
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair
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Bill No: AB 2425 **Hearing Date:** August 7, 2020
Author: Mark Stone
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Urgency: No **Fiscal:** Yes
Consultant: SJ

Subject: *Juvenile Police Records*

HISTORY

Source: National Center for Youth Law

Prior Legislation: AB 1537 (Cunningham), Ch. 50, Stats. 2019
SB 439 (Mitchell), Ch. 1006, Stats. 2018
AB 2952 (Stone), Ch. 1002, Stats. 2018
AB 529 (Stone), Ch. 685, Stats. 2017
SB 312 (Skinner), Ch. 679, Stats. 2017
AB 1945 (Stone), Ch. 858, Stats. 2016
AB 666 (Stone), Ch. 368, Stats. 2015
SB 1038 (Leno), Ch. 249, Stats. 2014

Support: Alliance for Boys and Men of Color; American Civil Liberties Union of California; Asian Americans Advancing Justice; Bill Wilson Center; California Alliance for Youth and Community Justice; California Attorneys for Criminal Justice; California Public Defenders Association; Californians United for a Responsible Budget; Center on Juvenile and Criminal Justice; Children Now; Children's Defense Fund-California; Children's Law Center of California; Communities United for Restorative Youth Justice; Community Works; Drug Policy Alliance; East Bay Community Law Center; Ella Baker Center for Human Rights; Empowering Pacific Islander Communities; Fresh Lifelines for Youth; Fresno Barrios Unidos; Friends Committee on Legislation of California; Immigrant Legal Resource Center; John Burton Advocates for Youth; Kids in Need of Defense; MILPA; National Association of Social Workers, California Chapter; National Institute for Criminal Justice Reform; Pacific Juvenile Defender Center; Public Counsel; Public Health Advocates; Root & Rebound; RYSE Center; San Jose/Silicon Valley NAACP; Santa Clara County Office of the Public Defender; Santa Cruz Barrios Unidos; United Friends of the Children; W. Haywood Burns Institute; Young Women's Freedom Center; Youth ALIVE!; Youth Alliance; Youth Forward; Youth Law Center

Opposition: California District Attorneys Association; California Law Enforcement Association of Records Supervisors; California State Sheriffs Association; Juvenile Court Judges of California; Orange County District Attorney

Assembly Floor Vote: 56 - 15

PURPOSE

The purpose of this bill is to limit the ability of a law enforcement agency to release a copy of a juvenile police record, as specified, and to prohibit the release of information by the arresting law enforcement agency when a juvenile has successfully completed a program of diversion or supervision.

Existing law requires the juvenile court to order the petition dismissed if the juvenile satisfactorily completes an informal program of supervision, probation as specified, or a term of probation for any offense. Requires the court to order sealed all records pertaining to that dismissed petition in the custody of the juvenile court, law enforcement agencies, probation department, or the Department of Justice (DOJ). Prohibits the court from sealing a record or dismissing a petition if the petition was sustained based on the commission of a serious or violent felony when the person was 14 years of age or older, unless the finding on the offense was dismissed or reduced to a misdemeanor or a lesser non-serious and non-violent felony. (Welf. & Inst. Code, § 786, subs. (a) & (d).)

Existing law provides that upon the dismissal of the petition, the arrest and other proceedings in the case shall be deemed not to have occurred. (Welf. & Inst. Code, § 786, subd. (b).)

Existing law requires, if a person who has been alleged to be a ward of the juvenile court has their 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 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 DOJ. (Welf. & Inst. Code, § 786, subd. (e).)

Existing law specifies the circumstances under which a sealed juvenile record may be accessed, utilized, or inspected. (Welf. & Inst. Code, § 786, subd. (g).)

Existing law provides that access to or inspection of a sealed juvenile records shall not be considered an unsealing of the records. (Welf. & Inst. Code, § 786, subd. (g)(3).)

