
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: AB 2952 **Hearing Date:** June 19, 2018
Author: Mark Stone
Version: June 11, 2018
Urgency: No **Fiscal:** Yes
Consultant: SJ

Subject: *Juvenile Records: Sealed Records: Access*

HISTORY

Source: Commonweal Juvenile Justice Program

Prior Legislation: SB 312 (Skinner), Ch. 679, Stats. 2017
AB 1945 (Stone), Ch. 858, Stats. 2016
AB 666 (Stone), Ch. 368, Stats. 2015
AB 1038 (Leno), Ch. 249, Stats. 2014

Support: California Attorneys for Criminal Justice; California Public Defenders Association; Juvenile Court Judges of California

Opposition: None known

Assembly Floor Vote: 73 - 0

PURPOSE

The purpose of this bill is to authorize a prosecuting attorney to access, inspect, or utilize a juvenile record that has been sealed under the automatic sealing process in order to meet a statutory or constitutional obligation to disclose favorable or exculpatory evidence to a defendant in a criminal case.

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

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

Existing law prohibits automatic sealing upon probation completion if the petition was sustained on the basis of a specified serious or violent offense committed when the individual was 14 years of age or older, unless the finding on the offense was dismissed or reduced to a lesser non-

serious and non-violent offense. (Welf. & Inst. Code, § 786, subd. (d).)

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

Existing law specifies that “access” shall not be deemed an unsealing of the record and shall not require notice to any other agency. (Welf. & Inst. Code, § 786, subd. (g)(3).)

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 allows a minor to petition the juvenile court to seal his or her record relating to an offense that is considered serious or violent and was committed after the minor attained 14 years of age only in the following circumstances:

- 1) The person was committed to the Department of Corrections and Rehabilitation, has attained 21 years of age, and has completed his or her probation after being released from the Department of Corrections and Rehabilitation; or
- 2) The person was not committed to the Department of Corrections and Rehabilitation, has attained 18 years of age and has completed any period of probation imposed by the court. (Welf. & Inst. Code, § 781, subd. (a)(1)(D)(i)(I) – (II).)

Existing law allows a prosecutor to access the juvenile record relating to an offense that is serious or violent and was committed after the minor attained 14 years of age if the prosecutor believes that the records are necessary to fulfill a disclosure obligation to a defendant in a criminal case. (Welf. & Inst. Code, § 781, subd. (a)(1)(D)(iii).)

This bill provides that a record that has been sealed pursuant to the Welfare and Institutions Code section 786 process may be accessed, inspected, or utilized by the prosecuting attorney in order to meet a statutory or constitutional obligation to disclose favorable or exculpatory evidence to a defendant in a criminal case in which the prosecuting attorney has reason to believe that access to the record is necessary to meet the disclosure obligation.

This bill requires the prosecutor to submit to the juvenile court his or her rationale for believing that access to the information in the record is necessary to meet the disclosure obligation.

This bill requires the juvenile court to notify the person having the sealed record, including the person’s attorney of record, that the court is considering the prosecutor’s request to access the record, and the court must provide that person with the opportunity to respond, in writing or by appearance, to the request prior to making its determination.

This bill requires the juvenile court to review the case file and records that have been referenced by the prosecutor as necessary to meet the disclosure obligation and any response submitted by the person having the sealed record.

This bill requires the court to approve the prosecutor's request to the extent that the court has, upon review of the relevant records, determined that access to a specific sealed record or portion of a sealed record is necessary to enable the prosecuting attorney to comply with the disclosure obligation.

This bill requires the court to state on the record appropriate limits on the access, inspection, and utilization of the sealed record information in order to protect the confidentiality of the person whose sealed record is accessed, if the juvenile court approves the prosecuting attorney's request.

This bill makes other technical amendments.

COMMENTS

1. Need for This Bill

According to the author:

In the last few years California created a system in which juvenile courts can auto-seal upon satisfactory completion of diversion or probation in certain circumstances. By allowing the automatic sealing of records California can remove barriers to success for these young people. This process helps young people have increased access to jobs, housing, and licensure agencies.

