
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: SB 312 **Hearing Date:** April 25, 2017
Author: Skinner
Version: April 6, 2017
Urgency: No **Fiscal:** Yes
Consultant: SJ

Subject: *Juveniles: Sealing of Records*

HISTORY

Source: Anti-Recidivism Coalition
Commonweal Juvenile Justice Program
National Center for Youth Law

Prior Legislation: AB 1945 (Stone) Ch. 858, Stats. 2016
AB 666 (Stone) Ch. 368, Stats. 2015
AB 1038 (Leno) Ch. 249, Stats. 2014
Proposition 21, passed by voters on March 7, 2000

Support: Alliance for Boys and Men of Color; Board of Supervisors County of Los Angeles, Third District; California Attorneys for Criminal Justice; California Public Defenders Association; Center for Juvenile Law and Policy at Loyola Law School; Center on Juvenile and Criminal Justice; Juvenile Court Judges of California; Pacific Juvenile Defender Center; San Francisco Public Defender; Youth Law Center; W. Haywood Burns Institute; 2 individuals

Opposition: None known

PURPOSE

The purpose of this bill is to restore record sealing under Welfare and Institutions Code (WIC) Section 781 for individuals with juvenile offense histories involving WIC 707(b) offenses, as specified. This bill also makes record sealing available to individuals whose 707(b) offenses have been reduced by the court to a misdemeanor, 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 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.)

Existing 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)(1)(A).)

Existing 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)(1)(A).)

Existing 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)(1)(D).)

This bill eliminates this provision and replaces it with language that permits a person to petition for the sealing of a record relating to an offense listed in subdivision (b) of Section 707 that was committed after attaining 14 years of age or older after the person has waited 3 years from the date of the commission of the offense.

This bill provides that a record that has been sealed pursuant to Section 781 may be accessed, inspected, or utilized in a subsequent proceeding in the following circumstances:

- (1) By the district attorney, as necessary, to make appropriate charging decisions or to initiate a prosecution in criminal court involving a subsequent felony offense, or by the district attorney or court to determine the appropriate sentencing for a subsequent felony offense.
- (2) By the district attorney, as necessary, to initiate a juvenile court proceeding to determine whether a minor shall be transferred from the juvenile court to a criminal court pursuant to Section 707(b).
- (3) By the district attorney, the probation department, or the juvenile court upon a subsequent finding by the juvenile court that the minor has committed a felony offense, for the purpose of determining an appropriate disposition of the case.

This bill requires that the information contained in the sealed record remain confidential and not be further disseminated.

This bill provides that the record sealing process for Section 707(b) offenses does not apply if the case was dismissed or reduced to a misdemeanor by the court. This bill further provides that in those cases, the person may petition the court for record sealing, and the court may order the sealing of the record in the same manner and with the same effect as otherwise provided for records that do not relate to a Section 707(b) offense committed after the person attained 14 years of age.

Existing 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).)

Existing law provides that, if a minor satisfactorily completes an informal program of supervision, probation as specified, or a term of probation for any offense, 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 provides that upon the court's order of dismissal of the petition, the arrest and other proceedings in the case are deemed not to have occurred and the person who is the subject of the petition may answer accordingly to an inquiry relating to their occurrence. (Welf. & Inst. Code § 786, subd. (b).)

Existing law prohibits a court from sealing a record or dismissing a petition if the petition was sustained based on the commission of a Section 707(b) offense that was committed when the person was 14 years of age or older unless the finding on that offense was dismissed or was reduced to a lesser offense not listed in subdivision (b) of Section 707. (Welf. & Inst. Code § 786, subd. (d).)

Existing law provides that a sealed record may be accessed, inspected, or utilized in limited circumstances by the prosecuting attorney, probation department, or court. This access shall not be deemed an unsealing of the record and shall not require notice to any other entity. (Welf. & Inst. Code § 786, subd. (f).)

This bill provides that a Section 707(b) offense that was committed after a person attained 14 years of age and that was subsequently reduced to a misdemeanor that is not listed in Section 707(b) is eligible for record sealing.

Existing law provides that a record sealed pursuant to Section 781 or Section 786 may be accessed by a law enforcement agency, probation department, court, the Department of Justice, or other state or local agency that has custody of the sealed record for the limited purpose of complying with data collection or data reporting requirements that are imposed by other provisions of law. No personally identifying information from a sealed record may be released, disseminated, or published by or through an agency, department, court, or individual that has accessed or obtained information from the sealed record. (Welf. & Inst. Code § 787.)

This bill makes other conforming changes.

