SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair
2015 - 2016 Regular

Bill No:	AB 899	**Hearing Date:**	June 23, 2015
Author:	Levine		
Version:	April 9, 2015		
Urgency:	No	**Fiscal:**	No
Consultant:	AA		

Subject: ***Juveniles: Confidentiality of Records***

HISTORY

Source: Immigrant Legal Resource Center

Prior Legislation: None

Support: Anti-Defamation League; Asian Americans Advancing Justice – Asian Law Caucus; Asian Pacific Islander Legal Outreach; Bay Area Industrial Areas Foundation; California Civil Rights Law Group; California Conference for Equality and Justice; California Immigrant Policy Center; California Rural Legal Assistance Foundation; Canal Alliance; Catholic Charities of the East Bay; Catholic Legal Immigration Network. Inc.; Center for Gender & Refugee Studies; Central American Resource Center; Centro Legal de la Raza; Chinese for Affirmative Action; Communities Organized for Relational Power in Action; Community United Against Violence; Communities United for Restorative Youth Justice; Dolores Street Community Services; East Bay Community Law Center; Esperanza Immigrant Rights Project; Executive Committee of the Family Law Section of the State Bar of California (FLEXCOM) Fools Mission; Huckleberry Youth Programs; Immigration Center for Women and Children; International Institute of the Bay Area; Juvenile Court Judges of California; Larkin Street Legal Services for Prisoners with Children; Legal Advocates for Children and Youth; Legal Aid Society of San Mateo County; Legal Services for Children; Legal Services for Prisoners with Children; National Center for Lesbian Rights; National Center for Youth Law; National Day Laborer Organizing Network; National Immigration Law Center; Pangea Legal Services; Prison Law Office; Public Counsel; Sacramento Public Defender; San Diego Volunteer Lawyer Program; San Francisco Public Defender; Santa Ana Boys and Men of Color; Santa Clara Public Defender; Silicon Valley De-Bug; Social Justice Collaborative; UCI Law Clinic Immigrant Rights Clinic; Urban Peace Movement; the W. Haywood Burns Institute; Youth Law Center

Opposition: None Known

Assembly Floor Vote: 76 - 1

PURPOSE

The purpose of this bill is to enact a new statute explicitly stating that, declaratory of existing law, confidential juvenile files cannot be disclosed to federal officials absent a court order, as specified.

Current law defines a "juvenile case file" as a petition filed in any 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 his or her report, or to the judge, referee, or other hearing officer, and thereafter retained by the probation officer, judge, referee, or other hearing officer. (Welfare & Institutions Code Section 827(e). All statutory references are to the Welfare & Institutions Code, unless otherwise indicated.)

Current law requires that the "order and findings of the superior court in each case [under the provisions of this chapter] shall be entered in a suitable book or other form of written record which shall be kept for that purpose and known as the 'juvenile court record.'" (Section 825.)

Current law provides that only specified parties, including but not limited to court personnel, a district attorney, a city attorney, a minor who is the subject of the proceeding, the minor's parents or guardian, the attorneys for the parties, and "[a]ny other person who may be designated by court order of the judge of the juvenile court upon filing a petition" are authorized to inspect a juvenile "case file." (Section 827(a).)

Current law provides that a juvenile case file, any portion thereof, and information relating to the content of the juvenile case file, may not be disseminated by the receiving agencies to any persons or agencies, other than those persons or agencies authorized to receive documents pursuant to this section. (Section 827(a)(1)(P)(4).)

Current law provides that a juvenile case file, any portion thereof, and information relating to the content of the juvenile case file, may not be made as an attachment to any other documents without the prior approval of the presiding judge of the juvenile court, unless it is used in connection with and in the course of a criminal investigation or a proceeding brought to declare a person a dependent child or ward of the juvenile court. (Section 827(a)(1)(P)(4).)

Current law allows the disclosure of any information gathered by a law enforcement agency, including the Department of Justice, relating to the taking of a minor into custody (including disposition information about juvenile court proceedings) to be disclosed to another law enforcement agency or to any person or agency which has a legitimate need for the information for purposes of official disposition of a case. (Section 828(a).)

Current law provides that when a petition is sustained for one of the serious or violent offenses listed in Section 676 subdivision (a), specified documents in the juvenile court file (and no others) are available for public inspection: the charging petition, the minutes of the proceeding, and the orders of adjudication and disposition of the court. (Section 676(d).)

This bill would enact a new provision in the Welfare and Institutions Code stating the following:

- "It is the intent of the Legislature in enacting this section to clarify that juvenile court records should remain confidential regardless of the juvenile's immigration status.

Confidentiality is integral to the operation of the juvenile justice system in order to avoid stigma and promote rehabilitation for all youth, regardless of immigration status."

- "Nothing in this article authorizes the disclosure of juvenile information to federal officials absent a court order of the judge of the juvenile court upon filing a petition as provided by subparagraph (P) of paragraph (1) of subdivision (a) of Section 827."

