SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair
2015 - 2016 Regular

Bill No:	AB 1945	**Hearing Date:**	June 14, 2016
Author:	Mark Stone		
Version:	May 31, 2016		
Urgency:	No	**Fiscal:**	No
Consultant:	AA		

Subject: ***Juveniles: Sealing of Records***

HISTORY

Source: California Welfare Directors' Association; Commonweal The Juvenile Justice Project

Prior Legislation: AB 666 (Stone) – Chapter 368, Statutes of 2015
AB 989 (Cooper) – Chapter 375, Statutes of 2015
SB 1038 (Leno) – Chapter 249, Statutes of 2014

Support: American Civil Liberties Union of California; California Attorneys for Criminal Justice; California Youth Empowerment Network

Opposition: Legal Services for Prisoners with Children

Assembly Floor Vote: 77 - 0

PURPOSE

The purpose of this bill relating to the sealing of juvenile records is to 1) clarify that existing sealing laws pertaining to informal supervision or probation apply even if the person with the juvenile records no longer is a minor; 2) allow the county child welfare agency responsible for a minor or nonminor dependent to access these sealed records for the limited purpose of determining an appropriate placement or service that has been ordered by the court, providing that the information contained in the sealed record and accessed by the child welfare worker or agency may be shared with the court or with a service or placement provider as necessary to implement the court-ordered service or placement but otherwise remain confidential, as specified; 3) explicitly state in statute that a juvenile case file that is covered by or included in record sealing order pursuant to Section 781 or 786 may not be inspected except as specified by those sections, as specified; and 4) make additional conforming cross-references in related sections.

Current law provides that, if a minor satisfactorily completes[1] an informal program of supervision, probation as specified, or a term of probation for any offense other than a specified

[1] For this purpose "satisfactory completion of an informal program of supervision or another term of probation . . . shall be deemed to have occurred if the person has no new findings of wardship or conviction for a felony offense or a misdemeanor involving moral turpitude during the period of supervision or probation and if he or she has not failed to substantially comply with the reasonable orders of supervision or probation that are within his or her

serious, sexual, or violent offense, then the court shall order sealed all records pertaining to that dismissed petition in the custody of the juvenile court. (Welf. & Inst. Code, § 786, subd. (a).)

This bill revises this language to clarify that the application of this section is not limited to when a person is a minor, as specified.

This bill would add that, "a person is eligible to have his or her records sealed and petition dismissed pursuant to this section after satisfactorily completing an informal program of supervision or another term of probation described in subdivision (a) while he or she was subject to the jurisdiction of the juvenile court pursuant to Section 602."

Current law allows a record sealed under this section to be accessed, inspected, or utilized under any of the following circumstances:

- By the prosecuting attorney, the probation department, or the court for the limited purpose of determining whether the minor is eligible and suitable for deferred entry of judgment pursuant to Section 790 or is ineligible for a program of supervision as defined in Section 654.3.
- By the court for the limited purpose of verifying the prior jurisdictional status of a ward who is petitioning the court to resume its jurisdiction pursuant to subdivision (e) of Section 388.
- If a new petition has been filed against the minor for a felony offense, by the probation department for the limited purpose of identifying the minor's previous court-ordered programs or placements, and in that event solely to determine the individual's eligibility or suitability for remedial programs or services. The information obtained pursuant to this subparagraph shall not be disseminated to other agencies or individuals, except as necessary to implement a referral to a remedial program or service, and shall not be used to support the imposition of penalties, detention, or other sanctions upon the minor.
- Upon a subsequent adjudication of a minor whose record has been sealed under this section and a finding that the minor is a person described by Section 602 based on the commission of a felony offense, by the probation department, the prosecuting attorney, counsel for the minor, or the court for the limited purpose of determining an appropriate juvenile court disposition. Access, inspection, or use of a sealed record as provided under this subparagraph shall not be construed as a reversal or modification of the court's order dismissing the petition and sealing the record in the prior case.
- Upon the prosecuting attorney's motion, made in accordance with Section 707, to initiate court proceedings to determine the minor's fitness to be dealt with under the juvenile court law, by the probation department, the prosecuting attorney, counsel for the minor, or the court for the limited purpose of evaluating and determining the minor's fitness to be dealt with under the juvenile court law. Access, inspection, or use of a sealed record as provided under this subparagraph shall not be construed as a reversal or modification of the court's order dismissing the petition and sealing the record in the prior case.
- By the person whose record has been sealed, upon his or her request and petition to the court to permit inspection of the records.
- The probation department of any county may access the records for the limited purpose of meeting federal Title IV-B and Title IV-E compliance. (WIC § 786(f).)

