

Children and
Family Justice
Center

Northwestern
PRITZKER SCHOOL OF LAW
Bluhm Legal Clinic

SUMMARY OF HOUSE BILL 3817

HB 3817 will implement most of the recommendations contained in “Burdened for Life: The Myth of Juvenile Record Confidentiality and Expungement in Illinois,” a 2016 report researched by the Illinois Juvenile Justice Commission at the direction of the Illinois General Assembly. The legislation is similar to the American Bar Association’s model statute on confidentiality and expungement of juvenile records.

INCREASES ABILITY TO EXPUNGE JUVENILE RECORDS

Under current law, no local juvenile records and only a small fraction of Illinois State Police juvenile records are eligible for automatic expungement.

HB 3817 expands automatic expungement to include the following state and local records:

- **Records of arrests that do not result in charges being filed**, as long as: 1.) one year has passed since the arrest being expunged occurred and 2.) six months have passed since any subsequent arrest was made or charges were filed.
- **Law enforcement records and court records of cases that are dismissed, that result in a finding of not delinquent, or that result in an order of supervision that is later successfully terminated.** The court would order the automatic expungement upon termination of the proceedings.
- **Law enforcement records and court records of cases resulting in a finding of guilt for a Class B misdemeanor, Class C misdemeanor, or petty or business offense.** The court would order automatic expungement upon termination of the proceedings.
- **Law enforcement records and court records of cases resulting in a finding of guilt for a Class A misdemeanor and felonies absent an element of violence or threat of violence**, as long as: 1.) two years have passed since the case was closed; 2.) no case is pending; 3.) the subject of the record hasn’t had any subsequent findings of guilt in juvenile or adult court.

(Note: With the exception of arrests that don’t lead to filing of charges, law enforcement could request court permission to keep arrest information in an intelligence file. This is limited to cases with investigations still pending.)

In addition to the expansion of automatic expungement, HB 3817 would shorten the waiting period for other youth to petition a court for expungement. The current law requires a youth petitioning for expungement to be at least 21 years old and five years past the end of all court proceedings, and HB 3817 would shorten this waiting period to two years from the end of all court proceedings.

STRENGTHENS CONFIDENTIALITY OF JUVENILE RECORDS

Weak confidentiality protections have led to broad sharing of juvenile records — both lawful and unlawful — and prevented young people from obtaining jobs, housing and education. There currently are no statutory penalties for unlawful sharing of juvenile records in Illinois and no legal remedies for individuals harmed by the sharing.

HB 3817 includes the following improvements in confidentiality laws:

- **Expands the penalty for willful violation of confidentiality laws to include court and law enforcement records.** Under current law, it is a Class C misdemeanor for someone with authorized access to a minor's social, psychological, or medical records to violate willfully the confidentiality laws surrounding those records. HB 3817 extends this protection to a minor's law enforcement and court records, making it a Class C misdemeanor to share these records willfully beyond the bounds permitted by law. A person convicted of violating juvenile confidentiality laws could also be liable for damages.
- **Extends confidentiality protections of the Juvenile Court Act to municipal ordinance violations.** Under current law, certain offenses (e.g. retail theft) may be handled either under the Juvenile Court Act (as a crime), or under a municipal code (as a violation of that municipality's ordinance). While the latter route is generally considered less punitive, the records of municipal ordinance violations by minors are open to the public. HB 3817 would extend the confidentiality protections of the Juvenile Court Act to records of ordinance violations.
- **For the first time, creates a penalty for the willful dissemination of an expunged juvenile record.** Under HB 3817, such unlawful sharing is a Class C misdemeanor and punishable by a fine of \$1,000 per instance. If this sharing were done for financial gain, an individual may face prosecution for a Class 4 felony (as well as job loss, if an employee of a government agency). HB 3817 also creates a right of action for the individual whose expunged records were wrongly shared to sue for actual damages as well as punitive damages up to \$1,000.
- **Provides definition of sealing.** Under current law, the Juvenile Court Act uses the word "sealed" but doesn't explain what that means. HB 3817 clarifies that juvenile arrest and court records, once sealed, may never be made publicly available or otherwise widely shared. HB 3817 additionally requires a court order to access sealed files by those not already authorized to retain such files (e.g. the state's attorney, clerk of court.)
- **Adds Secretary of State to the list of entities that can keep internal records, even post-expungement.** Under current law, prosecutors can still keep their physical case files even after a minor's record is ordered expunged. HB 3817 extends this practice to the internal records of the Secretary of State.
- **Codifies the well-established view in Illinois case law that a juvenile adjudication is not a "conviction."**

- **Holds employers accountable for failing to follow current law regarding treatment of expunged records.** Under current law, employers are bound to include language on job applications making clear that applicants do not need to disclose expunged juvenile records, nor may an employer ask whether an applicant has had a juvenile record expunged. HB 3817 provides that an employer who fails to follow the law, and obtains an expunged record as a result, will be treated as having shared the record and may be liable for a Class C misdemeanor.

HB 3817 was introduced with the support of Cook County Board President Toni Preckwinkle. Chief sponsors were Rep. Elaine Nekritz, D-Northbrook, and Sen. Michael Hastings, D-Tinley Park. Gov. Bruce Rauner signed HB 3817 (now Public Act 100-0285) on Aug. 24, 2017.