- "Nothing in this article authorizes the dissemination of juvenile information to, or by, federal officials absent a court order of the judge of the juvenile court upon filing a petition as provided by subparagraph (P) of paragraph (1) and paragraph (4) of subdivision (a) of Section 827."

- "Nothing in this article authorizes the attachment of juvenile information to any other documents given to, or provided by, federal officials absent prior approval of the presiding judge of the juvenile court as provided by paragraph (4) of subdivision (a) of Section 827."

- "For purposes of this section, "juvenile information" includes the "juvenile case file," as defined in subdivision (e) of Section 827, and information related to the juvenile, including, but not limited to, name, date or place of birth, and the immigration status of the juvenile that is obtained or created independent of, or in connection with, juvenile court proceedings about the juvenile and maintained by any government agency, including, but not limited to, a court, probation office, child welfare agency, or law enforcement agency."

- "Nothing in this section shall be construed as authorizing any disclosure that would otherwise violate this article."

- "The Legislature finds and declares that this section is declaratory of existing law."

This bill states uncodified legislative intent language "that juvenile records remain confidential in order to serve the compelling interest of avoiding stigma and promoting rehabilitation for juveniles. It is not the intent of the Legislature to attempt to resist federal officials."

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:

> The purpose of this bill is to protect minors from improper disclosures of their juvenile records, regardless of their immigration status. Under existing California law, juvenile court case files of dependent children and wards are to be kept confidential, except from certain specified parties or pursuant to a court order upon filing a petition in juvenile court.
>
> Although current California law does not exempt federal officials, including immigration officials, from having to petition the court to obtain juvenile case information and files, many local counties disagree, citing that there is no explicit statement in state law that federal officials must follow this process. Consequently, some local and state agencies are automatically sharing information with federal immigration officials, without following the procedure enumerated in California Welfare & Institutions Code § 827, which requires filing a separate petition with the juvenile court requesting the files.

This is problematic because the petitioning procedure in Welfare & Institutions Code § 827 recognizes that juvenile courts have exclusive authority to determine the extent to which juvenile records should be released to third parties given the court's sensitivity and expertise in this area. Further, the procedure provides the minor, his/her parents and his/her attorney (among others) the opportunity to contest the sharing of confidential information that may be contrary to his/her rehabilitation and best interests.

This bill makes absolutely clear that federal officials, like all other parties seeking access to juvenile court files who are not actively involved in the proceedings, must file a petition pursuant to Welfare & Institutions Code § 827 in order to request access to a youth's juvenile case file.

2. Background – Juvenile Records Confidentiality; Federal Officials

Existing legislative intent states that "juvenile court records, in general, should be confidential." (Section 827(b)(1).) This presumption reflects a long recognized public policy of protecting the confidentiality of juvenile proceedings and records. (*T.N.G. v. Superior Court* (1971) 4 Cal.3d 767, 778.) Only those persons who are listed in Section 827 are authorized to inspect records in a juvenile case file without a court order. The juvenile court has exclusive authority to determine the extent to which confidential juvenile records may be released and, if it grants a petition, also has exclusive control over "the time, place and manner of inspection." (*In re Gina S.* (2005) 133 Cal.App.4th 1074, 1081-1082.) Parties who are authorized to inspect the juvenile court file are not automatically authorized to copy documents in the file. (*Id*, at p. 1082.) The juvenile court has the authority to not only deny disclosure of juvenile court records, but also to order the return of all copies of juvenile case file documents. (*Id*, at p. 1084-85.) The juvenile court, not the person who is in possession of juvenile court records, has the authority to decide to whom juvenile court records may lawfully be released. (*In re Keisha T.* (1995) 38 Cal. App. 4th 220, 234.)

The California Rules of Court provide guidance to juvenile courts about whether to allow disclosure of juvenile court records. (See *In re Keisha T., supra,* 38 Cal.App.4th at p. 235.) Rule 1423(b) provides, in relevant part, "In determining whether to authorize inspection or release of juvenile court records, in whole or in part, the court must balance the interests of the child and other parties to the juvenile court proceedings, the interests of the petitioner, and the interests of the public. The court must permit disclosure of, discovery of, or access to juvenile court records or proceedings only insofar as is necessary, and only if there is a reasonable likelihood that the records in question will disclose information or evidence of substantial relevance to the pending litigation, investigation, or prosecution." Information about a minor that is gathered in the course of a juvenile court proceeding – whether a name, date of birth, country of birth, or charging information – is protected, as are documents that are found either in the juvenile case file or created in connection with a juvenile case. (*T.N.G. v. Superior Court, supra,* 4 Cal. 3d at pp. 780-81.)