Existing law requires, notwithstanding any other law, upon satisfactory completion of a 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, the probation department to seal the arrest and other records in its custody relating to the juvenile's arrest or referral and participation in the diversion or supervision program. 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. Requires the operator of the program to promptly seal the records in its custody relating to the juvenile's arrest or referral and participation in the program. Provides that upon sealing of the records, the arrest or offense giving rise to the person's participation in the program shall be deemed not to have occurred. (Welf. & Inst. Code, § 786.5, subd. (a).)

Existing law defines satisfactory completion of the program of supervision or diversion to mean substantial compliance by the participant with the reasonable terms of program participation that are within the capacity of the participant to perform. Requires a determination of satisfactory or unsatisfactory completion to be made by the probation department within 60 days of completion of the program by the juvenile, or if the juvenile does not complete the program, within 60 days of

determining that the program has not been completed by the juvenile. (Welf. & Inst. Code, § 786.5, subd. (c).)

Existing law provides that the probation department of a county responsible for the supervision of a person may access a record sealed by a probation department for the sole purpose of determining eligibility for informal probation. Requires that the information contained in the sealed record and accessed by the probation department remain in all other respects confidential and not be disseminated to any other person or agency. Provides that access to, or inspection of, a sealed record shall not be deemed an unsealing of the record. (Welf. & Inst. Code, § 786.5, subd. (e).)

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 provides that once the court has ordered the person's records sealed, the proceedings in the case shall be deemed never to have occurred. (Welf. & Inst. Code, § 781, subd. (a).)

Existing law specifies the conditions that must be met in order for a petition to seal records related to a serious or violent felony committed after the person attained the age of 14 to be considered by the court. Specifies the circumstances under which a juvenile record related to a violent or serious felony may be accessed, utilized, or inspected. Provides that the access, inspection, or utilization of a sealed record shall not be deemed an unsealing. (Welf. & Inst. Code, § 781, subd. (a)(1)(D).)

Existing law authorizes the court to access a sealed juvenile record for the limited purpose of verifying the prior jurisdictional status of a ward who is petitioning the court to resume its jurisdiction. Provides that this access is not to be deemed an unsealing of the records. (Welf. & Inst. Code, § 781, subd. (e).)

Existing law authorizes 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. (Welf. & Inst. Code, § 782.)

Existing law authorizes 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, subd. (a).)

Existing law authorizes specific persons or entities to inspect a juvenile case file. (Welf. & Inst. Code, § 827, subd. (a).)

Existing law defines "juvenile case file" as a petition filed in a juvenile court proceeding, reports of the probation officer, and all other documents filed in that case or made available to the probation officer in making the probation officer's report, or to the judge, referee, or other hearing officer, and thereafter retained by the probation officer, judge, referee, or other hearing officer. (Welf. & Inst. Code, § 827, subd. (e).)

Existing law prohibits a case file that is covered by, or included in, an order of the court sealing a record pursuant to Section 781 or 786 from being inspected, except as specified by those provisions of law. (Welf. & Inst. Code, § 827, subd. (g).)

Existing law requires, except as provide by various sealing statutes, a Los Angeles County law enforcement agency to release, upon request, a complete copy of a juvenile police record without notice to or consent from the subject of the record to the following entities: other law enforcement agencies, school district police, child protective service agencies, as defined, the attorney representing the subject of the juvenile record, and the DMV. (Welf. & Inst. Code, § 827.9, subd. (b).)

Existing law requires a Los Angeles County law enforcement agency to release a copy of a juvenile police record to any other person designated by court order upon the filing of a Petition to Obtain Report of Law Enforcement Agency, except as otherwise provided. Requires the court to determine whether the law enforcement agency may release a copy of the juvenile police record to the person or entity that submitted the request after considering the petition and any objections submitted to the court. (Welf. & Inst. Code, § 827.9, subds. (e) & (f).)

