
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: AB 529 **Hearing Date:** June 6, 2017
Author: Mark Stone
Version: May 26, 2017
Urgency: No **Fiscal:** Yes
Consultant: SJ

Subject: *Juveniles: Sealing of Records*

HISTORY

Source: California Public Defenders Association

Prior Legislation: AB 1945 (Stone) Ch. 858, Stats. of 2016
AB 666 (Stone) Ch. 368, Stats. of 2015
SB 1038 (Leno) Ch. 249, Stats. of 2014

Support: California Attorneys for Criminal Justice; Commonweal, Juvenile Justice Program; East Bay Children's Law Offices; Juvenile Court Judges of California; National Association of Social Workers, California Chapter

Opposition: California District Attorneys Association

Assembly Floor Vote: 47 - 22

PURPOSE

The purpose of this bill is to require the juvenile court to seal all records, pertaining to a dismissed or unsustained petition alleging wardship, that are in the custody of the juvenile court and other government agencies, as specified. This bill also requires the following entities to seal the records of a juvenile: 1) a probation department upon a juvenile's satisfactory completion of a program of diversion or supervision; and 2) a public or private agency operating a diversion program, as specified.

Existing law generally provides that any person under 18 years of age who commits a crime is within the jurisdiction of the juvenile court, which may adjudge that person to be a ward of the court. (Welf. and Inst. Code § 602.)

Existing law provides that, if a minor satisfactorily completes an informal program of supervision, probation as specified, or a term of probation, then the court shall order the petition dismissed and order sealed all records pertaining to that dismissed petition in the custody of the juvenile court, and in the custody of law enforcement agencies, the probation department, or the Department of Justice. (Welf. & Inst. Code § 786, subd. (a).)

Existing law requires the court to send a copy of the order of dismissal and sealing to the agencies named in the order and directing the agencies to destroy the sealed records. (Welf. & Inst. Code § 786, subd. (a).)

Existing law requires the court to notify the person and the person's counsel that it has ordered the petition dismissed and the records sealed in the case. The notice must include an advisement of the person's right to nondisclosure of the arrest and proceedings, as specified. (Welf. & Inst. Code, § 786 subd. (a).)

Existing law provides that upon the order of dismissal, the arrest and other proceedings in the case must be deemed not to have occurred and the person who is the subject of the petition may reply accordingly to an inquiry by employers, educational institutions, or other persons or entities regarding the arrest and proceedings in the case. (Welf. & Inst. Code § 786, subd. (b).)

Existing law prohibits the court from sealing a record or dismissing a petition sustained on the basis of a specified serious or violent offense committed when the individual was 14 years of age or older, unless the finding on the offense was dismissed or reduced to a specified lesser non-serious or non-violent offense. (Welf. & Inst. Code § 786, subd. (d).)

Existing law allows the court, the prosecuting attorney, the probation department, the person whose record has been sealed, and a child welfare agency to access a record that has been sealed for limited purposes, as specified. (Welf. & Inst. Code, § 786 subd. (f)(1)(A)-(H).)

Existing law provides that access for these limited purposes shall not be considered an unsealing of the records. (Welf. & Inst. Code, § 786 subd. (f)(2).)

Existing law specifies that the sealed records will not prevent a court from enforcing an unpaid judgment for civil restitution. A minor is not relieved of the obligation to pay victim restitution, restitution fines, and court-ordered fines and fees. (Welf. & Inst. Code § 786, subd. (g)(1).)

Existing law allows a judge of the juvenile court to dismiss a filed petition, or set aside the findings and dismiss the petition, in the interests of justice and welfare of the subject of the petition, or if the court finds that the subject does not need treatment or rehabilitation, as specified. (Welf. & Inst. Code § 782.)

Existing law allows the probation officer to destroy all records and papers in the proceedings concerning a minor after five years from the date on which the jurisdiction of the juvenile court over the minor is terminated. (Welf. & Inst. Code § 826.)

Existing law provides that any person who was under the age of 18 when he or she was arrested for a misdemeanor, may, before or after reaching age 18, petition the court in which the proceedings occurred or, if there were no court proceedings, the court in whose jurisdiction the arrest occurred, for an order sealing the records in the case, including any records of arrest and detention, in specified circumstances. (Pen. Code § 851.7.)

Existing law provides that a person who was under the age of 18 at the time of commission of a misdemeanor and is eligible for, or has previously received expungement relief, may petition the court for an order sealing the record of conviction and other official records in the case, including arrest records and records relating to other offenses charged in the accusatory pleading, whether the defendant was acquitted, or the charges dismissed. Thereafter the conviction, arrest,

or other proceeding shall be deemed not to have occurred, and the petitioner may answer accordingly any question relating to their occurrence. (Pen. Code § 1203.45, subd. (a).)

