
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair
2019 - 2020 Regular

Bill No: AB 1537 **Hearing Date:** June 11, 2019
Author: Cunningham
Version: April 25, 2019
Urgency: No **Fiscal:** No
Consultant: SJ

Subject: *Juvenile Records: Inspection: Prosecutorial Discovery*

HISTORY

Source: California District Attorneys Association

Prior Legislation: AB 2952 (Stone), Ch. 1002, Stats. 2018
AB 2659 (Cooley), held in Assembly Appropriations in 2018
SB 312 (Skinner), Ch. 679, Stats. 2017
AB 666 (Stone), Ch. 368, Stats. 2015
SB 1038 (Leno), Ch. 249, Stats. 2014

Support: Unknown

Opposition: None known

Assembly Floor Vote: 76 - 0

PURPOSE

The purpose of this bill is to expand a prosecutor's ability to request to access, inspect, or use specified sealed juvenile records if the prosecutor has reason to believe that the record may be necessary to meet a legal obligation to disclose favorable or exculpatory evidence to a defendant in a criminal case.

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 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, and any other agencies and public officials as the petitioner alleges to have custody of the records. (Welf. & Inst. Code, § 781, subd. (a)(1)(A).)

Existing law requires the court to 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, if the court finds that since the termination of jurisdiction or action, the person has not been convicted of a felony or of any misdemeanor involving moral turpitude and that rehabilitation has been attained to the satisfaction of the court. 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 properly reply accordingly to any inquiry about the events, the records of which are ordered sealed. (Welf. & Inst. Code, § 781, subd. (a)(1)(A).)

Existing law provides that a petition to seal the record or records relating to a serious or violent felony that was committed after the person attained 14 years of age may only be filed or considered by the court under the following circumstances:

- The person was committed to the Department of Corrections and Rehabilitation, Division of Juvenile Justice (DJJ), has attained 21 years of age, and has completed his or her probation after being released from DJJ; or
- The person was not committed to DJJ, 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 specifies the circumstances under which a prosecutor may access, inspect, or utilize a sealed juvenile record relating to a serious or violent felony that was committed after the person attained 14 years of age in a subsequent proceeding. (Welf. & Inst. Code, § 781, subd. (a)(1)(D)(ii).)

Existing law allows a prosecutor to access, inspect, or utilize a sealed juvenile record relating to a serious or violent felony that was committed after the person attained 14 years of age if the prosecutor believes that the records are necessary to meet a statutory or constitutional obligation to disclose favorable or exculpatory evidence to a defendant in a criminal case. Requires a request to access information in the sealed record for this purpose to be submitted by the prosecuting attorney to the juvenile court. Requires the juvenile court to approve the request if it determines that access to the record is necessary to enable the prosecuting attorney's compliance with the disclosure obligation. Provides that if the juvenile court approves the prosecuting attorney's request, the court must 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 pursuant to this clause. (Welf. & Inst. Code, § 781, subd. (a)(1)(D)(iii).)

This bill requires that the prosecutor's request to the juvenile court to access information in the sealed juvenile record in order to meet the disclosure obligation include the prosecutor's rationale for believing that access to the information in the record may be necessary to meet the disclosure obligation and the date by which the records are needed.

This bill requires the juvenile 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 provides that a ruling to allow the prosecuting attorney to access, inspect, or utilize a sealed juvenile record in order to meet its disclosure obligation does not affect whether the information is admissible in a criminal or juvenile proceeding, and clarifies that the provisions related to a prosecuting attorney's disclosure obligation do not impose any discovery obligations on a prosecuting attorney that do not already exist.

This bill provides that a prosecuting attorney's ability to access, inspect, or utilize a sealed juvenile record in order to meet its disclosure obligation does not apply to juvenile case files pertaining to matters within the jurisdiction of the juvenile dependency court.

Existing law provides that access, inspection, or utilization of a sealed record shall not be deemed an unsealing of the record and shall not require notice to any other entity. (Welf. & Inst. Code, § 781, subd. (a)(1)(D)(iv).)

Existing law requires the court, if a minor satisfactorily completes an informal program of supervision, probation as specified, or a term of probation, to order the petition dismissed and 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 (DOJ). (Welf. & Inst. Code, § 786, subd. (a).)

