
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: SB 1281 **Hearing Date:** April 3, 2018
Author: Stern
Version: February 16, 2018
Urgency: No **Fiscal:** Yes
Consultant: SJ

Subject: *Juvenile Records*

HISTORY

Source: Los Angeles County District Attorney's Office

Prior Legislation: AB 666 (Stone), Ch. 368, Stats. of 2015
AB 1038 (Leno), Ch. 249, Stats. of 2014

Support: California District Attorneys Association; Peace Officers Research Association of California

Opposition: None known

PURPOSE

The purpose of this bill is to: 1) prohibit the destruction of a sealed juvenile record if an offense in that record has made the person subject to a firearm restriction, as specified, until he or she turns 33 years of age and 2) authorize a prosecuting attorney or the Department of Justice (DOJ) to access, inspect, or utilize those records for specified purposes relating to the enforcement of a firearm restriction, as specified.

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. (Welf. & Inst. Code (WIC), § 786, subd. (a).)

Existing law requires 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. (*Id.*)

Existing law requires the court to send a copy of the order to each agency and official named in the order, direct the agency or official to seal its records, and specify a date by which the sealed records shall be destroyed. (*Id.*)

Existing law requires each agency and official named in the order to seal the records in its custody as directed by the order, to advise the court of its compliance, and, after advising the court, to seal the copy of the court's order that was received. (*Id.*)

Existing law permits a sealed to be accessed, inspected, or utilized by specified governmental entities and persons for specified reasons. (*Id.*)

Existing law prohibits a person adjudged a ward of the juvenile court because the person committed a Welfare and Institutions Code section 707(b) serious felony from owning, possessing, or having under his or her custody or control, any firearm until the age of 30 years. A violation is punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding \$1,000, or by both that imprisonment and fine. (Pen. Code, § 29820, subd. (a)-(c).)

Existing law requires the juvenile court, on forms prescribed by the DOJ, to notify the department of persons subject to the above firearm restriction. These forms may be used to determine eligibility to acquire a firearm. (Pen. Code, § 29820, subd. (d).)

This bill provides that if a record contains a sustained petition rendering the person ineligible to own or possess a firearm until 30 years of age pursuant to Penal Code section 29820, then the date the sealed records shall be destroyed is the date upon which the person turns 33 years of age.

This bill adds the following to the list of circumstances under which a sealed juvenile record may be accessed, inspected, or utilized:

- By the prosecuting attorney for the evaluation of charges and prosecution of offenses pursuant to Penal Code section 29820.
- By the DOJ for the purpose of determining if the person is suitable to purchase, own, or possess a firearm, consistent with Penal Code section 29820.

COMMENTS

1. Need for This Bill

According the author:

Welfare and Institutions Code (WIC) section 786 entitles minors to have their juvenile records sealed except under limited circumstances. When the juvenile court orders a petition dismissed and the minor's records sealed under this code section, the arrest is deemed to not have occurred. Under section 786, all records pertaining to the dismissed juvenile petition which are in the custody of law enforcement agencies, the probation department, the Department of Justice, and the juvenile court must be sealed. Section 786 also requires those agencies to destroy the sealed records by a specified date.

Penal Code section 29820 prohibits juveniles from owning or possessing a firearm before the age of 30 if they have been adjudged a ward of the court for

having committed specified offenses. These offenses include assault with a deadly weapon, domestic violence, and criminal threats.

WIC section 786 is incompatible with Penal Code section 29820. While the sealing statute provides for access to and inspection of records for certain specified purposes, it does not contain any exception applicable to the prohibition on owning or possessing firearms. Thus, permitting the destruction of records of those minors who are prohibited from owning or possessing a firearm until the age of 30 would impinge upon the ability to prosecute those persons who violate Penal Code section 29820, rendering the statute unenforceable and potentially resulting in the commission of firearms offenses that could have been prevented.

The purpose of Penal Code section 29820 is to curtail the possession and ownership of firearms by those persons who as juveniles proved to be violent....

The prohibition on firearm possession pursuant to section 29820, subdivision (b), operates as a matter of law. When the Legislature enacted WIC 786 to seal and destroy the records of juveniles, it did not explicitly or implicitly rescind the partial ban on firearms possession, enumerated under Penal Code section 29820, subdivision (b).

In addition, this statute requires the juvenile court to submit forms prescribed by the Department of Justice in order to notify that agency of juvenile offenders who are subject to the firearms restriction. The forms required to be submitted to the department may be used to determine eligibility to acquire a firearm; however, they are insufficient to prove a violation of Penal Code section 29820 for an individual who illegally owns or possesses a firearm....

In *Joshua R.*, the issue was whether Penal Code section 29820 addressing future firearm ownership for minors in his situation conflicted with WIC 786 requiring the juvenile court to seal records upon the successful completion of probation.

...The appellate court recognized that sealing juvenile records may render violations of Penal Code section 29820 more difficult to prosecute. However, the court deferred to the Legislature, stating, "should that be the case, a statutory fix from the Legislature or a revision of the Firearm Form is the appropriate remedy."

This proposal would amend Welfare and Institutions Code section 786 to prohibit a juvenile court from ordering the destruction of records associated with the petition of any juvenile who has been adjudged a ward of the court for committing an offense enumerated in Penal Code section 29820, subdivision (b), until that person attains the age of 33. In light of the 3-year statute of limitations for violations of Penal Code section 29820, and its mandate that juveniles who violate its provisions not be allowed to own or possess a firearm until age 30, the unintended incompatibility between the sealing/destruction requirement in WIC 786 and the firearms prohibition in PC 29820 would best be solved by setting the age of destruction of eligible juvenile records at age 33.