Existing law defines, for purposes of section 827.9, a “juvenile police record” to mean records or information relating to the taking of a minor into custody, temporary custody, or detention. (Welf. & Inst. Code, § 827.9, subd. (m).)

Existing law provides that any information gathered by a law enforcement agency relating to the taking of a minor into custody may be disclosed to another law enforcement agency, including a school district police or security department, or to any person or agency that has a legitimate need for the information for purposes of official disposition of a case, except as limited by sealing statutes. Requires the disposition of a taking into custody to be included with any information disclosed if available. (Welf. & Inst. Code, § 828.)

Existing law provides that any person who was under the age of 18 when arrested for a misdemeanor may, during or after minority, 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 if any of the following have occurred: the person was released from custody when arrested without a warrant because the officer is satisfied that there are insufficient grounds for making a criminal complaint against the person arrested; proceedings against the person were dismissed, or the person was discharged, without a conviction; or the person was acquitted. (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, an expungement, 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. Provides that the conviction, arrest, or other proceeding shall be deemed not to have occurred. (Pen. Code, § 1203.45, subd. (a).)

This bill requires a probation department, upon a juvenile’s successful completion of a program of diversion or supervision, to notify an arresting law enforcement agency to seal the arrest records in its custody. Requires the law enforcement agency to seal the arrest records no later than 60 days from the date of notification from the probation department. Requires the arresting law enforcement agency to notify the probation department once that records have been sealed.

This bill requires a public or private agency operating a diversion program to seal the records in its custody relating to the arrest or referral and the participation of the juvenile in the program no later than 60 days from the date of notification from the probation department to seal the records. Requires the agency operating the diversion program to notify the probation department once the records have been sealed.

This bill generally prohibits a law enforcement agency in this state from releasing a copy of a juvenile police record if the subject of the juvenile police record is any of the following:

- A minor who has been diverted by police officers from arrest, citation, detention, or referral to probation or any district attorney, and who is currently participating in a diversion program or has satisfactorily completed a diversion program.
- A minor who has been counseled and released by police officers without an arrest, citation, detention, or referral to probation or any district attorney, and for whom no referral to probation has been made within 60 days of the release.
- A minor who does not fall within the jurisdiction of the juvenile delinquency court under current state law.

This bill requires a law enforcement agency to release, upon request, a copy of a juvenile police record to the minor who is the subject of the juvenile police record and their parent or guardian only if identifying information pertaining to any other juvenile has been removed from the record.

This bill requires the law enforcement agency in possession of the juvenile police records to seal the applicable juvenile police records and all other records in its custody relating to the minor's law enforcement contact or referral and participation in a diversion program.

This bill provides that any juvenile police record created following a law enforcement contact with a minor, as described, shall be considered confidential and deemed not to exist while the minor is completing a diversion program, except to the minor who is the subject of the police record and their parent or guardian. Requires the diversion service provider to notify the referring law enforcement agency of a minor's satisfactory completion of a diversion program within 30 days of the minor's satisfactory completion. Requires the law enforcement agency to seal the juvenile police record no later than 30 days from the date of notification by the diversion service provider of the minor's satisfactory completion of a diversion program.

This bill requires any juvenile police record created following a law enforcement contact with a minor, as described, to be sealed no later than 60 days from the date of verification that the minor has not been referred to probation or any district attorney.

This bill requires any juvenile police record created following a law enforcement contact with a minor, as described, to be sealed immediately upon verification that the minor does not fall within the jurisdiction of the juvenile delinquency court under current state law.

This bill provides that upon sealing of the records under this subdivision, the offense giving rise to the police record shall be deemed to not 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 a law enforcement agency that seals a juvenile police record to notify the applicable diversion service provider to seal the records in the diversion service provider's custody relating to the minor's law enforcement contact or referral and participation in the program.

