
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair
2019 - 2020 Regular

Bill No: SB 1126 **Hearing Date:** May 20, 2020
Author: Jones
Version: March 23, 2020
Urgency: No **Fiscal:** No
Consultant: SJ

Subject: *Juvenile Court Records*

HISTORY

Source: California Judges Association

Prior Legislation: AB 1214 (Stone), Ch. 991, Stats. 2018
SB 312 (Skinner), Ch. 679, Stats. 2017

Support: Alameda County District Attorney's Office; California District Attorneys Association; California Public Defenders Association; Ella Baker Center for Human Rights; Peace Officers Research Association of California

Opposition: None known

PURPOSE

The purpose of this bill is to authorize specified sealed juvenile records to be accessed, inspected, or utilized by the probation department, the prosecuting attorney, counsel for the minor, and the court for the purpose of assessing the minor's competency in a subsequent proceedings if the issue of competency has been raised.

Existing law provides for specified procedures when a juvenile's competence is at issue. (Welf. & Inst. Code, § 709.)

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 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 order of dismissal, the arrest and other proceedings in the case must be deemed not to have occurred and the person who is 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 provides the circumstances under which a sealed juvenile record may be accessed, inspected, or utilized. (Welf. & Inst. Code, § 786, subd. (g).)

This bill adds to the list of circumstances under which a sealed juvenile record may be accessed, inspected, or utilized. Specifically, this bill permits a juvenile's sealed records to be accessed, inspected, or utilized by the probation department, the prosecuting attorney, counsel for the minor, and the court when a new petition has been filed against the minor in juvenile court for the purpose of assessing the minor's competency in the proceedings on a subsequent petition against the minor if the issue of competency has been raised.

This bill limits access, inspection, or utilization of the sealed records to any prior competency evaluations submitted to the court, whether ordered by the court or not, all reports concerning remediation efforts and success, all court findings and orders relating to the minor's competency, and any other evidence submitted to the court for consideration in determining the minor's competency, including, but not limited to, school records and other test results.

This bill prohibits the information obtained from being disseminated to any other person or agency except as necessary to evaluate the minor's competency or provide remediation services, and shall not be used to support the imposition of penalties, detention, or other sanctions on the minor. Specifies that access to the sealed record under this subparagraph shall not be construed as a modification of the court's order dismissing the petition and sealing the record in the case.

COMMENTS

1. Need for This Bill

According to the author:

Pursuant to Welfare & Institutions Code (WIC) section 709, when a youth is found to be not competent to stand trial, proceedings are suspended, and the petition must be dismissed if the youth is not remediated within a maximum of one year. In this event, the juvenile record must be sealed.

WIC §786 provides certain exceptions to access sealed records under limited circumstances; however, if the same youth mentioned above, has a new petition filed against them and a doubt as to their competency is raised, there is no allowance for the court to access the sealed record.

Not only is access to the old competency records necessary and relevant to the new competency determination, but in most cases where competency is an issue, the youth is high-risk and has special needs. Serious mental health issues or developmental disabilities are prevalent in this population. This population of youth in juvenile court are at greater risk of homelessness, underemployment/unemployment, and dropping out of school.

SB 1126 would allow the probation department, the prosecuting attorney, counsel for the minor, and the Court to access prior competency evaluations submitted to the Court in a previous proceeding. Information obtained through this new allowance still may not be disseminated to any other person or agency, except as necessary to evaluate the minor's competency. This will result in a better-informed evaluation of the person's present incompetence that will lead to better decision making.

Access to the prior sealed record will provide the Court with a fuller understanding of the youth's social history and service history, identification of service gaps, and guidance for appropriate interventions. For example, access to the sealed record may show that the youth has historically struggled with engagement with therapy and school attendance, but that they respond well to another particular intervention. The Court could then convene mental health providers and school personnel to work with probation to develop a plan.

2. Juvenile Competency Statute

The Due Process Clause of the U.S. Constitution prohibits the criminal prosecution of a defendant who is not mentally competent to stand trial. An adult is mentally incompetent if “as a result of mental disorder or developmental disability, the defendant is unable to understand the nature of the criminal proceedings or to assist counsel in the conduct of a defense in a rational manner.” (Pen. Code, § 1367, subd. (a).) While those same factors are considered in evaluating the competency of a minor, a minor's developmental maturity is also considered when determining whether he or she is competent. Unlike an adult, a minor may be found to be incompetent based on developmental immaturity alone. (See *Timothy J. v. Superior Court* (2007) 150 Cal.App.4th 847.)