Existing law provides that upon the order of dismissal under the court-initiated sealing process, the arrest and other proceedings in the case shall 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 if the petition was sustained based on the commission of a serious or violent felony when the person was 14 years of age or older, unless the finding on the offense was dismissed or reduced to a misdemeanor or a lesser non-serious and non-violent felony. (Welf. & Inst. Code, § 786, subd. (d).)

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

Existing law allows a prosecutor to access, inspect, or utilize a juvenile record if the prosecutor believes that access to the record is necessary to meet a statutory or constitutional obligation to disclose favorable or exculpatory evidence to a defendant in a criminal case. Requires a request to access information in the sealed record for this purpose, including the prosecutor's rationale for believing that access to the information in the record is necessary to meet the disclosure obligation, to be submitted by the prosecuting attorney to the juvenile court. (Welf. & Inst. Code, § 786, subd. (g)(1)(K).)

This bill requires that the prosecutor's request to the juvenile court to access information in the sealed juvenile record in order to meet the disclosure obligation include the date by which the records are needed.

This bill provides that a ruling to allow the prosecuting attorney to access, inspect, or utilize a sealed juvenile record in order to meet its disclosure obligation does not affect whether the information is admissible in a criminal or juvenile proceeding, and clarifies that the provisions related to a prosecuting attorney's disclosure obligation do not impose any discovery obligations on a prosecuting attorney that do not already exist.

This bill provides that a prosecuting attorney's ability to access, inspect, or utilize a sealed juvenile record in order to meet its disclosure obligation does not apply to juvenile case files pertaining to matters within the jurisdiction of the juvenile dependency court.

Existing law provides that access to, or inspection of, a sealed record 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 allows any person who has been arrested for a misdemeanor, with or without a warrant, while a minor, may, during or after minority, petition the court in which the proceedings occurred or, if there were no court proceedings, the court in whose jurisdiction the arrest occurred, for an order sealing the records in the case, including any records of arrest and detention, if any of the following occurred:

- The person was released because charges were not feasible or desirable, as specified;
- The charges were dismissed without a conviction; or,
- The person was acquitted. (Pen. Code, § 851.7, subd. (a).)

Existing law provides that if a petition for the sealing of a juvenile arrest record is granted, the arrest, detention, and any further proceedings in the case shall be deemed not to have occurred, and the petitioner may answer accordingly any question relating to their occurrence. Prohibits the sealing of a juvenile arrest record for specified offenses, including offenses requiring registration as a sex offender pursuant to Penal Code section 290. (Pen. Code, § 851.7, subs. (b), (e).)

This bill allows a prosecutor to access, inspect, or use the sealed records of a minor who was arrested for a misdemeanor and subsequently no charges were brought against the minor, the proceedings were dismissed, or the minor was acquitted of the charge 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 may be necessary to meet the disclosure obligation. Requires a request to access information in the sealed record for this purpose, including the prosecutor's rationale for believing that access to the information in the record may be necessary to meet the disclosure obligation and the date by which the records are needed, to be submitted by the prosecuting attorney to the juvenile court. 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. 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. Requires the juvenile court, if it approves the prosecuting attorney's request, 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. Provides that a ruling allowing disclosure of information does not affect whether the information is admissible in a criminal or juvenile proceeding. Clarifies that the provisions related to a prosecuting attorney's disclosure obligation do not impose any discovery obligations on a prosecuting attorney that do not already exist.

Existing law provides that if a minor has performed satisfactorily during the period in which deferred entry of judgment was granted, at the end of that period the charge or charges in the wardship petition shall be dismissed and the arrest upon which the judgment was deferred shall be deemed never to have occurred and any records in the possession of the juvenile court shall be sealed. Provides that the prosecuting attorney and the probation department of any county shall have access to these sealed records for the limited purpose of determining whether a minor is eligible for another deferred entry of judgment. (Welf. & Inst. Code, § 793, subd. (c).)