This bill requires, if the minor is a dependent of the juvenile court, the law enforcement agency to notify the minor's social worker that the juvenile police records have been sealed and that any such records in the social worker's custody relating to the minor's law enforcement contact or referral and participation in a diversion program must also be sealed.

This bill requires a law enforcement agency to notify a minor in writing that their police record has been sealed. Requires the law enforcement agency to notify the minor if it determines that a minor's juvenile police record is not eligible for sealing.

This bill provides that an individual who receives notice from a law enforcement agency that their juvenile police record is not eligible for sealing may request reconsideration of the law enforcement agency's determination by submitting a petition to seal a report of a law enforcement agency and any documentation supporting their eligibility for sealing to the law enforcement agency. Specifies that a sworn statement by the petitioner qualifies as supporting documentation.

This bill provides that police records sealed under the provisions of this bill shall not be considered part of the "juvenile case file," as defined.

This bill provides that diversion service provider records related to the provision of diversion services to a minor, as described, shall not be considered part of a "juvenile case file," as defined. Requires that these records be kept confidential except to the minor who is the subject of the record or information and their parent or guardian. Does not require the release of confidential records created, collected, or maintained by diversion service providers in the course of diversion service delivery.

This bill provides that if any other state or federal law or regulation grants access to portions of, or information relating to, the contents of a diversion service provider record related to diversion, the requirements of that state or federal law or regulation governing access to the record or portions of the record prevail.

This bill requires that the release of any diversion service provider records related to diversion by any party with access under applicable California state or federal laws be governed by those applicable state or federal laws, and are otherwise be prohibited.

This bill requires diversion service providers to release diversion service provider records to the minor who is the subject of the record, or their parent or guardian, upon receiving a signature authorization by the minor, parent, or guardian and using existing internal confidentiality procedures of the service provider.

This bill provides the following definitions:

- "Juvenile police record" refers to records or information relating to the taking of a minor into custody, temporary custody, or detention.
- With respect to a juvenile police record, "any other juvenile" refers to additional minors who were taken into custody or temporary custody, or detained and who also could be considered a subject of the juvenile police record.

- “Diversion” refers to an intervention that redirects youth away from formal processing in the juvenile justice system, including, but not limited to, counsel and release or a referral to a diversion program, as defined.
- “Diversion service provider” refers to an agency or organization providing diversion services to a minor.
- “Diversion service provider record” refers to any records or information collected, created, or maintained by the service provider in connection to providing diversion program services to the minor.
- “Satisfactory completion” refers to substantial compliance by the participant with the reasonable terms of program participation that are within the capacity of the participant to perform, as determined by the service provider.

This bill requires the Judicial Council, in consultation with the California Law Enforcement Association of Record Supervisors (CLEARS), to develop on or before January 1, 2022, forms for distribution by law enforcement agencies to the public to implement the provisions of this bill, including the Petition to Seal Report of Law Enforcement Agency. Requires that the material for the public include information about the persons who are entitled to a copy of the juvenile police record and the specific procedures for requesting a copy of the record if a petition is necessary.

This bill includes legislative findings and declarations.

This bill makes other technical and conforming changes.

COMMENTS

1. Need for This Bill

According to the author:

Welfare and Institutions Code (WIC) § 827.9 and §786.5 need to be updated to ensure the confidentiality of records for youth who have been diverted.

Welfare and Institutions Code § 827.9 determines the confidentiality of “juvenile police records,” or any information gathered by law enforcement agencies related to the taking of a minor into custody, temporary custody, or detention. The code section predated recent juvenile justice reforms that expanded diversion and prohibited certain children from entering the juvenile justice system so it fails to make several distinctions.

WIC § 827.9 fails to distinguish between a record of a youth who is counseled and released, and a youth who avoids arrest because they no longer fall within the jurisdiction of the juvenile court. The code section also fails to distinguish between a juvenile police record that documents a diversion program referral, and a record that documents an arrest and subsequent referral to probation or the district attorney.

