
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

Bill No: AB 989 **Hearing Date:** June 23, 2015
Author: Cooper
Version: April 16, 2015
Urgency: No **Fiscal:** No
Consultant: AA

Subject: *Juveniles: Sealed Records*

HISTORY

Source: Chief Probation Officers of California; State Coalition of Probation Organizations

Prior Legislation: SB 1038 (Leno), Chapter 249, Statutes of 2014

Support: American Federation of State, County and Municipal Employees; Association for Los Angeles Deputy Sheriffs; Association of Probation Supervisors; California District Attorneys Association; California Probation, Parole and Correctional Association; California State Lodge, Fraternal Order of Police; County of San Diego; Fraternal Order of Police; Kern County Probation Officers Association; Long Beach Police Officers Association; Los Angeles County Professional Peace Officers Association; Los Angeles County Probation Officers Union; Los Angeles Police Protective League; Monterey County Probation Association; Orange County Employees Association; Riverside Sheriffs' Association; Sacramento County Deputy Sheriffs' Association; Sacramento County Probation Association; San Francisco Deputy Probation Officers' Association; San Joaquin Probation Officers Association; San Mateo County Probation and Detention Association; Santa Ana Police Officers Association; Santa Clara County Probation Peace Officers' Union; Shasta County Professional Peace Officers Association; Ventura County Professional Peace Officers' Association

Opposition: Legal Services for Prisoners with Children

Assembly Floor Vote: 78 - 0

PURPOSE

The purpose of this bill is to provide limited access to otherwise sealed juvenile records to district attorneys and probation departments, as specified.

Current law provides that five years or more after the jurisdiction of the juvenile court has terminated over a person adjudged a ward of the court or after a minor appeared before a probation officer, or, in any case, at any time after the person has reached the age of 18, the person or county probation officer, with specified exceptions, may petition the juvenile court for sealing of the records, including arrest records, relating to the person's case, in the custody of the juvenile court, the probation officer, or any other agency or public official. (Welf. & Inst. Code, § 781, subd. (a).)

Current law states that once the court has ordered the person's records sealed, the proceedings in the case shall be deemed never to have occurred, and the person may reply accordingly to any inquiry about the events. (Welf. & Inst. Code, § 781, subd. (a).)

Current law prohibits, notwithstanding any other provision of law, the court from ordering a person's records sealed in any case in which the person has been found to have committed an offense listed in section 707(b), which are offenses for which certain minors could be tried in adult court under specified circumstances. (Welf. & Inst. Code, § 781, subd. (a).)

Current law permits the court to access a file that has been sealed for the limited purpose of verifying the prior jurisdictional status of the ward who is petitioning the court to resume its jurisdiction, as specified. This access is not to be deemed an unsealing of the records. (Welf. & Inst. Code, § 781, subd. (e).)

Current law allows a judge of the juvenile court in which a petition was filed to dismiss the petition, or to set aside the findings and dismiss the petition, if the court finds that the interests of justice and the welfare of the person who is the subject of the petition require that dismissal, or if it finds that he or she is not in need of treatment or rehabilitation. The court has jurisdiction to order dismissal or setting aside of the findings and dismissal regardless of whether the person who is the subject of the petition is, at the time of the order, a ward or dependent child of the court. (Welf. & Inst. Code, § 782.)

Current law states that any person who was under the age of 18 when he or she was arrested for a misdemeanor may 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 certain circumstances. (Pen. Code, § 851.7.)

Current 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).)

Current law provides that, if a minor satisfactorily completes an informal program of supervision, probation as specified, or a term of probation for any offense other than a specified 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, except that the prosecuting attorney and the probation department of any county shall have access to these records after they are sealed for the limited purpose of determining whether the minor is eligible for deferred entry of judgment. The court may access a file that has been sealed pursuant to this section for the limited purpose of verifying the prior jurisdictional status of a ward who is petitioning the court to resume its jurisdiction. This access shall not be deemed an unsealing of the record and shall not require notice to any other entity. (Welf. & Inst. Code, § 786.)

This bill would recast this statute, and add the following provisions:

- Authorize the prosecuting attorney and the probation department of any county access to the records to determine if the minor is eligible for informal supervision, as specified;
- Provide that if “a new petition has been filed against the minor for a felony offense, the probation department of any county shall have access to the records 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 paragraph 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.”; and
- Provide that the probation department of any county may access the records for the limited purpose of meeting federal Title IV-E compliance.

RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past eight 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 February of this year the administration reported that as “of February 11, 2015, 112,993 inmates were housed in the State’s 34 adult institutions, which amounts to 136.6% of design bed capacity, and 8,828 inmates were housed in out-of-state facilities. This current population is now below the court-ordered reduction to 137.5% of design bed capacity.”(Defendants’ February 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).