COMMENTS

1. Need for This Bill

According to the author:

Proposition 21 was adopted in the year 2000. Among other provisions, the initiative imposed a lifetime ban on the sealing of juvenile WIC 707(b) records

where the individual was over 14 at the time of the offense. The legal, policy and scientific landscape of the juvenile court law has changed significantly since the enactment of Proposition 21 some 17 years ago. When the initiative was circulated for signatures in 1998, crime rates—both juvenile and adult—were near all-time highs. Juvenile violent crime rates in California have dropped by two-thirds since then. Also since Proposition 21, findings in brain science and adolescent development have compelled revisions of harsh laws depriving juveniles of an adequate opportunity for rehabilitation.

Thousands of California juveniles are prosecuted each year for offenses on the WIC 707(b) list. Most are retained in the juvenile justice system and, when adjudicated, receive local (county-based) sentences. Approximately 200 juveniles are committed by juvenile courts to the state Division of Juvenile Justice (DJJ). Robbery and assault are the most frequent juvenile WIC 707(b) offenses that are not eligible for record sealing—some involving relatively moderate conduct such as shoplifting that becomes a robbery (and a 707 offense) when the store security guard intervenes. However, even serious offenses committed at young ages should qualify for record sealing if the young person remains crime-free over a waiting period and can persuade the court in a hearing that he or she deserves a clean start in life.

SB 312 is limited to restoring sealing for individuals with juvenile offense histories. It does not create a new sealing right for adults or for juveniles convicted in adult criminal court. SB 312 would restore access to the “sealing by petition” procedure currently available to individuals with non-707(b) offenses under section 781 of the WIC, but with a different waiting period and with new limitations on downstream uses of the sealed record. Under SB 312, the criteria applied by the court in 707(b) sealing would be the same as those applied in cases involving non-707(b) offenses—specifically, that the individual must not have been convicted of a felony or misdemeanor involving moral turpitude in the interim, and that “rehabilitation has been attained to the satisfaction of the court.” The district attorney and the probation officer are entitled to appear in the hearing in which the court considers the sealing petition. An order of sealing, if made, applies to non-court agencies that are named in the sealing order which is the same as for cases involving non-707(b) offenses. However, under SB 312, a sealed juvenile 707(b) record will not have full protection from use in a future prosecution....

SB 312 would also make sealing available to individuals whose juvenile 707(b) offenses are reduced by the court to a misdemeanor....This component of SB 312 responds to the request of the Sixth District Court of Appeals’ decision in *In re G.Y.* (243 Cal.App.4th 1196, 2015)....

SB 312 will remove lifetime barriers to jobs, education, housing, military service and other re-entry barriers for California juveniles who are now barred by Proposition 21 from sealing, and then only after they meet specific rehabilitation and crime-free criteria applied by the juvenile court. Individuals who become eligible for sealing of a 707(b) record under SB 312 would be subject to downstream use of the sealed record by prosecutors, courts, and probation of they

come back to the criminal justice system on a subsequent felony offense....SB 312 is specifically designed to promote rehabilitation and to reduce recidivism. It further aligns California law with evolving legal principles of adolescent development governing the sanctions that can be imposed on youth in the juvenile justice system.

2. Record Sealing

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 known as 707(b) 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.

If a minor has been found to have satisfactorily completed an informal program of supervision or probation, the juvenile court will dismiss the petition and order sealed all records pertaining. (Welf. & Inst. Code § 786.) WIC section 707(b) offenses are excluded from sealing unless the finding has been dismissed or reduced to a lesser included offenses not on the 707(b) list. Upon sealing of the record, the arrest upon which the judgment was deferred shall be deemed to have never occurred. The court shall order sealed all records in its custody pertaining to a petition dismissed. A sealed record may be accessed, inspected, or utilized in limited circumstances by the prosecuting attorney, probation department, or court. This access shall not be deemed an unsealing of the record and shall not require notice to any other entity.

3. Proposition 21

On March 7, 2000, California voters approved Proposition 21, known as the “The Gang Violence and Juvenile Crime Prevention Act.” The purpose of Proposition 21 was to change the treatment of juvenile offenders, particularly youths engaged in gang-related criminal activity or who had committed other serious offenses. Among other things, Proposition 21 increased sentences for specified gang-related crimes, required adult trial for juvenile offenders 14 years of age or older charged with murder or specified sex offenses, prohibited the sealing of juvenile records involving WIC 707(b) offenses, and designated additional crimes as violent and serious felonies. (Official Vote Guide Information, Proposition 21, California Primary Election, Mar. 7, 2000 , <http://vigarchive.sos.ca.gov/2000/primary/propositions/21analysis.htm>> [as of April 19, 2017].)