WIC § 827.9 allows other law enforcement agencies to obtain a complete copy of the juvenile police record without notice or the consent of the youth who is the subject of the record.

The protections provided by WIC §786.5 also need to be updated in response to these recent reforms. Welfare and Institutions Code §786.5 provides for the sealing of probation records and diversion service provider records for youth who are referred to a diversion program by a probation officer or a prosecutor. But no such protection exists for the juvenile police records and service provider records of youth who are referred to diversion programs directly by police and who avoid contact with the juvenile delinquency court system.

There is ample evidence illustrating that even an arrest increases a youth's chance of further system involvement. In addition, a juvenile police record has far-reaching consequences related to access to education, housing, employment and participation in the military. Without a change to the law, youth who no longer fall under the jurisdiction of the juvenile delinquency court and those who participate in diversion programs will continue to suffer the negative collateral consequences of system involvement.

As recent reforms have expanded diversion programs throughout California, some of the code sections meant to ensure the confidentiality of youth police records have become outdated. AB 2425 will update those code sections to ensure that youth who go through diversion programs are protected from the negative collateral consequences of a police record they weren't aware existed. This bill will prevent records that should remain confidential from being disseminated and used against juveniles who were diverted from the juvenile justice system.

2. Juvenile Record Sealing and Destruction

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, subd. (a).) The person of record may also petition to have records retained by agencies other than the court destroyed, and the request must be granted unless good cause is shown for retention of the records. (Welf. & Inst. Code, § 826, subd. (b).) When records are destroyed pursuant to these provision, the proceedings "shall be deemed never to have occurred." (Welf. & Inst. Code, § 826, subd. (a).) Courts have interpreted the phrase "never to have occurred" to mean that the juvenile proceeding is deemed not to have existed. (*Parmett v. Superior Court (Christal B.)* (1989) 212 Cal.App.3d 1261, 1267.)

Existing law provides two mechanisms for an individual to seal his or her juvenile records related to an offense for which a petition was sustained. (Welf. & Inst. Code §§ 781, 786.) 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. (Welf. & Inst. Code, § 786.) Welfare and Institutions Code section 707(b) offenses—serious and violent felonies—are excluded from the court-initiated sealing process unless the finding has been dismissed or reduced to a misdemeanor or a lesser non-serious and non-violent felony.

Juvenile records that are ineligible for automatic record sealing via Welfare and Institutions Code section 786, may be sealed via Welfare and Institutions Code section 781. Under section 781, a person may petition the court to seal records related to a non-707(b) offense if the person is at least 18 years old, or it has been at least 5 years since the case was closed or the person's last contact with probation, and the court finds that the person has been rehabilitated. (Welf. & Inst. Code, § 781, subd. (a)(1)(A).) In the case of sealing records pertaining to a 707(b) offense, the petitioner must either be 21 years of age and have completed supervision by the Division of Juvenile Justice, or 18 years of age and have completed probation supervision. (Welf. & Inst. Code, § 781, subd. (a)(1)(D).) Records related to a 707(b) offense that was committed after the petitioner attained 14

years of age and for which the person is required to register as a sex offender pursuant to Penal Code section 290.008 are prohibited from being sealed. (Welf. & Inst. Code, § 781, subd. (a)(1)(F).)

The proceedings related to a sealed juvenile record are deemed not to have occurred whether the sealing occurred via the section 781 or 786 process. Both statutes delineate the specific circumstances under which a sealed juvenile record may be accessed, utilized, or inspected, and make clear that this access, utilization, or inspection does not unseal the record.

Additional mechanisms exist for sealing other types of juvenile records. Penal Code section 851.7 provides a process for the sealing of a juvenile misdemeanor arrest record. Welfare and Institutions Code section 793 requires the juvenile court to seal any records related to an offense for which a minor was granted a deferred entry of judgment and during which time the minor performed satisfactorily.

