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## SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

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**Bill No:** SB 504                      **Hearing Date:** April 21, 2015  
**Author:** Lara  
**Version:** April 6, 2015  
**Urgency:** No                              **Fiscal:** Yes  
**Consultant:** AA

**Subject:** *Court Records: Sealing*

### HISTORY

**Source:** Legal Services for Prisoners with Children; California Public Defenders Association

**Prior Legislation:** AB 1756 (Skinner) – Held in Senate Appropriations, 2014

**Support:** Ella Baker Center for Human Rights; Californians for Safety and Justice; Lawyers' Committee for Civil Rights of the San Francisco Bay Area; Berkeley Youth Alternatives; A New Way of Life Re-Entry Project; Community Works' Project WHAT!; National Association of Social Workers, California Chapter; Justice Now; California Attorneys for Criminal Justice; American Civil Liberties Union of California; American Friends Service Committee; Asian Americans Advancing Justice; All of Us or None; At The Crossroads; Drug Policy Alliance; National Center for Lesbian Rights; Alliance for Boys and Men of Color; National Center for Youth Law; California Coalition for Women Prisoners; RYSE Youth Center; Californians United for a Responsible Budget; Dignity and Power Now; The W. Haywood Burns Institute; City of Richmond; National Employment Law Project; Courage Campaign

**Opposition:** None Known

### PURPOSE

*The purpose of this bill is to 1) limit certain cost liabilities related to sealing juvenile records to persons over the age of 26, as specified; and 2) provide for the automatic sealing of certain juvenile records, as specified.*

#### Fees for Petitions to Seal Juvenile Records

*Current law* provides that a person who was under the age of 18 at the time of the 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 records of arrests resulting in the criminal proceeding and records relating to other offenses charged in the accusatory pleading, whether defendant was acquitted or charges were 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).)

*Current law* states that a person who petitions for an order sealing a record may be required to reimburse the court for the actual cost of services rendered, whether or not the petition is granted and the records are sealed or expunged, at a rate to be determined by the court, not to exceed \$150, and to reimburse the county for the actual cost of services rendered, whether or not the petition is granted and the records are sealed or expunged, at a rate to be determined by the county board of supervisors, not to exceed \$150, and to reimburse any city for the actual cost of services rendered, whether or not the petition is granted and the records are sealed or expunged, at a rate to be determined by the city council, not to exceed \$150. Ability to make this reimbursement shall be determined by the court and shall not be a prerequisite to a person's eligibility under this section. The court may order reimbursement in a case in which the petitioner appears to have the ability to pay, without undue hardship, all or any portion of the cost for services established pursuant to this subdivision. (Pen. Code, § 1203.45, subd. (g).)

*This bill* would limit this payment provision to persons who are 26 years of age and older.

*Current law* provides that the "father, mother, spouse, or other person liable for the support of a minor person, the person himself or herself if he or she is an adult, or the estates of those persons shall, unless indigent, be liable for the cost to the county and court for any investigation related to the sealing and for the sealing of any juvenile court or arrest records pursuant to Section 781 pertaining to that person. The liability of those persons and estates shall be a joint and several liability." (Welf. & Inst. Code, § 903.3(a).)

*This bill* would revise this provision to provide instead that a person who is 26 years of age or older shall, unless indigent, be liable for the cost to the county and court for any investigation related to the sealing and for the sealing of any juvenile court or arrest records pursuant to Section 781 pertaining to that person.

*Current law* provides in the event a petition is filed for an order sealing a record, the father, mother, spouse, or other person liable for the support of a minor, that person if he or she is an adult, or the estate of that person, may be required to reimburse the county and court for the actual cost of services rendered, whether or not the petition is granted and the records are sealed or expunged, at a rate to be determined by the county board of supervisors for the county and by the court for the court, not to exceed \$150. Ability to make this reimbursement shall be determined by the court and shall not be a prerequisite to a person's eligibility under this section. The court may order reimbursement in any case in which the petitioner appears to have the ability to pay, without undue hardship, all or any portion of the cost for services. (Welf. & Inst. Code, § 903.3, subd. (b).)

*This bill* would revise this provision to instead limit it to a person 26 years of age and older.

*Current law* provides that the father, mother, spouse, or other person liable for the support of the minor, the person himself or herself if he or she is an adult, the estate of that person, or the estate of the minor, shall not be liable for the costs described in this section if a petition to declare the minor a dependent child of the court is dismissed at or before the jurisdictional hearing, as specified. (WIC § 903.3(c).)