However, WIC 786 does not allow access for a Brady Disclosure. A Brady Disclosure is information or evidence that is material to the guilt, innocence, or punishment of the defendant that must be disclosed to the defense. If a prosecuting attorney needs access to a sealed file in order to comply with this disclosure obligation, they would be unable to do so.

AB 2952 allows for access to a sealed record for a Brady disclosure while still protecting the confidentiality rights and needs of the individual whose records have been sealed. This bill will allow a prosecuting attorney to access a sealed record as long as a court has reviewed the request for access. Any response submitted by the affected individual and ruled that access to the sealed file is necessary to meet a disclosure obligation. AB 2952 will protect the needs of the individual while allowing for constitutional needs of the prosecuting attorney.

2. Juvenile Record Sealing

Two mechanisms for sealing a juvenile record exist under current law. One mechanism provides for an automatic sealing of the record if the juvenile completes certain requirements. (Welf. & Inst. Code, § 786.) However, in certain circumstances, a person is required to petition the court to have his or her record sealed. (Welf. & Inst. Code, § 781.)

A person who is not eligible to have his or her juvenile record sealed via the Welfare and Institutions Code section 786 process, may petition the court to have his or her record sealed via the Welfare and Institutions Code section 781. To seal a juvenile court record, a petition must be filed by either the person who is the subject of the record or the probation department. (Welf. & Inst. Code, § 781, subd. (a).) Juvenile court jurisdiction must have lapsed five years previously or the person must be at least 18 years old. (Welf. & Inst. Code, § 781, subd. (a).) The records are not sealed if the person of record has been convicted of a felony or a misdemeanor involving moral turpitude. (Welf. & Inst. Code, § 781, subd. (a).) Once the court has ordered the person's records sealed, the proceedings in the case are deemed never to have occurred, and the person may reply accordingly. (Welf. & Inst. Code, § 781, subd. (a).)

Additional requirements exist for a person who has been found by the juvenile court to have committed one of the offenses enumerated Welfare and Institutions Code section 707(b). Section 781 establishes the circumstances under which a person who has been found to have committed a section 707(b) offense is eligible to have his or her record sealed. (Welf. & Inst. Code, § 781, subd. (a)(1)(D).) Notably, a person's sealed 707(b) records may be accessed, utilized, or inspected by a prosecutor, juvenile court, or probation officer under specified circumstances. (Welf. & Inst. Code, § 781, subd. (a)(1)(D)(ii).)

With respect to a prosecutor's authority to access a sealed 707(b) record because the prosecutor believes that access to the record is necessary to meet a disclosure obligation, the statute provides:

A record relating to an offense listed in subdivision (b) of Section 707 that was committed after attaining 14 years of age that has been sealed pursuant to this section may be accessed, inspected, or utilized by the prosecuting attorney in order to meet a statutory or constitutional obligation to disclose favorable or exculpatory evidence to a defendant in a criminal case in which the prosecuting attorney has reason to believe that access to the record is necessary to meet the disclosure obligation. A request to access information in the sealed record for this purpose shall be submitted by the prosecuting attorney to the juvenile court, and the juvenile court shall approve the request if it determines that access to the record is necessary to enable the prosecuting attorney's compliance with the disclosure obligation. (Welf. & Inst. Code, § 781, subd. (a)(1)(D)(iii).)

As stated above, an automatic sealing process exists under Welfare and Institutions Code section 786. Under section 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, subd. (a).) Upon sealing of the record, the arrest and other proceedings will be deemed to not have occurred. (Welf. & Inst. Code § 786, subd. (b).) A sealed record may be accessed, inspected, or utilized in limited circumstances by the prosecuting attorney, probation department, or court. (Welf. & Inst. Code § 786, subd. (g).) 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. (g)(3).)

Unlike Welfare and Institutions Code section 781, section 786 does not include a provision allowing a prosecutor to access the sealed records if he or she believes that information is subject to a discovery obligation. This bill seeks to add a similar provision, but with additional protections for the person whose record was sealed. Specifically, AB 2952 would require the

court to notify the person with the sealed record upon a request from the prosecutor's office to access the sealed record. In addition, the person with the sealed record would be given an opportunity to respond to the prosecutor's request in writing or by appearance.

