SENATE COMMITTEE ON PUBLIC SAFETY
Senator Nancy Skinner, Chair
2017 - 2018 Regular

Bill No:	SB 312	**Hearing Date:**	April 4, 2017
Author:	Skinner		
Version:	February 13, 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 666 (Stone), Ch. 368, Stats. 2015
AB 1038 (Leno), Ch. 249, Stats. 2014

Support: Board of Supervisors County of Los Angeles; California Attorneys for Criminal Justice; California Public Defenders Association; Californians for Safety and Justice; Center on Juvenile and Criminal Justice; Juvenile Court Judges of California; California Public Defenders Association; San Francisco Public Defender; Youth Law Center; 2 individuals

Opposition: None known

PURPOSE

The purpose of this bill is to require a court to seal a record or dismiss a petition of an individual whose juvenile 707 (b) offense has been reduced to a misdemeanor.

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 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.)

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 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).)

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).)

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).)

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. A court is prohibited 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. 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. 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.)

This bill requires the court to seal the record of a person whose Section 707 (b) offense was subsequently reduced to a misdemeanor.

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.)

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. Some (approximately 200 per year) 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 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 to non-707's — 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—the same as for non 707s. However, under SB 312, a sealed juvenile 707/over 14 record will not have full protection from use in a future prosecution.

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. (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*.)

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.) 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*.) 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. (*Ibid*.)

3. 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:

(1) Murder
(2) Arson, as specified
(3) Robbery
(4) Rape with force, violence, or threat of great bodily harm
(5) Sodomy by force, violence, duress, menace, or threat of great bodily harm
(6) A lewd or lascivious act with a child under 14, as specified
(7) Oral copulation by force, violence, duress, menace, or threat of great bodily harm
(8) Forcible sexual penetration, as specified
(9) Kidnapping for ransom

(10) Kidnapping for robbery
(11) Kidnapping with bodily harm
(12) Attempted murder
(13) Assault with a firearm or destructive device
(14) Assault by any means of force likely to produce great bodily injury
(15) Discharge of a firearm into an inhabited or occupied building
(16) Specified crimes against older or physically disabled persons
(17) Specified firearm offenses
(18) A felony offense in which the minor personally used a weapon, as specified
(19) Specified felonies involving victim intimidation, or intimidation or improper influence of a witness
(20) Manufacturing, compounding, or selling one-half ounce or more of a salt or solution of a controlled substance, as specified
(21) A violent felony, as specified
(22) 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.
(23) Torture, as specified
(24) Aggravated mayhem, as specified
(25) Carjacking, as specified, while armed with a dangerous or deadly weapon.
(26) Kidnapping for purposes of sexual assault, as specified
(27) Kidnapping related to carjacking
(28) Specified offenses involving firearms in vehicles
(29) Specified crimes involving explosive devices
(30) Voluntary manslaughter, as specified

4. What This Bill Does

This bill requires the court to seal the record of a person whose Section 707 (b) offense was subsequently reduced to a misdemeanor. This bill only applies to the court-initiated sealing process (i.e., WIC § 786).

5. Argument in Support

The Juvenile Court Judges of California support this bill stating:

> SB 312 finds the right balance between the important goals of rehabilitation of youthful offenders with protection of public safety. SB 312 also corrects a discrepancy in the law by authorizing the sealing of certain misdemeanor juvenile cases that are currently excluded from California juvenile record sealing laws.
>
> Current law prohibits record sealing of any offense that is listed as eligible for transfer to adult court ("707(b) offenses") no matter how well the young person performs on probation. This prohibition is also overly broad because it includes 707(b) offenses that after a determination that the case is less serious, are charged as misdemeanors, or later reduced from a felony to a misdemeanor….
>
> 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 and remove barriers to economic opportunity. Sealing does not preclude the person's ongoing

responsibility to pay full victim restitution. Current law has resulted in unequal justice for certain youthful offenders who otherwise pose no threat to the community….

SB 312 furthers the purpose of the Juvenile Court to provide rehabilitation and to enable young people to be productive members of his or her family or community. SB 312 is a common sense solution to a statutory gap.

-- END –