While significant gains have been made in reducing the prison population, the state now 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:

In 2014, SB 1038 (Leno) regarding juvenile records sealing was signed into law. The bill provided for the automatic dismissal of juvenile petitions and sealing of records in cases where a juvenile offender successfully completes probation. The intent was to provide incentives for youth to successfully complete probation and foster employment, housing, and education opportunities by setting forth a process to have juvenile records sealed.

Upon implementation there have been varying legal opinions as to whether probation records such as program referrals and risk/needs assessments are considered part of the court record and would therefore be required to be sealed under the provisions of SB 1038.

Therefore, there are cases when a youth comes back into the custody of the juvenile court and probation is unable to view their previous program referrals and other information relative to eligibility for programs to make the most appropriate determination on getting them connected to services. Further, it is important that probation be able to access records on a limited basis for the purposes of determining AB 12 extended foster care eligibility, eligibility for informal probation, and Federal Title IV-E purposes. In order to achieve the best outcomes for these minors, it is important that probation have access to this information to make the most effective case plan determinations for the minor's treatment.

AB 989 would continue the practice and original intent of SB 1038 to ensure that minors' records are automatically sealed upon successful completion and would clarify that in cases where a juvenile record has been sealed pursuant to Welfare & Institutions Code 786, if a youth subsequently comes back into the custody of the juvenile court, probation may access limited information as it pertains to determining AB 12 extended foster care eligibility, informal probation eligibility, Federal Title IV-E purposes and prior program and service referrals in order to most appropriately develop a case plan to address the treatment needs of the minor.

2. Sealing and Destruction of Records

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. (Ibid.) 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. (Ibid.)

A minor's juvenile court case is dismissed and court records sealed without a petition from the minor if the minor has been found to have satisfactorily completed an informal program of supervision or probation, except in specified cases. (Welf. & Inst. Code, § 786.) Upon sealing of the record, the arrest upon which the judgment was deferred shall be deemed to have never occurred. (Ibid.) The court shall order sealed all records in its custody pertaining to a petition dismissed. (Ibid.) The prosecuting attorney and the probation department of any county shall have access to these records after they are sealed for the limited purpose of determining whether the minor is eligible for deferred entry of judgment. 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.)

3. Support

The State Coalition of Probation Organizations, a co-sponsor of this bill, submits in part:

(Under current law), if a juvenile has completed his/her term of probation, and is subsequently arrested as a minor, probation officers are prohibited from accessing all files, including their own department's files, for any purpose. As a result, without access to earlier files, the probation officer has no ability to determine the proper course of action as it pertains to placement and/or rehabilitative placement. This prohibition also inhibits the probation officer's ability to provide a comprehensive dispositional report to the court.

This bill will grant probation officers limited access to juvenile files, in case of a subsequent arrest of a juvenile, in order to inform the probation officer's recommendation for rehabilitation program referral, risk-needs assessments, and other placements.

This clean up legislation is vital for the proper performance of probation officer duties as it pertains to re-offender juveniles. . . .

4. Opposition

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

California's confidentiality laws are intended to protect children from present and future adverse consequences and unnecessary emotional harm. Juvenile courts are intended to have exclusive authority in determining whether a juvenile record is to be shared. Under current law, entities must petition the court to obtain someone's confidential juvenile records. This process gives the defending party an opportunity to contest the sharing of information that may be detrimental to his or her rehabilitation and best interests.

AB 989 would add a new subsection (b)(3) to Welfare and Institutions Code Section 786 to grant probation departments access to sealed juvenile records, for the limited purpose of determining program referrals. This proposal is unnecessary because district attorneys already make informed decisions to refer young defendants to programs, regardless of probation records. District attorneys already have access to sealed juvenile records to decide eligibility for deferred entry of judgment. Additionally, we are concerned that it will be difficult to limit access to this stated 'limited purpose,' and difficult to know whether access was limited in this fashion or whether probation officers used this information for other purposes.

5. Related Bills

This Committee heard and passed SB 504 (Lara) earlier this year (5-2). That bill has been narrowed since leaving this Committee to limiting fees associated with sealing juvenile records and other potential liabilities, and to prohibiting an unfulfilled order of restitution that has been converted to a civil judgment from barring the sealing of a juvenile record. The bill would also prohibit outstanding restitution fines and court-ordered fees from being considered when assessing whether a petitioner's rehabilitation has been attained to the satisfaction of the court and from barring the sealing of a record. SB 504 is now in the Assembly.

AB 666 (Stone), also before the Committee, amends the same statute as this bill concerning the dismissal of juvenile petitions. As now in print AB 989 is more narrow than AB 666, but the bills are not in conflict with respect to their substantive changes to the law. The authors of these bills may wish to add chaptering amendments to harmonize these provisions.

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