, a contradictory hearing is not required unless one of the agencies objects to the expunge-

ment by filing an affidavit of response requesting a hearing.¹⁰ The affidavit of response is also included as a form in the Children's Code and requires the objecting party to indicate on which of five possible grounds the agency is basing its objection.¹¹ The reforms also added an article that prohibits courts from assessing costs or fees for juvenile expungements and allows courts to waive fees or costs assessed by record-bearing agencies if the court finds the applicant is indigent.¹² Each of these changes removes a practical obstacle that previously made it more difficult for individuals to clear their juvenile records.

The most dramatic change brought about by Act 362, however, may be the new requirement that courts include in all judgments of disposition "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" through an affidavit of response.¹³ In effect, this provision makes expungement automatic and the need to file a motion for expungement superfluous for most juvenile adjudications since the end of the case triggers the execution of the expungement order without need for any further action by the juvenile. Nevertheless, individuals would still need to file a motion to expunge and seal when the records in question relate to arrests that did not result in an adjudication since there would be no order of disposition in such cases. Likewise, matters involving dispositions orders issued prior to the new law going into effect would also continue to require a motion. Yet even in cases where the judgment of disposition should make expungement and sealing automatic, juvenile defenders and other stakeholders within the juvenile system must be vigilant to ensure all jurisdictions are implementing the new process correctly.

Once the court has entered an order of expungement, the agencies or officials subject to the order must expunge and seal all records and reports within 30 days of the order.¹⁴ The agencies are no longer required to destroy the record physically, but the records and reports expunged and the underlying conduct is afterwards considered non-existent and

cannot be made available to any person or be released under any circumstances.¹⁵ Once records are expunged and sealed, the law does not prohibit schools, government agencies or potential employers from asking about expunged juvenile arrests and adjudications. However, the new law does specify that no one whose juvenile records have been expunged “shall be required to disclose to any person that he was arrested or adjudicated or that the records and reports of arrest or adjudication have been expunged and sealed.”¹⁶ The law also protects children with expunged records and their parents from perjury charges related to a failure to acknowledge or provide information about the expunged record.¹⁷ As a result, anyone who takes advantage of the new streamlined process for expungement and sealing of juvenile delinquency records can have confidence that their past involvement with the juvenile justice system will no longer be a legal impediment for their future.

Confidentiality Protections in General

The new legislation also strengthens the confidentiality of juvenile records generally by establishing strict rules for how and when courts and agencies can share juvenile records with outside parties. First, a new provision explicitly provides “juvenile criminal conduct shall not be made part of any state or local criminal background check.”¹⁸ Further, the new law creates a rigid process that applies to the sharing of all confidential juvenile records, including records related to Child in Need of Care (CINC) and Families in Need of Services (FINS) proceedings.¹⁹ Courts maintain the ability to authorize the release of juvenile records when they are relevant to specific investigations or proceedings, but must follow a more rigid process in order to do so.

First, the party seeking the information must file a petition listing the intended use of the information and the names of all persons who will be able to access the information.²⁰ The petitioner must serve both the juvenile and his or her attorney with notice of this petition, and the court

must grant the juvenile an opportunity to be heard at a contradictory hearing before the petition can be granted. Furthermore, the new procedure specifies that, in determining whether to grant the petition for release of information, the juvenile court should consider “the privacy of the juvenile, risk of harm to the juvenile, whether a compelling reason exists for releasing the information, and whether the release is necessary for the protection of a legitimate interest.”²¹ If the court grants the authorization to release the confidential information, every person to whom the information is disclosed must execute a non-disclosure agreement certifying the person is familiar with the rules surrounding disclosure and agrees not to disclose any information to unauthorized persons.²² Importantly, courts have the ability to enforce these heightened protections because violation of these procedures and other confidentiality provisions are punishable as constructive contempt of court.²³ As a result of these enhanced confidentiality provisions, it is now significantly more difficult for third parties to obtain access to juvenile records, including delinquency records that have not been expunged.

Conclusion

The reforms to juvenile expungement procedures and confidentiality provisions described in this article are the result of a collaborative effort among stakeholders from across the juvenile justice system, originating with proposed legislation developed by the Louisiana State Law Institute’s Children’s Code Committee. Many of the provisions making the expungement process more accessible — notification requirements, immediate eligibility and automatic expungement upon case closure for most adjudicated offenses, a five-year waiting period for serious offenses, and the elimination of costs associated with expungement — coincide with or were adapted from provisions contained in the American Bar Association’s Model Act Governing the Confidentiality and Expungement of Juvenile Delinquency Records.²⁴ This new legal framework better protects confidentiality and removes

barriers to juvenile expungement by making it easier, cheaper and quicker. As a result, youth and adults seeking to move forward with their lives will not have to face as many obstacles to success because of their prior involvement with the juvenile justice system.

FOOTNOTES

1. Christopher Gowen, Lisa Thureau and Meghan Wood, *The ABA’s Approach to Juvenile Justice Reform: Education, Eviction, and Employment: The Collateral Consequences of Juvenile Adjudication*, 3 Duke Forum for L. & Soc. Change 187 (2011).
2. *Id.*
3. La. Ch. C. art. 918(A) (2018).
4. *Id.* at 918(B).
5. *Id.* at 918(D).
6. *Id.* at 918(C)-(D).
7. La. Ch. C. art. 901(G) (2018).
8. *Id.* at 925.
9. *Id.* at 919(D).
10. *Id.* at 919(E).
11. *Id.* at 926.
12. *Id.* at 924.
13. *Id.* at 903(B)(7).
14. *Id.* at 921(B).
15. *Id.* at 920(B), 922.
16. *Id.* at 922(A).
17. *Id.* at 922(B).
18. *Id.* at 412(M).
19. The new statutory language unequivocally classifies FINS proceedings as civil in nature and prohibits custody, detention and any other action ordered as a part of a FINS proceeding from being considered a delinquency or criminal matter. La. Ch. C. art. 792.
20. *Id.* at 412(E)(2).
21. *Id.* at art. 412(E)(3).
22. *Id.* at 412(K).
23. *Id.* at 412(I).
24. See ABA Model Act Governing the Confidentiality and Expungement of Delinquency Records (2015).

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