This bill allows a prosecutor to access, inspect, or use the sealed records of a minor who performed satisfactorily in a deferred entry of judgment program 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 may be necessary to meet the disclosure obligation. Requires a request to access information in the sealed record for this purpose, including the prosecutor's rationale for believing that access to the information in the record may be necessary to meet the disclosure obligation and the date by which the records are needed, to be submitted by the prosecuting attorney to the juvenile court. 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. 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. Requires the juvenile court, if it approves the prosecuting attorney's request, 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. Provides that a ruling allowing disclosure of information does not affect whether the information is admissible in a criminal or juvenile proceeding. Clarifies that the provisions related to a prosecuting attorney's disclosure obligation do not impose any discovery obligations on a prosecuting attorney that do not already exist.

COMMENTS

1. Need for This Bill

According to the author:

Statutes allowing juvenile records to be sealed create a potential conflict with a prosecutor's due process discovery obligations if someone in the prosecutor's office is aware of information in the sealed record of a witness that should be discovered. Only two of the four most commonly used juvenile sealing statutes permit prosecutors to access the records to meet potential discovery obligations. Moreover, seeking access to records under the current versions of the other two statutes has resulted in lengthy delays in criminal cases because juvenile courts are so behind in responding to motions for access to the records.

AB 1537 amends two statutes (W&I Code, § 793 and Pen. Code, § 851.7) to allow prosecutors to seek access to, inspect, or use sealed juvenile records in order to meet a statutory or constitutional obligation to disclose favorable or exculpatory evidence to a defendant in a criminal case. It also adds language to two other juvenile sealing statutes that already allow the prosecutors to seek such access to address the problem of excessive delays in getting cases to trial when

witnesses have sealed juvenile records, to ensure new discovery obligations are not created by the amendments, and to distinguish between access to and admissibility of the records.

2. Juvenile Record Sealing Statutes

Existing law provides two mechanisms for an individual to seal his or her juvenile records related to an offense for which a petition was sustained. (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—serious and violent felonies—are excluded from sealing unless the finding has been dismissed or reduced to a lesser included offenses not on the 707(b) list.

Juvenile records that are ineligible for automatic record sealing via Welfare and Institutions Code section 786, may be sealed via Welfare and Institutions Code section 781. Under section 781, a person may petition the court to seal records related to a non-707(b) offense if the person is at least 18 years old, or it has been at least 5 years since the case was closed or there person's last contact with probation, and the court finds that the person has been rehabilitated. (Welf. & Inst. Code, § 781, subd. (a)(1)(A).) In the case of sealing records pertaining to a 707(b) offense, the petitioner must either be 21 years of age and have completed supervision by the Division of Juvenile Justice, or 18 years of age and have completed your probation supervision. (Welf. & Inst. Code, § 781, subd. (a)(1)(D).) Records related to a 707(b) offense that was committed after the petitioner attained 14 years of age and for which the person is required to register as a sex offender pursuant to Penal Code section 290.008 are prohibited from being sealed. (Welf. & Inst. Code, § 781, subd. (a)(1)(F).)

Additional mechanisms exist for sealing other types of juvenile records. Penal Code section 851.7 provides a process for the sealing of a juvenile misdemeanor arrest record. Welfare and Institutions Code section 793 requires the juvenile court to seal any records related to an offense for which a minor was granted a deferred entry of judgment and during which time the minor performed satisfactorily.

3. The Prosecutor's *Brady* Obligation

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.

In a landmark case, the U.S. Supreme Court held that the Due Process Clause of the 14th Amendment is violated when a prosecutor in a criminal case withholds material evidence from the accused person that is 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 on prosecutors a duty to disclose to the defendant material evidence that would be favorable to the accused. In a subsequent case, the U.S. Supreme Court explained:

“Under 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.’ 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 (citation omitted).)

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.) Generally, a specific request is not necessary for parties to receive discovery, however, an informal discovery request must be made before a party can request formal court enforcement of discovery.

Current law permits a prosecutor to access, inspect, or utilize juvenile records sealed pursuant to Welfare and Institutions Code sections 781 and 786 in order to meet the disclosure requirement imposed by *Brady*. Similar language is absent from the statute permitting record sealing for misdemeanor juvenile arrests and the statute requiring record sealing following a minor’s satisfactory completion of a deferred entry of judgment program. This bill amends Penal Code section 851.7 and Welfare and Institutions Code section 793 to permit a prosecuting attorney to access, inspect, or utilize juvenile records sealed pursuant to those statutes in order to meet the prosecuting attorney’s 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 may be necessary to meet the disclosure obligation.

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