2. Juvenile Record Sealing via WIC § 786

There are two mechanisms for sealing a juvenile record. This bill concerns the WIC § 786 automatic sealing process. If a minor has been found to have satisfactorily completed an informal program of supervision or probation, the juvenile court is required to dismiss the petition and order sealed all records pertaining to the dismissed petition. WIC § 707(b) offenses are excluded from sealing unless the finding has been dismissed, reduced to a misdemeanor, or reduced to a lesser included offense not on the 707(b) list. Upon sealing of the record, the arrest and other proceedings shall be deemed to have never occurred. The court is required to order sealed all records in its custody pertaining to a dismissed petition. However, a sealed record may be accessed, inspected, or utilized in limited circumstances by specified parties, including the prosecuting attorney, probation department, court, or minor's attorney. This access shall not be deemed an unsealing of the record and shall not require notice to any other entity.

3. Firearm Restriction Pursuant to Penal Code section 29820

The firearm restriction that is the subject of this bill is codified in Penal Code section 29820:

- a) This section applies to any person who satisfies both of the following requirements:
 - (1) *The person is alleged to have committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, an offense described in subdivision (b) of Section 1203.073, any offense enumerated in Section 29805, or any offense described in Section 25850, subdivision (a) of Section 25400, or subdivision (a) of Section 26100.*
 - (2) *The person is subsequently adjudged a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code because the person committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, an offense described in subdivision (b) of Section 1203.073, any offense enumerated in Section 29805, or any offense described in Section 25850, subdivision (a) of Section 25400, or subdivision (a) of Section 26100.*
- (b) *Any person described in subdivision (a) shall not own, or have in possession or under custody or control, any firearm until the age of 30 years.*

The statute specifically states that the juvenile court is required to notify the DOJ of persons subject to this firearm restriction, and that the form submitted to the DOJ may be used to determine eligibility to acquire a firearm. The proponents of this bill argue that there has been difficulty prosecuting violations of Penal Code section 29820 when a person's juvenile record has been sealed because the statute does not explicitly permit a district attorney's office to use the firearms restriction form for that purpose.

4. What This Bills Does

This bill seeks to address the difficulty prosecutors have had in prosecuting violations of Penal Code section 29820 when the person's juvenile record has been sealed pursuant to WIC § 786. The relationship between these two code sections and the possible challenges in prosecuting violations of Penal Code section 29820 were laid out in *In re Joshua R.* (2017) 7 Cal. App. 5th 864, 12 Cal. Rptr. 3d 803:

[A]lthough Welfare and Institutions Code section 786 requires sealing the record, the form described in Penal Code section 29820, subdivision (d), is exempt from the requirement of destruction for the limited purpose of determining “eligibility to acquire a firearm.” Thus, while the rest of the record must be sealed and destroyed by the date the court specifies in the order it will issue after remand, the Firearm Form need not be ordered destroyed until Joshua’s 30th birthday.

We believe the current state of the law requires this outcome and furthers the primary purpose of both statutes. The goal behind Welfare and Institutions Code section 786, as we read the statute, is to allow certain juvenile offenders who have successfully completed their probation to lead productive lives without the black mark of a record hanging over their heads for employment and educational purposes. The only purpose of section 29820 is to prevent those who have committed certain offenses as juveniles from owning firearms before they turn 30 years old. Ordering the record sealed, as required by Welfare and Institutions Code section 786, while at the same time allowing the DOJ to maintain the Firearm Form until Joshua turns 30 will serve both purposes.

...The Firearm Form can still be used by the DOJ for firearm eligibility purposes. Sealing the record might make violations more difficult to prosecute, however. Should that be the case, a statutory fix from the Legislature or a revision of the Firearm Form is the appropriate remedy. (7 Cal. App. 5th at 869.)

This bill attempts to address the issue of prosecuting violations of Penal Code section 29820 when person has a sealed juvenile record by amending WIC § 786. First, the bill provides that the date that a person’s juvenile records that were sealed pursuant to WIC § 786 shall be destroyed is the date that the person turns 33 years of age. Second, this bill adds the following to the list of circumstances under which a person’s sealed juvenile records may be accessed, inspected, or utilized:

- By the prosecuting attorney for the evaluation of charges and prosecution of offenses pursuant to Penal Code section 29820.
- By the DOJ for the purpose of determining if the person is suitable to purchase, own, or possess a firearm, consistent with Penal Code section 29820.

5. Argument in Support

The California District Attorneys Association writes:

Generally, if a minor or ward successfully complete probation, that minor is entitles to have his or her case record sealed and later destroyed. However, a minor who is adjudged a ward of the juvenile court because he or she has committed a certain specified serious offense, such as domestic violence, sexual battery or assault with a deadly weapon, is prohibited from owning or possessing any firearm until the age of 30. (Pen. Code § 29820.)

This bill would prohibit the destruction of the juvenile records of a minor subject to the restrictions of Penal Code section 29820 until the minor turns 33 years old, and would also provide that the sealed records may be accessed by prosecutors for purposes of determining whether one of the specified serious offenses occurred. (Pen. Code § 29820.)

This bill is an important step forward in addressing the alarming increase in gun violence on school campuses.

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