Existing law provides that in any case where a minor has been arrested or a citation has been issued, and an accusatory pleading or petition to adjudge the minor a ward of the court has been filed, but not sustained, and it appears to the judge presiding at the proceeding that the minor was factually innocent of the offense. A minor who establishes factual innocence is entitled to have records related to his or her arrest and juvenile court proceedings sealed and eventually destroyed. (Welf. & Inst. Code § 781.5, subd. (e).) Existing law specifies the procedure to establish factual innocence. (Welf. & Inst. Code § 781.5, subd. (b).)

This bill provides that if a person who has been alleged to be a ward of the juvenile court has his or her petition dismissed by the court, whether on the motion of the prosecution or on the court's own motion, or if the petition is not sustained by the court after an adjudication hearing, the court is required to order sealed all records pertaining to the dismissed petition in the custody of the juvenile court, and in the custody of law enforcement agencies, the probation department, or the Department of Justice.

This bill requires the court to send a copy of the order to each agency and official named in the order, direct the agency or official to seal its records, and specify a date by which the sealed records must be destroyed.

This bill requires each agency and official named in the order to seal the records in its custody as directed by the order, advise the court of its compliance, and, after advising the court, seal the copy of the court's order that was received.

This bill requires the court to provide notice to the person and the person's counsel that it has ordered the petition dismissed and the records sealed. The notice is required to include an advisement of the person of his or her right to nondisclosure of the arrest and proceedings, as specified.

This bill requires the probation department to seal the arrest and other records in its custody relating to a juvenile's arrest or referral and participation in the diversion or supervision program upon satisfactory completion of the program of diversion or supervision to which a juvenile is referred by the probation officer or the prosecutor in lieu of the filing of a petition to adjudge the juvenile a ward of the juvenile court, including a program of informal supervision.

This bill requires the probation department to notify a public or private agency operating a diversion program to which the juvenile has been referred under these circumstances to seal records in the program operator's custody relating to the arrest or referral and the participation of the juvenile in the diversion or supervision program, and the operator of the program is then required to promptly seal the records in its custody relating to the juvenile's arrest or referral and participation in the program.

This bill provides that upon sealing of the records by the probation department or a public or private agency operating a diversion program, the arrest or offense giving rise to the person's participation in the program will be deemed not to have occurred and the individual may respond accordingly to any inquiry, application, or process in which disclosure of this information is requested or sought.

This bill requires the probation department to notify the participant in the supervision or diversion program in writing that his or her record has been sealed pursuant to the above provisions of this section based on his or her satisfactory completion of the program. If the record is not sealed, the probation department is required to notify the participant in writing of the reason or reasons for not sealing the record.

This bill defines “satisfactory completion” of the program of supervision or diversion, and requires the probation department to make a determination of satisfactory or unsatisfactory completion within 30 days of completion of the program by the juvenile, or if the juvenile does not complete the program, within 30 days of determining that the program has not been completed by the juvenile.

This bill allows an individual who receives notice from the probation department that he or she has not satisfactorily completed the diversion program and that the record has not been sealed to petition the juvenile court for review of the decision in a hearing in which the program participant may seek to demonstrate, and the court may determine, that he or she has met the satisfactory completion requirement and is eligible for the sealing of the record by the probation department and by the program operator.

This bill repeals an obsolete provision.

COMMENTS

1. Need for This Bill

According to the author:

The sealing of delinquency records has proved to be an important factor in reducing recidivism and opening doors to jobs and education for many of California youth. AB 529 is a modest expansion of the automatic sealing of juvenile records. It would require automatic sealing of all records of individuals who had been alleged to be a ward of the juvenile court and had their petition dismissed or not sustained by the court after an adjudication hearing. The goal of AB 529 is to open more pathways to college and jobs for justice-involved youth whose criminal records and histories stand in the way of employment and other opportunities.

2. Record Sealing Generally

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. (Welf. & Inst. Code, § 826.) The person of record also may petition to destroy records retained by agencies other than the court. (Welf. & Inst. Code § 826, subd. (b).) The request must be granted unless good cause is shown for retention of the records. (Welf. & Inst. Code, § 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.” (Welf. & Inst. Code, § 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, 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. (Welf. & Inst. Code, § 781.) A person may have his or her juvenile court records sealed by petitioning the court “five years or more after the jurisdiction of the juvenile court has terminated over [the] person adjudged a ward of the court or after [the] minor appeared before a probation officer, or, in any case, at any time after the person has reached the age of 18.” (Welf. & Inst. Code § 781, subd. (a).) Once the court has ordered the records sealed, the proceedings in the case shall be deemed never to have occurred, and the person may properly reply accordingly to any inquiry about the events. The relief consists of sealing all of the records related to the case, including the arrest record, court records, entries on dockets, and any other papers and exhibits. The court must send a copy of the order to each agency and official named in the petition for sealing records, directing the agency to seal its records and stating the date thereafter to destroy the sealed records.