Section 707(b) Offenses

Section 707 (a) of the Welfare and Institutions Code provides that “the district attorney or other appropriate prosecuting officer may make a motion to transfer the minor from juvenile court to a court of criminal jurisdiction” in any case in which a person is at least 14 years of age and alleged to have committed an offense listed in subdivision (b). The following offenses are included in subdivision (b) of Section 707:

- Murder
- Arson, as specified
- Robbery
- Rape with force, violence, or threat of great bodily harm
- Sodomy by force, violence, duress, menace, or threat of great bodily harm
- A lewd or lascivious act with a child under 14, as specified
- Oral copulation by force, violence, duress, menace, or threat of great bodily harm
- Forcible sexual penetration, as specified
- Kidnapping for ransom
- Kidnapping for robbery
- Kidnapping with bodily harm
- Attempted murder
- Assault with a firearm or destructive device
- Assault by any means of force likely to produce great bodily injury
- Discharge of a firearm into an inhabited or occupied building
- Specified crimes against older or physically disabled persons
- Specified firearm offenses
- A felony offense in which the minor personally used a weapon, as specified
- Specified felonies involving victim intimidation, or intimidation or improper influence of a witness
- Manufacturing, compounding, or selling one-half ounce or more of a salt or solution of a controlled substance, as specified
- A violent felony, as specified
- Escape, by the use of force or violence, from a county juvenile hall, home, ranch, camp, or forestry camp, as specified, where great bodily injury is intentionally inflicted upon an employee of the juvenile facility during the commission of the escape.
- Torture, as specified
- Aggravated mayhem, as specified
- Carjacking, as specified, while armed with a dangerous or deadly weapon.
- Kidnapping for purposes of sexual assault, as specified
- Kidnapping related to carjacking
- Specified offenses involving firearms in vehicles
- Specified crimes involving explosive devices
- Voluntary manslaughter, as specified

4. What This Bill Does

a. Restores Record Sealing via WIC § 781 for 707(b) Offenses

Proposition 21 prohibits the sealing of juvenile offense records involving Section 707(b) offenses. This bill would eliminate this prohibition and restore eligibility for record sealing in these cases under WIC § 781. This bill requires a three-year waiting period from the date of the commission of a Section 707(b) offense before a person may petition for record sealing under WIC § 781. This bill would allow access to sealed records in the following circumstances:

- (1) By the prosecutor in order to make charging decisions or to initiate a prosecution in criminal court involving a subsequent felony offense, or by the prosecutor or court in the sentencing of an individual convicted in criminal court of a subsequent felony
- (2) By the prosecutor to initiate a juvenile court proceeding to determine whether a minor should be transferred to the adult criminal court under Section 707
- (3) By the prosecutor, probation department, or the juvenile court upon a subsequent finding by the juvenile court that the minor has committed a felony offense

The future use of sealed records involving 707(b) offenses in a felony case does not require approval by a court.

b. Record Sealing Eligibility for 707(b) Offenses That Have Been Reduced to Misdemeanors

This bill makes record sealing available to individuals whose juvenile 707(b) offenses have been dismissed or reduced by the court to a misdemeanor. Eligibility for record sealing applies to both the court-initiated sealing process (i.e., WIC § 786) and sealing by petition (i.e., WIC § 781).

In re G.Y. (2015) 234 Cal.App.4th 1196 lays out the issue that Section 2 of this bill aims to address. In that case, G.Y.'s petition to have his juvenile record sealed pursuant to WIC § 781 was denied. G.Y. was convicted of more than one 707(b) offense that he had committed when he was 17 years old; these felony counts were subsequently reduced to misdemeanors. In upholding the lower court's decision, the appellate court in *In re G.Y.* found:

Here it is undisputed that the juvenile court found that appellant committed assault with a firearm in 1998, an offense that is listed in section 707, subdivision (b), and he committed the offense when he was over 14 years old. Section 781, subdivision (1) does not specify that the offenses listed in section 707, subdivision (b) must be felonies.

Nor do the cases upon which appellant relies [sic] advance his argument that section 707, subdivision (b) applies only to felonies....

...Moreover, even assuming that the "offenses" referred to in section 781 must be felonies, appellant admitted that he committed three felonies, including a felony offense listed in section 707, subdivision (b). The subsequent reduction of the felony to a misdemeanor did not alter the fact that a juvenile court had previously found that he committed a felony offense listed in section 707, subdivision (b). When the court later granted a motion to reduce the offense from a felony to a misdemeanor, "the offense became a misdemeanor from that point on, but not retroactively." (*People v. Kennedy* (2011) 194 Cal.App.4th 1484, 1492.)

