
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: AB 1617 **Hearing Date:** June 26, 2018
Author: Bloom
Version: June 11, 2018
Urgency: No **Fiscal:** Yes
Consultant: SJ

Subject: *Juvenile Case Files: Inspection*

HISTORY

Source: Judicial Council of California

Prior Legislation: AB 462 (Atkins), Ch. 462, Stats. 2017
SB 312 (Skinner), Ch. 679, Stats. 2017
AB 1945 (Stone), Ch. 858, Stats. 2016

Support: Unknown

Opposition: None known

Assembly Floor Vote: Not relevant

PURPOSE

The purpose of this bill is to enable certain parties in appellate proceedings challenging a juvenile court order to access the confidential juvenile case files that the juvenile court previously authorized them to access.

Existing law requires that the superior court's order and findings in juvenile cases be entered in the form of written record and known as the "juvenile court record." (Welf. & Inst. Code, § 825.)

Existing law provides that a juvenile case file may be inspected by the following persons and agencies:

- court personnel;
- a district attorney, a city attorney, or city prosecutor authorized to prosecute criminal or juvenile cases under state law;
- the minor who is the subject of the proceeding;
- the minor's parent or guardian;
- the attorneys for the parties, judges, referees, other hearing officers, probation officers, and law enforcement officers who are actively participating in criminal or juvenile proceedings involving the minor;
- the county counsel, city attorney, or any other attorney representing the petitioning agency in a dependency action;
- the superintendent or designee of the school district where the minor is enrolled or attending school;

- members of specified child protective agencies;
- the State Department of Social Services;
- members of children’s multidisciplinary teams, persons, or agencies providing treatment or supervision of the minor;
- a judge, commissioner, or other hearing officer assigned to a family law case with issues concerning custody or visitation, or both, involving the minor;
- a family court mediator assigned to a family law case involving the minor;
- a court-appointed evaluator or a person conducting a court-connected child custody evaluation, investigation, or assessment;
- counsel appointed for the minor in a family law case;
- a statutorily authorized or court-appointed investigator who is actively participating in a guardianship case involving a minor;
- a local child support agency for the purpose of establishing paternity and establishing and enforcing child support orders;
- juvenile justice commissions;
- the Department of Justice, to carry out its duties relating to the repository for sex offender registration;
- any other person who may be designated by court order of the judge of the juvenile court upon filing a petition; and
- a probation officer who is preparing a report on behalf of a person who was in the custody of the Department of Corrections and Rehabilitation, Division of Juvenile Facilities and who has petitioned the Board of Juvenile Hearings for an honorable discharge. (Welf. & Inst. Code, § 827, subd. (a)(1).)

Existing law defines “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. (Welf. & Inst. Code, § 827, subd. (e).)

Existing law provides that if a juvenile case file, or any portion of the file, is privileged or confidential pursuant to state or federal law, then the requirements of that state or federal law prevail. (Welf. & Inst. Code, § 827, subd. (a)(3)(A).)

Existing law provides that unless a person is authorized to inspect a juvenile case file without a court order, the person seeking access to a juvenile case file must petition the juvenile court for the information. (Welf. & Inst. Code, § 827, subd. (a)(3)(A).)

Existing law prohibits the juvenile court from releasing information protected by state law or federal law and prohibits disclosure if it is detrimental to the safety, protection, or physical or emotional well-being of a child who is directly or indirectly connected to the juvenile case that is the subject of the petition. (Welf. & Inst. Code, § 827, subd. (a)(3)(A).)

Existing law requires the court, before the release of a juvenile case file, to afford due process to all interested parties, including a notice and opportunity to file an objection. (Welf. & Inst. Code, § 827, subd. (a)(3)(B).)

Existing law provides that a juvenile case file 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 authorized to receive the information and may not be attached to any other document 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. (Welf. & Inst. Code, § 827, subd. (a)(4).)

This bill provides that an individual, other than the above-described specified persons authorized to inspect a juvenile case file, who files a notice of appeal or writ of petition challenging a juvenile court order, or who is a respondent in that appeal or writ proceeding, may, for purposes of that appeal or writ proceeding, inspect and copy any records in a juvenile case file to which the individual was previously granted access by the juvenile court.