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capacity to perform. The period of supervision or probation shall not be extended solely for the purpose of deferring or delaying eligibility for dismissal of the petition and sealing of the records under this section." (WIC § 786(c)(1).)

This bill additionally would provide that the "child welfare agency of a county responsible for the supervision and placement of a minor or nonminor dependent may access a record that has been ordered sealed by the court under this section for the limited purpose of determining an appropriate placement or service that has been ordered for the minor or nonminor dependent by the court. The information contained in the sealed record and accessed by the child welfare worker or agency under this subparagraph may be shared with the court or with a service or placement provider as necessary to implement the court-ordered service or placement but shall in all other respects remain confidential. Access to the sealed record under this subparagraph shall not be construed as a modification of the court's order dismissing the petition and sealing the record in the case."

Current law generally limits the inspection of juvenile case files, as specified. (WIC § 827.)

This bill would provide that a "case file that is covered by or included in an order of the court sealing a record pursuant to Section 781 or 786 may not be inspected except as specified by Section 781 or 786."

Current law generally limits the release of juvenile police records in Los Angeles County, as specified. (WIC § 827.9.)

This bill would add technical cross-references to conform these provisions to other sections pertaining to the sealing of records, as specified. This bill makes an additional conforming cross-reference in Welfare and Institutions Code section 828, concerning information gathered by a law enforcement agency relating to the taking of a minor into custody, to sealing provisions, as specified.

RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past several years this Committee has scrutinized legislation referred to its jurisdiction for any potential impact on prison overcrowding. Mindful of the United States Supreme Court ruling and federal court orders relating to the state's ability to provide a constitutional level of health care to its inmate population and the related issue of prison overcrowding, this Committee has applied its "ROCA" policy as a content-neutral, provisional measure necessary to ensure that the Legislature does not erode progress in reducing prison overcrowding.

On February 10, 2014, the federal court ordered California to reduce its in-state adult institution population to 137.5% of design capacity by February 28, 2016, as follows:

- 143% of design bed capacity by June 30, 2014;
- 141.5% of design bed capacity by February 28, 2015; and,
- 137.5% of design bed capacity by February 28, 2016.

In December of 2015 the administration reported that as "of December 9, 2015, 112,510 inmates were housed in the State's 34 adult institutions, which amounts to 136.0% of design bed capacity, and 5,264 inmates were housed in out-of-state facilities. The current population is 1,212 inmates below the final court-ordered population benchmark of 137.5% of design bed capacity, and has been under that benchmark since February 2015." (Defendants' December 2015 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, Coleman v. Brown, Plata v. Brown (fn. omitted).) One year ago, 115,826 inmates

were housed in the State's 34 adult institutions, which amounted to 140.0% of design bed capacity, and 8,864 inmates were housed in out-of-state facilities. (Defendants' December 2014 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, Coleman v. Brown, Plata v. Brown (fn. omitted).)

While significant gains have been made in reducing the prison population, the state must stabilize these advances and demonstrate to the federal court that California has in place the "durable solution" to prison overcrowding "consistently demanded" by the court. (Opinion Re: Order Granting in Part and Denying in Part Defendants' Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, Coleman v. Brown, Plata v. Brown (2-10-14). The Committee's consideration of bills that may impact the prison population therefore will be informed by the following questions:

- Whether a proposal erodes a measure which has contributed to reducing the prison population;
- Whether a proposal addresses a major area of public safety or criminal activity for which there is no other reasonable, appropriate remedy;
- Whether a proposal addresses a crime which is directly dangerous to the physical safety of others for which there is no other reasonably appropriate sanction;
- Whether a proposal corrects a constitutional problem or legislative drafting error; and
- Whether a proposal proposes penalties which are proportionate, and cannot be achieved through any other reasonably appropriate remedy.

COMMENTS

1. Stated Need for This Bill

The author states:

> SB 1038 (Leno), passed in 2014, and AB 666 (Stone), passed in 2015, both make it easier for juvenile records to be sealed under WIC Sec. 786. While juvenile sealing already existed under WIC 781, the process has been costly and previously necessitated an individual to hire a lawyer and then petition for a sealing of his or her juvenile record. SB 1038 and AB 666 provided an alternative and largely "automatic" process, requiring the court to seal records on its own initiative in non-707 offenses and upon satisfactory completion of probation. The legal effect of sealing and dismissal is that the offense is deemed not to have occurred as such by job and college applicants.
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> WIC 786 specifies limited circumstances under which a record that has been ordered sealed may be accessed, inspected or utilized by prosecuting attorneys, probation departments or the courts. Child welfare agencies are not among those listed entities, and as a result, social workers are unable to review sealed juvenile court records in order to determine appropriate placement and services.