Our interpretation of section 781, subdivision (a) comports with the intent of Proposition 21. As in *In re Jeffrey T.* (2006) 140 Cal.App.4th 1015 explained: “Section 781 was generally enacted ‘to protect minors from future prejudice resulting from their juvenile records.’ ... Voters, according to section 2 of Proposition 21, desired to ‘eliminat[e] confidentiality in some juvenile proceedings in order to hold juvenile offenders more accountable for their actions.’ This ‘more recent and specific intent underlying Proposition 21’s amendments to section 781 prevails[s] over th[e] general intent’ recognized when the statute was initially enacted.” (*Id.* at pp. 1020-1021.) Thus, we must conclude that the juvenile court had no authority to seal appellant’s juvenile records. (*In re G.Y.*, *supra*, (citations omitted).)

5. Related Legislation

AB 529 (Stone) amends WIC § 786 to require the juvenile court to order sealed all records pertaining to a dismissed or unsustained petition that are in the custody of the juvenile court and other government agencies, as specified. The bill was referred to Assembly Appropriations on March 28, 2017.

6. Arguments in Support

The Juvenile Court Judges of California support this bill stating:

Record sealing is a crucial rehabilitation tool for young people because it provides them with a “clean slate” to live as productive members of society. However, Proposition 21—adopted 17 years ago—imposed a blanket lifetime sealing ban on juvenile records involving 707(b) offenses.

Under SB 312, to qualify for record sealing, a youth with a 707(b) offense committed at age 14 or older would have to petition the court and demonstrate in a hearing that he or she has been fully rehabilitated. The individual would have to remain crime-free for a minimum waiting period of three years before the petition to seal could even be filed. Moreover, sealing granted by the court under these circumstances would be limited in that prosecutors are given access by SB 312 to the sealed record to support subsequent felony prosecutions should they occur. We see this revision framework as a balanced one that supports the dual goals of rehabilitation and public safety.

In addition, SB 312 would allow individuals having 707(b) offenses that are reduced to a misdemeanor under the authority of Penal Code Section 17(b) to be eligible for record sealing—either upon satisfactory completion of probation under WIC Section 786, or by petition and court order under WIC Section 781. This provision responds to the request of the Sixth District Court of Appeal in *In re G.Y.* (2015) 234 Cal.App.4th 1196. In that case, the Court of Appeals denied a petition for sealing by an individual with a stellar performance record of higher education and military service, saying that only the Legislature could “remedy this unjust result”. SB 312 provides that needed remedy in cases where the Court has found sufficient reason to reduce the 707(b) offense to misdemeanor status.

SB 312 furthers the juvenile court's mission and purposes of protecting the safety of the public and the best interest of the youth.

According to the San Francisco Public Defender:

The main purpose of the California juvenile justice system is rehabilitation. However, current law stands in the way of youth rehabilitation by imposing a lifetime ban on the sealing of juvenile records involving offenses listed in Section 707(b) of the Welfare and Institutions Code. Many youth with a 707(b) offense have not committed serious and violent crimes— for example, a shoplift that is charged as a 707(b) robbery due to the presence of a security guard. However, even youth with serious offenses who go through the juvenile system should be eligible for record sealing, when they can satisfy the court that they have been fully rehabilitated.

In the absence of record sealing, youth juveniles with old offense histories encounter significant barriers to jobs, higher education, professional licenses, military enlistment and other recovery alternatives. Even housing can be hard to get if a juvenile offense record gets in the way. It makes little sense to process youth through a juvenile justice system that is founded on rehabilitation, and then to allow the offense record to block access to jobs and other recovery options necessary to meet the rehabilitation goal.

The lifetime ban on sealing these records was created by Proposition 21... Youth crime rates have declined substantially since then the initiative was passed 17 years ago. Since then new findings in adolescent development and brain science have shaped revisions of state and federal law curtailing punitive sanctions and expanding re-entry options for juvenile justice youth. SB 312 will bring state law into alignment with modern juvenile justice principles by restoring youth access to re-entry alternatives that are now blocked by the lifetime record sealing ban of Proposition 21.

Under SB 312 these individuals would still have to demonstrate in a court hearing that they meet the criteria in Section 781 for sealing of the record—remaining crime free during a wait period and demonstrating their rehabilitation in a court hearing. We note that the bill as amended will still maintain a tough stance toward these youth, in that their records could still be used by prosecutors against them in future criminal proceedings.

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