SB 1038 (Leno), Chapter 249, Statutes of 2014, provided 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 specified serious or violent offenses where the juvenile was 14 years or older at the time of the offense, and the offense was not dismissed or reduced to a non-serious or non-violent offense. (Welf. & Inst. Code, § 786, subd. (d).)

This bill provides a process for automatic juvenile record sealing in cases where the petition was dismissed or not sustained by the court after an adjudication hearing. This bill also requires the probation department to seal the arrest and other records in its custody related to a juvenile’s arrest or referral and participation in a diversion or supervision program upon the juvenile’s satisfactory completion of the program to which he or she was referred in lieu of the filing of a petition in juvenile court.

3. Related Legislation

SB 312 (Skinner) restores juvenile record sealing for records involving Welfare and Institutions Code section 707(b) offenses. SB 312 is on Third Reading and eligible for a floor vote.

4. Proposed Amendment

Current law authorizes the probation officer in any case in which he or she concludes that a minor is within the jurisdiction of the juvenile court to delineate, with consent of the minor and the minor’s parent or guardian, specific programs of supervision for the minor in lieu of filing a petition to declare a minor a dependent child of the court or a minor or a ward of the court or requesting that a petition be filed by the prosecuting attorney to declare a minor a ward of the court. (Welf. & Inst. Code § 654.) Existing law further provides that a minor who has previously participated in a program of supervision pursuant to Section 654 is not eligible for participation in another program pursuant to Section 654, except in an unusual case where the interests of justice would best be served and the court specifies on the record the reasons for its decision. (Welf. & Inst. Code § 654.3, subd. (e).)

The author intends to amend the bill to permit the probation department to have access to a juvenile’s sealed record in order for the probation department to determine if a person is eligible for a program of supervision pursuant to Section 654.

5. Argument in Support

The sponsor of the bill writes:

...In accordance with existing law, under most circumstances a youth that has his case dismissed due to insufficient evidence, or in the interest of justice, without an adjudication must wait until he is at least 18 to petition the court to seal his record. However, minors that commit and are adjudicated for non-serious or non-violent offenses can have their records automatically sealed upon completion of probation. This means that the court orders the petition be dismissed and the juvenile court records are sealed immediately. AB 529 seeks to extend this same process to similar cases where a minor has had his delinquency petition dismissed without an adjudication due to insufficient evidence, in the interest of justice or because he is incompetent and not likely to become competent in the foreseeable future, regardless of the alleged offense. Allegations alone should not be prohibitive in having a minor's juvenile delinquency record sealed.

For minors determined to be in need of juvenile court services after an adjudication, automatic sealing of the records accomplishes three goals. First, it provides an additional incentive for youth to complete their probation successfully. Research consistently demonstrates that youth are not motivated by what they view as "long term consequences" or benefits. They simply don't connect their behavior now—at age 13, or 14 or even 15, 16 or 17, with incentives they can earn at age 18. If instead they know that the result of their hard work will immediately earn them a dismissal, they will likely work much harder to comply. A second benefit of automatic sealing is that it may open opportunities for youth in terms of their employment, housing or education. Even though juvenile court records are supposed to be confidential, there are many exceptions where juvenile records can be found in the public domain. Minors that come before the juvenile court based on allegations that are never adjudicated should be afforded the same benefit and relief.

6. Argument in Opposition

The California District Attorneys Association opposes this bill stating:

This bill expands Welfare and Institutions Code section 786 to essentially provide that upon dismissal of any petition alleging the commission of a crime by a minor, the juvenile court shall order the sealing of all records related to that petition. Because no time frame is given, we presume the sealing order will be made at the time of the dismissal and will take effect immediately.

As a practical matter, prosecutors generally cannot or do not engage in much "sentence bargaining" during plea negotiations with juveniles. This is because the primary purpose of delinquency proceedings is rehabilitation, not punishment. The probation department and the court take the lead in determining how to accommodate the minor's needs. Instead, under certain circumstances a prosecutor may agree to the dismissal of a petition "without prejudice," so that if a minor reoffends in the future, the petition can be re-filed. Also, prosecutors may

dismiss a petition “subject to comment and restitution,” the juvenile equivalent of a *Harvey* waiver. This is not a determination that a minor is innocent of the crimes alleged in a dismissed petition, and that conduct may be important to consider in future proceedings. Because of the requirement that records related to a dismissed petition must immediately be ordered sealed, the change proposed by AB 529 would be a very significant disincentive for prosecutors to agree to any petition being dismissed as part of a negotiated disposition.

Legal mechanisms already exist that enable minors to have their records sealed. Welfare and Institutions Code section 781 generally provides for sealing of juvenile records within certain time periods based on a person’s age and/or when juvenile court jurisdiction is terminated. Further, WIC 781.5(d) and (e) provides a procedure for a minor to obtain a finding of factual innocence from the court and have his or her records sealed immediately.

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