California's juvenile competency statute, which lays out the procedure and standards for handling incompetent minors before the juvenile court, was enacted in 2018 via AB 1214 (Stone, Ch. 991). AB 1214 revised the then-existing statute to close procedural gaps regarding how a juvenile should be treated if they are found to be incompetent.

3. Juvenile Record Sealing

Existing law provides two mechanisms for an individual to seal his or her juvenile records. (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 are excluded from sealing under Welfare and Institutions Code section 786 unless the finding has been dismissed or reduced to a lesser included offenses not on the 707(b) list.

Welfare and Institutions Code section 786 specifies the circumstances under which a sealed juvenile record may be accessed, inspected, or utilized. The following are some of the circumstances delineated in the statute:

- By the prosecuting attorney, the probation department, or the court for the limited purpose of determining whether the minor is eligible and suitable for deferred entry of judgment or is ineligible for specified programs of supervision.
- By the probation department for the limited purpose of identifying the minor's previous court-ordered programs or placements if a new petition has been filed against the minor for a felony offense to determine the individual's eligibility or suitability for remedial programs or services.
- Upon the prosecuting attorney's motion to initiate court proceedings to determine whether the case should be transferred to a court of criminal jurisdiction, by the probation

department, the prosecuting attorney, counsel for the minor, or the court for the limited purpose of evaluating and determining if such a transfer is appropriate. Access, inspection, or use of a sealed record as provided under this subparagraph shall not be construed as a reversal or modification of the court's order dismissing the petition and sealing the record in the prior case.

- By the county child welfare agency responsible for the supervision and placement of a minor or nonminor dependent for the limited purpose of determining an appropriate placement or service that has been ordered for the minor or nonminor dependent by the court.

4. What This Bill Would Do

The sponsor of this bill argues that Welfare and Institutions Code section 786 needs to be amended to include the circumstance in which a new petition has been filed against a minor in juvenile court and the issue of competency has been raised in order to assess the minor's competency in the proceedings on the new petition. The bill provides that the accessing, inspection, and utilization of those sealed juvenile records may be done by the probation department, the prosecuting attorney, counsel for the minor, and the court. The bill further specifies that access, inspection, or utilization of the sealed records is limited to any prior competency evaluations submitted to the court, whether ordered by the court or not, all reports concerning remediation efforts and success, all court findings and orders relating to the minor's competency, and any other evidence submitted to the court for consideration in determining the minor's competency, including school records and other test results. This bill prohibits the information obtained from being disseminated to any other person or agency except as necessary to evaluate the minor's competency or provide remediation services, and provides that the information obtained shall not be used to support the imposition of penalties, detention, or other sanctions on the minor. Finally, this bill provides that access to the sealed record shall not be construed as a modification of the court's order dismissing the petition and sealing the record in the case.

5. Argument in Support

The California Public Defenders Association writes:

SB 1126 would allow a very limited exception for the juvenile court to examine a sealed juvenile record where the issue of competency to stand trial is raised in a new case before the court. Under current law, juvenile court records are automatically sealed in most cases (excluding Welf. & Instit. Code § 707(b) offenses) whenever probation has been satisfactorily completed, or when a petition has been dismissed. At times, the petition will be dismissed because a youth is incompetent to stand trial. If a subsequent petition is filed against that same youth, the records from the previous case cannot currently be accessed by the court. That means the process must start anew: a doubt as to competency must be declared, qualified expert(s) must be appointed, and either an agreement or a hearing must take place before the court can make a determination whether the youth is incompetent.

SB 1126 would close this gap by allowing the court to examine the evidence in the court record that was the basis for the declaration of incompetency and dismissal. Although we are concerned about the growing number of opportunities

for access to sealed juvenile records, we believe that SB 1126 will further the interests of justice by allowing the court to make a more informed and speedy resolution of the issue in new cases. We believe that the protections contained in SB 1126 prohibiting dissemination except as necessary for evaluation of competency or to provide remediation services, as well as prohibiting the use of any of the information to be used to penalize, detain or impose sanctions on the youth, will strike the appropriate balance of maintaining the confidentiality of those sealed records.

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