3. Juvenile Case File

Welfare and Institutions Code section 827 authorizes specific entities to inspect a juvenile case file. Juvenile case file is defined as “a petition filed in a juvenile court proceeding, reports of the probation officer, and all other documents filed in that case or made available to the probation officer in making the probation officer’s report, or to the judge, referee, or other hearing officer, and thereafter retained by the probation officer, judge, referee, or other hearing officer.” (Welf. & Inst. Code, § 827, subd. (e).) While existing law generally seeks to protect the confidentiality of juvenile court records, it does provide for limited exceptions to “to promote more effective communication among juvenile courts, family courts, law enforcement agencies, and schools to ensure the rehabilitation of juvenile criminal offenders as well as to lessen the potential for drug use, violence, other forms of delinquency, and child abuse.” (Welf. & Inst. Code, § 827, subd. (b)(1).) To that end, current law provides that any information gathered by a law enforcement agency relating to the taking of a minor into custody may be disclosed to another law enforcement agency, including a school district police department, or to any person or agency that has a legitimate need for the information for purposes of official disposition of a case, except as limited by the sealing statutes discussed in Section 2 of this analysis. (Welf. & Inst. Code, § 828.)

4. Effect of This Bill

This bill contains a number of provisions designed to limit the dissemination of information related to a juvenile who has had contact, however minimal, with the juvenile justice system. First, this bill amends existing law that requires a probation department to seal the arrest records and other records in its custody related to a juvenile’s arrest upon the juvenile’s satisfactory completion of a program of diversion or supervision. Specifically, the bill requires the probation department to notify the arresting law enforcement agency to seal the arrest records in its custody, and requires the arresting law enforcement agency to seal those records within 60 days from the date it received notification from the probation department. Current law requires the operator of a diversion program to seal the records in its custody related to the juvenile’s arrest or referral or participation in the program. This bill requires that sealing to happen within 60 days from the date the operator of the program receives notification from the probation department to seal the records in its custody.

Next, this bill generally prohibits a law enforcement agency in this state from releasing a copy of a juvenile police record if the subject of the juvenile police record is any of the following:

- A minor who has been diverted by police officers from arrest, citation, detention, or referral to probation or any district attorney, and who is currently participating in a diversion program or has satisfactorily completed a diversion program.
- A minor who has been counseled and released by police officers without an arrest, citation, detention, or referral to probation or any district attorney, and for whom no referral to probation has been made within 60 days of the release.
- A minor who does not fall within the jurisdiction of the juvenile delinquency court under current state law.

This bill specifies the timelines for the sealing of a juvenile police record in the three scenarios listed above. For example, for a minor who does not fall within the jurisdiction of the juvenile delinquency court, the bill requires that the juvenile police record be sealed immediately upon verification that the minor does not fall within the jurisdiction of the court. This bill provides that upon sealing of the records, the offense giving rise to the police record shall be deemed not to have occurred.

This bill additionally requires a law enforcement agency to notify a minor in writing that the minor's police record has been sealed. In the event that the agency determines that a minor's juvenile police record is not eligible for sealing, the law enforcement agency must notify the minor in writing of its decision.

This bill provides that police records sealed under the provisions of this bill as well as diversion service provider records are not part of the juvenile case file as defined by Welfare and Institutions Code section 827.

The author argues that recent reforms necessitate additional statutory changes to ensure that juveniles who come into contact with the justice system are not harmed by the record resulting from that contact. Of the juvenile justice reforms enacted by the Legislature in recent years, the most relevant to this bill is SB 439 (Mitchell), Chapter 1006, Statutes of 2018. SB 439 established a minimum age of juvenile court jurisdiction. Specifically, a child under 12 can no longer be adjudicated for alleged criminal conduct unless the child is accused of murder or specified sex offenses. The author contends that juveniles in this situation as well as those who were merely counseled and released or were diverted away from formal processing in the juvenile justice system should be able to have the records associated with that law enforcement contact sealed.