3. Prosecutorial Obligations Under *Brady*

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.

The U.S. Supreme Court held in *Brady v. Maryland* that the Due Process Clause of the Fourteenth Amendment is violated when a prosecutor in a criminal case withholds material evidence from the accused person that is materially favorable to the accused. (*Brady v. Maryland* (1963) 373 U.S. 83, 87; see also *Giglio v. United States* (1972) 405 U.S. 150.) *Brady* and *Giglio* impose a duty on prosecutors to disclose to the defendant material evidence that would be favorable to the accused. The Supreme Court in a later case explained “[u]nder the Due Process Clause of the Fourteenth Amendment, criminal prosecutions must comport with prevailing notions of fundamental fairness. We have long interpreted this standard of fairness to require that criminal defendants be afforded a meaningful opportunity to present a complete defense. To safeguard that right, the Court has developed ‘what might loosely be called the area of constitutionally guaranteed access to evidence.’ [Citing *United States v. Valenzuela-Bernal* (1982) 458 U.S. 858, 867.] Taken together, this group of constitutional privileges delivers exculpatory evidence into the hands of the accused, thereby protecting the innocent from erroneous conviction and ensuring the integrity of our criminal justice system.” (*California v. Trombetta* (1984) 467 U.S. 479, 485.)

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.) Further, the *Brady* obligation is not limited to evidence the prosecutor's office is aware of and has in its possession, but includes “evidence known to the others acting on the government's behalf in the case, including the police.” (*Kyles v. Whitley* (1995) 514 U.S. 419, 437.) For *Brady* purposes, exculpatory evidence also includes evidence that could be used to impeach a witness. (*United States v. Bagley* (1985) 473 U.S. 667, 647.) Generally, a specific request is not necessary for parties to receive discovery. However, an informal discovery is required before a court can formally order either the defendant or the prosecutor to comply with a discovery request. (Penal Code, § 1054.5, subd. (b).)

This bill would provide the prosecutor in a criminal trial with the ability to access, inspect, and utilize otherwise sealed records in order to meet a statutory or constitutional obligation to disclose favorable or exculpatory evidence.

4. Argument in Support

According to the bill's sponsor, Commonweal Juvenile Justice Program:

AB 2952 would add a “Brady” provision to Section 786 of the Welfare and Institutions Code, permitting prosecutors to access an “auto-sealed” juvenile record in order to meet a constitutional or statutory obligation to disclose exculpatory evidence to the defense in a criminal case. . . .

Section 786 was added to the Welfare and Institutions Code In 2014 (SB 1038, Leno). It created a process by which the juvenile court must order the sealing of juvenile offense records upon the juvenile's satisfactory completion of probation or diversion. Between 2015-2017, Section 786 was amended to permit access to these "auto sealed" juvenile records under specifically defined circumstances—for example, by courts, prosecutors or probation officers in order to determine an appropriate disposition or to make transfer hearing decisions in a subsequent cases. Brady access was not included in these amendments.

Commonweal...co-sponsored last year's Senate Bill 312 (Skinner), amending WIC Section 781 (sealing by petition) to modify the Proposition 21 lifetime ban on sealing of a juvenile record involving a WIC 707 (b) offense committed over the age of 14. SB 312 included a "Brady" amendment to WIC Section 781, allowing a prosecutor to seek Brady disclosure of information contained in records sealed under the provisions of SB 312.

AB 2952 adds a corresponding Brady provision to the "auto sealing" section, Section 786. The bill responds to the cross-sector demand from prosecution, defense, probation and court interest groups. The bill also responds to a 2017 California appellate decision, holding that Brady access to a WIC 786 sealed record is not permitted, unless and until it becomes explicitly authorized by statute.

...

...AB 2952 adds a reasonable, limited and necessary access provision to WIC Section 786. It establishes a Brady process for Section 786 that includes...protective features.

...AB 2952 represents a fair balance between competing interests that include the constitutional obligations of the prosecution, the right of the defense to exculpatory information and the confidentiality rights and needs of individuals whose records have been sealed.

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