2. What This Bill Would Do

Some juvenile record sealing laws generally have been streamlined over the last few years. This bill refines these revisions further to 1) clarify that existing sealing laws pertaining to informal supervision or probation apply even if the person with the juvenile records no longer is a minor; 2) allow the county child welfare agency responsible for a minor or nonminor dependent to access these sealed records for the limited purpose of determining an appropriate placement or service that has been ordered by the court, providing that the information contained in the sealed record and accessed by the child welfare worker or agency may be shared with the court or with a service or placement provider as necessary to implement the court-ordered service or placement but otherwise remain confidential, as specified; 3) explicitly state in statute that a juvenile case file that is covered by or included in record sealing order pursuant to Section 781 or 786 may not be inspected except as specified by those sections, as specified; and 4) make additional conforming cross-references in related sections.

3. Background: Sealing and Dismissals of Juvenile Records

Juvenile court records generally must be destroyed when the person of record reaches the age of 38 unless good cause is shown for maintaining those records. (WIC § 826.) The person of record also may petition to destroy records retained by agencies other than the court. (WIC § 826, subd. (b).) The request must be granted unless good cause is shown for retention of the records. (WIC § 826.) When records are destroyed pursuant to the above provision, the proceedings "shall be deemed never to have occurred, and the person may reply accordingly to an inquiry." (WIC § 826, subd. (a).) Courts have held that the phrase "never to have occurred" means that the juvenile proceeding is deemed not to have existed. (*Parmett v. Superior Court* (Christal B.) (1989) 212 Cal.App.3d 1261, at 1267.)

Minors adjudicated delinquent in juvenile court proceedings may petition the court to have their records sealed unless they were found to have committed certain serious offenses. (WIC § 781.) To seal a juvenile court record, either the minor or the probation department must petition the court. (*Ibid.*) Juvenile court jurisdiction must have lapsed five years previously, or the person must be at least 18 years old. (WIC § 781, subd. (a).) The records are not sealed if the person of record has been convicted of a felony or a misdemeanor involving moral turpitude. (*Ibid*.) No offenses listed in Welfare and Institutions Code section 707, subdivision (b) may be sealed if the juvenile was 14 years or older at the time of the offense. Additionally, there can be no pending civil litigation involving the incident.

In 2014, the legislature enacted a process for automatic juvenile record sealing (i.e. without a petition from the minor) in cases involving satisfactorily-completed informal supervision or probation, except in cases involving serious offenses, namely Welfare and Institutions Code section 707, subdivision (b) offenses. (WIC § 786.) When the record is sealed, the arrest in the case is deemed never to have occurred. (*Ibid.*) The court must order all records in its custody pertaining to the petition sealed. However, the prosecuting attorney and the probation department can access these records after they are sealed for the limited purpose of determining whether the minor is eligible for deferred entry of judgment. Also, the court may access the sealed file for the limited purpose of verifying the prior jurisdictional status of a ward who is petitioning the court to resume its jurisdiction. (*Ibid*.)

Last year there were two follow up measures which permit the probation department and district attorney to view the sealed records for several other limited purposes, such as to determine whether a minor is ineligible for informal supervision, to comply with the requirements of federal Title IV-E, and for purposes of determining a minor's prior program referrals and risk-needs assessments.

4. Opposition

Legal Services for Prisoners with Children opposes this bill, stating in part:

> Although the intent of this bill is to help young people, accessing their sealed court records in order to meet that goal is not an appropriate means. Once a record is sealed it should be treated as such. Increasing access to these records may increase stigma against the young person as well as not give real information about the situation or actions of the young person. . . . We recommend that employees of child welfare agencies have conversations with the young people they are seeking to serve in order to ascertain what their needs are. . . .

5. Technical Consideration

As currently in print, this bill proposes language amending subdivision (c) of Welfare and Institutions Code section 786, which generally pertains to the sealing of juvenile informal probation and probation records. The author may wish to review this proposed added language, which appears to be intended to perfect the statute's application to persons with these juvenile records who no longer are minors, to ensure it clearly achieves that clarification. In the alternative, the author may wish to delete that language in light of the very clear clarification this bill makes to subdivision (a) of that section.

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