5. Outstanding Issues

This bill raises a number of issues. The author may wish to consider whether it is possible or prudent to amend the bill in such way that maintains the spirit of the bill while also mirroring some of the language in the existing sealing statutes to eliminate the possibility of unintended consequences.

Brady Obligation

Opponents of the bill argue that it prevent prosecutors from fulfilling their constitutionally mandated duties of providing exculpatory evidence to the accused. In a criminal trial, a defendant is

presumed innocent, and the prosecution has the burden to prove beyond a reasonable doubt that the defendant is guilty. In order to ensure a fair trial, the prosecuting attorney has a constitutional and statutory duty to disclose specified information to the defendant. In a landmark case, the U.S. Supreme Court held that the Due Process Clause of the 14th Amendment is violated when a prosecutor in a criminal case withholds material evidence from the accused person that is favorable to the accused. (*Brady v. Maryland* (1963) 373 U.S. 83.) Even in the absence of a specific request, the prosecution has a constitutional duty to turn over exculpatory evidence that would raise a reasonable doubt about the defendant's guilt. (*United States v. Agurs* (1996) 427 U.S. 97, 112.)

The juvenile record sealing statutes referenced earlier in this analysis all include provisions allowing a prosecutor to access, utilize, or inspect sealed juvenile records in order to meet the disclosure requirement imposed by *Brady*. (See Welf. & Inst. Code §§ 793, 781, 786; Pen. Code, § 851.7.) This bill does not include similar language. While recognizing that this bill deals with a different population of juveniles (i.e., juveniles with relatively minor justice system contact or who cannot be prosecuted due to their young age) than the populations covered by the other juvenile record sealing statutes, Members may wish to consider whether the bill should be amended to address the concerns raised.

Victim's Restitution

Opponents of the bill argue that it violates the constitutional rights of crime victims because there is no provision to provide for crime victims to recover restitution. Proposition 8, approved by the voters in 1982, amended the state Constitution to establish the right of crime victims to receive restitution. The relevant text of the initiative provided:

It is the unequivocal intention of the People of the State of California that all persons who suffer losses as a result of criminal activity shall have the right to restitution from the persons convicted of the crimes for losses they suffer. Restitution shall be ordered from the convicted persons in every case, regardless of the sentence or disposition imposed, in which a crime victim suffers a loss, unless compelling and extraordinary reasons exist to the contrary. (Cal. Const., art. I, § 28, subd. (b).)

A victim of a criminal offense committed by a juvenile who incurs an economic loss as a result of the minor's conduct is entitled to receive restitution directly from the minor. (Welf. & Inst. Code, § 730.6, subd. (a)(1).) If there is a sustained petition against the minor, the court is required to consider ordering the minor to pay, in addition to any other penalty provided or imposed by law, a restitution fine and restitution to the victim. (Welf. & Inst. Code, § 730.6, subd. (a)(2).) The restitution fine is set at the discretion of the court and commensurate with the seriousness of the offense. (Welf. & Inst. Code, § 730.6, subd. (b).) Restitution to the victim is imposed in the amount of the losses. (Welf. & Inst. Code, § 730.6, subd. (h)(1).) If the amount of loss cannot be ascertained at the time of sentencing, the restitution order must include a provision that the amount will be determined at the direction of the court at any time during the term of the commitment or probation. The court is required to order full restitution unless it finds compelling and extraordinary reasons for not doing so; inability of the minor to pay is not considered a compelling or extraordinary reason not to impose a restitution order. (*Ibid.*)

Welfare and Institutions Code sections 781 and 786 specify that a minor is not relieved from the obligation to pay victim restitution or restitution fines because the minor's records are sealed. (Welf. & Inst. Code, §§ 781, subd. (g), 786, subd. (h)(1).) This bill does not include similar language. While recognizing that this bill deals with a different population of juveniles (i.e.,

juveniles with relatively minor justice system contact or who cannot be prosecuted due to their young age) than the populations covered by the other juvenile record sealing statutes, Members may wish to consider whether the bill should be amended to address the concerns raised.