*This bill* would revise this subdivision to apply instead to any "person."

*This bill* additionally would technically recast the existing provisions in the bill, as specified.

### **Sealing of Juvenile Records**

*Current 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. (Welfare and Institutions Code ("WIC") § 781(a).) *Current 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, and the person may reply accordingly to any inquiry about the events. (*Id.*)

*This bill* would revise this section to instead require courts to seal certain juvenile records automatically by providing that in "any case in which a petition has been filed with a juvenile court to commence proceedings to adjudge a person a ward of the court, the court shall, at the time the jurisdiction of the juvenile court has terminated as to the person, order all records, papers, and exhibits in the person's case in the custody of the juvenile court sealed, including the juvenile court record, minute book entries, and entries on dockets, and any other records relating to the case in the custody of the other agencies, entities, and officials as are named in the order."

*This bill* also would require law enforcement to seal certain juvenile records automatically by requiring that in "any case in which a person is cited to appear before a probation officer or is taken before a probation officer . . . or in any case in which a minor is taken before any officer of a law enforcement agency, and no petition is filed, the probation department or law enforcement agency shall, at the time at which the decision was made to not refer the person to the probation department or to the district attorney's office, seal all records, including records of arrest, relating to the person's case, in the custody of the probation department and law enforcement agency. Once the records have been sealed, the events shall be deemed never to have occurred, and the person may properly reply accordingly to any inquiry about the events, the records of which are sealed."

*This bill* would not change the current sealing limitations applicable to juvenile records concerning serious crimes, as specified, including those established by the passage of Proposition 21 in 2000.

*Current law* provides that unless "for good cause the court determines that the juvenile court record shall be retained, the court shall order the destruction of a person's juvenile court records that are sealed pursuant to this section as follows: five years after the record was ordered sealed, if the person who is the subject of the record was alleged or adjudged to be a person described by Section 601; or when the person who is the subject of the record reaches the age of 38 if the person was alleged or adjudged to be a person described by Section 602, except that if the subject of the record was found to be a person described in Section 602 because of the commission of an offense listed in subdivision (b) of Section 707 when he or she was 14 years of age or older, the record shall not be destroyed. Any other agency in possession of sealed records may destroy its records five years after the record was ordered sealed." (WIC § 781(d).)

*This bill* would delete this provision.

*Current law* provides that the court may access a file that has been sealed pursuant to this section for the limited purpose of verifying the prior jurisdictional status of a ward who is petitioning the court to resume its jurisdiction . . . (relating to dependency pursuant to subdivision section 388(e)). This access shall not be deemed an unsealing of the record and shall not require notice to any other entity.” (WIC § 781(e).)

*This bill* would delete this provision, and provide instead that the “person who is the subject of records sealed pursuant to this section may petition the superior court to permit inspection of the records by persons named in the petition, and the superior court may order the inspection of the records.” *This bill* additionally would provide that these records shall not be open to inspection except as specified.

### RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past eight years, this Committee has scrutinized legislation referred to its jurisdiction for any potential impact on prison overcrowding. Mindful of the United States Supreme Court ruling and federal court orders relating to the state’s ability to provide a constitutional level of health care to its inmate population and the related issue of prison overcrowding, this Committee has applied its “ROCA” policy as a content-neutral, provisional measure necessary to ensure that the Legislature does not erode progress in reducing prison overcrowding.

On February 10, 2014, the federal court ordered California to reduce its in-state adult institution population to 137.5% of design capacity by February 28, 2016, as follows:

- 143% of design bed capacity by June 30, 2014;
- 141.5% of design bed capacity by February 28, 2015; and,
- 137.5% of design bed capacity by February 28, 2016.

In February of this year the administration reported that as “of February 11, 2015, 112,993 inmates were housed in the State’s 34 adult institutions, which amounts to 136.6% of design bed capacity, and 8,828 inmates were housed in out-of-state facilities. This current population is now below the court-ordered reduction to 137.5% of design bed capacity.”( Defendants’ February 2015 Status Report In Response To February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).

While significant gains have been made in reducing the prison population, the state now must stabilize these advances and demonstrate to the federal court that California has in place the “durable solution” to prison overcrowding “consistently demanded” by the court. (Opinion Re: Order Granting in Part and Denying in Part Defendants’ Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (2-10-14). The Committee’s consideration of bills that may impact the prison population therefore will be informed by the following questions:

- Whether a proposal erodes a measure which has contributed to reducing the prison population;
- Whether a proposal addresses a major area of public safety or criminal activity for which there is no other reasonable, appropriate remedy;
- Whether a proposal addresses a crime which is directly dangerous to the physical safety of others for which there is no other reasonably appropriate sanction;

- Whether a proposal corrects a constitutional problem or legislative drafting error; and
- Whether a proposal proposes penalties which are proportionate, and cannot be achieved through any other reasonably appropriate remedy.