These protections extend to law enforcement agencies that are not directly connected to the juvenile court. The fact that information is stored within a law enforcement record is irrelevant to the issue of confidentiality because law enforcement records about juveniles "become equivalent to court records and remain under the control of the

juvenile court." (*T.N.G., supra,* 4 Cal. 3d at 781; see also Cal. Ct. Rule 5.552(a)(4) [providing that the juvenile case file includes "[d]ocuments relating to a child concerning whom a petition has been filed in juvenile court that are maintained in the office files of probation officers"].) Even documents that relate to minors who are not detained are subject to the protections of Section 827. (*People v. Espinoza* (2002) 95 Cal.App.4th 1287, 1315; *Wescott v. County of Yuba* (1980) 104 Cal. App. 3d 103, 108.) The court in *Westcott* reasoned that disclosure of information about a law enforcement encounter with juveniles was inappropriate because of "[t]he stigma and ridicule which could occur if a third party is given the report," which outweighed the interests of the requester. (*Wescott v. County of Yuba, supra,* at p. 108.) "The mere fact that the minors, in this case, were not taken into formal custody does not reduce the potentially harmful effect the release of the police report could have on them. (*Ibid.*)

The Legislature has reiterated its intent to protect the confidentiality of information related to juvenile court proceedings held by law enforcement agencies. Section 827.9 provides that, "It is the intent of the Legislature to reaffirm its belief that records or information gathered by law enforcement agencies relating to the taking of a minor into custody, temporary custody, or detention (juvenile police records) should be confidential." California Rule of Court 5.552(f) requires the filing of JV-575 with the juvenile court to obtain information gathered by a law enforcement agency regarding the taking of a minor into custody.

A 2012 advisory by the Stanford University Law School Immigrants' Rights Clinic warned about what it characterized as…

> . . . the troubling practice of San Mateo County Probation Department ("Probation") disclosing confidential information about youth in the juvenile justice system to Immigration and Customs Enforcement ("ICE"). Probation obtains this confidential information during initial meetings with youth, when the youth are typically alone and unrepresented by counsel. Because of the relationship of trust between youth and Probation, youth often disclose very personal information, including their address, parents' names and employment, previous delinquency dispositions, developmental issues, school history, medical records, descriptions of home life, and immigration status or other immigration related information, such as foreign place of birth. When Probation suspects that a youth lacks immigration status, Probation has shared the youth's confidential information with ICE, without first obtaining the juvenile court's permission, as it is required to do under § 827 of the California Welfare and Institutions Code.

In the *T.N.G.*case, the court used the police and probation departments of San Francisco to exemplify how other law enforcement agencies should protect the confidentiality of juvenile court information. "[T]he police and probation departments of San Francisco do not reveal detention records to third parties without court order. Welfare and Institutions Code section 827 reposes in the juvenile court control of juvenile records and requires the permission of the court before any information about juveniles is disclosed to third parties by any law enforcement official. The police department of initial contact may clearly retain the information that it obtains from the youths' detention, but it must receive the permission of the juvenile court pursuant to section

827 in order to release that information to any third party, including state agencies." (*T.N.G. v. Superior Court, supra,* 4 Cal.3d, at pp. 780-781.)

According to the author, the Bureau of Immigration and Customs Enforcement (ICE) "issued 211 detainers for youth in juvenile detention centers in California [during a 21 month period] in Fiscal Years 2012 and 2013 [*http://trac.syr.edu*.] . . . This means that at a minimum, 211 breaches of confidentiality occurred during the reporting period. These numbers do not, however, reflect all violations of confidentiality since many youth who are reported to ICE do not receive a detainer. Accordingly, it is likely that far more than 211 violations of juvenile confidentiality occurred."

The Bureau of Immigration and Customs Enforcement (ICE) appears to be prohibited by federal regulation from obtaining and using confidential information. (5 C.F.R. 2635.703(a).) The regulation forbids "'the improper use of nonpublic information to further [an employee's] own private interest . . . by knowing unauthorized disclosure.' Nonpublic information is defined as information the employee gains by reason of federal employment and 'knows or reasonably should know has not been made available to the general public . . . [or] been disseminated to the general public.' (5 C.F.R. 2635.703(b).)" (*Chuyon Yon Hong v. Mukasey* (9th Cir. 2008) 518 F.3d 1030, 1035.)

Information obtained in violation of federal regulations or state law is subject to exclusion from deportation proceedings. The United State Supreme Court has observed (in dicta) that while exclusion of illegally obtained evidence from deportation proceedings is infrequent, there are several cases where exclusion is required: when the internal regulations of the immigration agency have been violated (*See INS v. Delgado* (1984) 466 U.S. 210) and when there are "egregious violations of Fourth Amendment or other liberties that might transgress notions of fundamental fairness and undermine the probative value of the evidence obtained." (*Immigration & Naturalization Service v. Lopez-Mendoza* (1984) 468 U.S. 1032, 1050-1051.)

According to the author, "the issues addressed by the bill are the subject of two pending appeals in the First Appellate District: *The People v. Y.V.*, No. A142355 (Cal. App. 1st Dist. filed July 1, 2014); *The People v. C.H.*, No. A141758 (Cal. App. 1st Dist. filed May 1, 2014). This bill will clarify that the probation department cannot disclose confidential juvenile information to federal immigration officials without going through the petitioning process in § 827, as it failed to do in both cases."

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