Juveniles Who Have Not Yet Completed Diversion Program

The relief afforded in this bill (i.e., the prohibition on a law enforcement agency releasing a copy of a juvenile police record) applies to three categories of juveniles. The first category includes a minor who has been diverted by police officers from arrest, citation, detention, or referral to probation or any district attorney, and *who is currently participating in a diversion program or has satisfactorily completed a diversion program*. Welfare and Institutions Code 786.5 requires, *upon satisfactory completion of a 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, the probation department to seal the arrest and other records in its custody relating to the juvenile's arrest or referral and participation in the diversion or supervision program. Members may wish to consider whether a minor who has not yet completed a diversion program should be included in the provisions of this bill.

6. Argument in Support

Youth Law Center writes:

AB 2425 will ensure that youth who are diverted by police from the juvenile justice system are protected from the negative collateral consequences of a police record. Under current law, youth who participate in diversion programs at the referral of probation departments or prosecutors have more confidentiality protections than youth who are diverted directly by police and make no contact with the juvenile delinquency court system. The protections provided under current law need to be updated to address this gap and to respond to recent reforms.

...

AB 2425 will ensure that youth who do not fall under the jurisdiction of the juvenile delinquency court and those who participate in diversion programs will not suffer the negative collateral consequences of system involvement by:

- Ensuring that records maintained by a diverting law enforcement agency for youth who are currently participating in a diversion program, have successfully completed a diversion program, or who do not fall within the jurisdiction of the juvenile court are not disseminated;
- Ensuring the confidentiality of diversion program service provider records;
- Ensuring the automatic sealing of police records of youth who have satisfactorily completed diversion programming, those who have been counseled and released without a probation referral within 60 days, and youth who do not fall under the jurisdiction of juvenile court under State law.

...AB 2425 is a vital step to ensure that the juvenile justice reforms California has made are not undermined because of a gap in existing law that continues to harm youth.

7. Argument in Opposition

According to the California District Attorneys Association:

Although we have no qualms with the general intention behind the measure, we are concerned about the “and deemed not to exist” portion of the bill, as this phrase would appear to prevent law enforcement and prosecutorial agencies from ever disclosing the existence of underlying information contained in those reports which may be considered *Brady* material, pursuant to *Brady v. Maryland* (1963) 373 U.S. 83. ...

Additionally, AB 2425 would create unintended consequences by taking away current protections for juveniles and would work to their disadvantage. AB 2425 would:

- Prevent thorough investigation in violent offences: Many violent crimes such as murder, rape, and assault are complex in nature and require time to be thoroughly investigated to ensure proper handling of evidence, witnesses, and crime victims. The requirement of mandatory sealing of records within 60 days will lead to rushed investigations resulting in the mishandling of cases.
- Prevent successful rehabilitation and collaborative efforts: Not allowing access to sealed records by the Courts and social workers will affect the ability to assess trauma and triggers for youth resulting in the improper and dangerous placement of youthful offenders. ...
- Violate the constitutional rights of crime victims: There is no provision to provide for crime victims to recover restitution which is mandated in the California Constitution.
- Affect the placement of children in civil matters: Family and Probate courts that are charged with determining custody, guardianship, and adoption of children will not be able to make thorough decisions. The courts will be prevented from accurately determining trauma, needs, and family involvement when determining custodial issues.
- Violate due process: AB 2425 will prevent prosecutors from fulfilling their constitutionally mandated duties of providing exculpatory evidence to mitigate guilt or punishment resulting in a violation of due process for the accused.

CDAAs strongly support rehabilitation and successful reintegration, which are the goals of our juvenile system. However, this bill is flawed with unintended consequences and would work to the disadvantage of juveniles in California.

-- END --