## COMMENTS

### 1. Stated Need for This Bill

The author states in part:

Since 2007 the Legislature has charged itself with the duty of reducing the evolving and severe overcrowding in California's prisons. As the Legislature continues to make progress on this initiative, SB 504 arrives as an aid in the ongoing charge to reduce prison populations.

SB 504 endeavors to increase the accessibility of record sealing for adjudicated youth by removing the fee associated with expungement.

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Under current law, the records-sealing fee serves as an obstacle for a youth's successful reentry. Adjudicated youth who seek to clear their records must pay \$150 to petition the court to seal his or her records. Filing the petition is a risk, because payment does not guarantee expungement, yet many of these youth have minor misdemeanors and will be eligible for expungement.

The current law is cost-prohibitive and counterintuitive. Without sealed records, these youth will have limited opportunities and will likely recidivate. When employers and landlords conduct background checks on applicants, a juvenile record can be used as a basis for a denial. Sealing records is the best way to ensure that these youth's past mistakes do not continuously hinder their future opportunities. As long as the fee remains as an obstacle to these youth's rehabilitation, record sealing is an ineffective tool.

...

This bill also streamlines the sealing process into one court hearing at the time that juvenile court jurisdiction is terminated as opposed to two separate events. This consolidation reduces staff time and workload associated with record sealing applications and the associated processes thus further decreasing costs for the state.

Ultimately, SB 504 will improve economic outcomes for California's youth by eliminating a fiscal barrier to reentry and reducing the chances of recidivism. By eliminating the fee for record sealing for youth under twenty-six, SB 504 will also increase young people's ability to positively contribute to our state, which is the ultimate goal of our corrections and rehabilitation system.

## 2. Background: Sealing and Destruction of Juvenile Records

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. (WIC § 781.) In order 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. (WIC § 781.) Juvenile court jurisdiction must have lapsed five years previously or the person must be at least 18 years old. (WIC § 781 (a).) The records are not sealed if the person of record has been convicted of a felony or a misdemeanor involving moral turpitude. (WIC § 781 (a).) No offenses listed in WIC section 707 subdivision (b) may be sealed if the juvenile was 14 years or older at the time of the offense. Additionally, there can be no pending civil litigation involving the incident.

For minors who are convicted of a misdemeanor in adult court, Penal Code Section 1203.45 authorizes sealing of such records. Sealing of the records may be granted if the person has already received, or is eligible for, post-conviction dismissal of the case under existing expungement statutes. (Pen. Code, §§ 1203.4 and 1203.4a.) If relief is granted under Penal Code Section 1203.45, the records are sealed and the conviction, arrest, or other proceeding is deemed never to have occurred. With exceptions, to receive relief the minor can have been convicted of only one charge, or count, even in the same case. (Pen. Code § 1203.45 (d).) Sealing of records, under this provision, is not available to a minor convicted of offenses requiring sex offender registration or of certain Vehicle Code offenses.

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. (WIC § 826.) The person of record also may petition to destroy records retained by other agencies. (WIC § 826 (b).) The request shall be granted unless good cause is shown for retention of the records. (WIC § 826.) When records are destroyed pursuant to the above provision, the proceedings "shall be deemed never to have occurred, and the person may reply accordingly to an inquiry." (WIC § 826 (a).) Courts have held that the phrase "never to have occurred" means that the juvenile proceeding is deemed not to have existed. (*Parmett v. Superior Court (Christal B.)* (1989) 212 Cal.App.3d 1261, at 1267.)

## 3. What This Bill Would Do – Sealing Fees and Procedures

This bill would limit specified existing fees for petitioning the court to file juvenile records to persons 26 years of age or older, as specified.

In addition, this bill would change the process and scope of sealing juvenile records, generally to provide that specified juvenile records would be sealed automatically at the time the jurisdiction of the juvenile court has terminated as to the person, instead of requiring a petition and a court order to have these files sealed, as specified. The bill does not change the sealing laws concerning minors adjudicated to have committed a registerable sex offense or a serious or violent crime, as specified. In addition, the bill does not change when juvenile court records are destroyed.