This bill provides that, with regard to an individual who, for purposes of an appeal or writ proceeding, seeks to inspect and copy records in a juvenile case file to which the individual was previously granted access by the juvenile court, as described above, both of the following apply:

- 1) The requirements in Welfare and Institutions Code Section 827(a)(3) imposing additional restrictions on inspections of juvenile case records, except that a petition seeking release may be filed in, and release of records ordered by, either the juvenile court or the court of appeals; and
- 2) The requirements in Welfare and Institutions Code Section 827(a)(4) prohibiting the dissemination of juvenile case file records.

This bill specifies that a court of appeal is not authorized to release any record that a juvenile court did not previously authorize to be released

COMMENTS

1. Need for This Bill

According to the author:

By eliminating the necessity for special procedures to authorize the individuals' access to these records, the proposal would increase efficiency and access to justice while reducing costs and delays for the parties and the courts. The amendment would also clarify the procedure for providing the individuals with access to any additional records from the juvenile case file in these circumstances.

AB 1617 would permit individuals (who have previously [been] granted access by the juvenile court) to inspect and receive copies of case files for the purposes of participating in an appeal.

2. Persons Authorized to Inspect Juvenile Case Records

Existing law recognizes the importance of maintaining the confidentiality of juvenile case files in order to protect the privacy rights of the child. Under section 827, the juvenile court has "exclusive authority to determine whether and to what extent to grant access to confidential juvenile records" to unauthorized persons. (*In re Elijah S.* (2005) 125 Cal.App.4th 1532, 1541.) Consequently, as a general matter, a person who wishes to inspect a juvenile case file must

petition the juvenile court for authorization by showing good cause for the release of the information. California Rule of Court 5.552(d) provides for this process as follows:

- the court must review the petition and, if petitioner does not show good cause, deny it summarily;
- if petitioner shows good cause, the court may set a hearing and the clerk must notice the hearing to certain persons and entities;
- whether or not the court holds a hearing, if the court determines that there may be information or documents in the records sought to which the petitioner may be entitled, the juvenile court judicial officer must conduct an in camera review of the juvenile case file and any objections and assume that all legal claims of privilege are asserted;
- in determining whether to authorize inspection or release of juvenile case files, 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;
- if the court grants the petition, the court must find that the need for discovery outweighs the policy considerations favoring confidentiality of juvenile case files;
- the court may permit disclosure of juvenile case files only insofar as is necessary, and only if petitioner shows by a preponderance of the evidence that the records requested are necessary and have substantial relevance to the legitimate need of the petitioner;
- if, after in-camera review and review of any objections, the court determines that all or a portion of the juvenile case file may be disclosed, the court must make appropriate orders, specifying the information to be disclosed and the procedure for providing access to it; and
- the court may issue protective orders to accompany authorized disclosure, discovery, or access.

This statutory scheme reflects the strong public policy of confidentiality of juvenile records and the legislative determination that the juvenile court has both the “sensitivity and expertise” to make decisions about access to juvenile records. (*J.E. v. Superior Court* (2014) 223 Cal.App.4th 1329, 1337, nested quotation marks and citations omitted.)

However, the Legislature has authorized certain categories of persons to inspect juvenile case files without a court order. Existing law provides that a juvenile’s case file may only be inspected by specified entities, including: court personnel; prosecutors and various other attorneys; judges, referees, and other hearing officers; mediators; probation officers; law enforcement officers; investigators; the Superintendent of the minor’s school district; agencies that provide services to the minor or the minor’s family; and certain individuals designated by the court. (Welf. & Inst. Code § 827, subd. (a)(1).) An authorized person may not disclose information from the juvenile file to an unauthorized person without a court order. (Welf. & Inst. Code § 827, subd. (a)(4) & (5); *J.E. v. Superior Court* (2014) 223 Cal.App.4th 1329, 1337.)

3. Parties to Whom This Bill Would Apply

This bill would authorize an additional category of people to access juvenile case files without a court order: people who are entitled to seek review of certain orders in juvenile court proceedings or who are respondents in such appellate proceedings when, for purposes of those appellate proceedings, they seek access and copy those records to which they were previously given access by the juvenile court. According to the Judicial Council:

[S]ome individuals who have been authorized to participate in juvenile proceedings and have the right to seek review of certain orders in those proceedings or who have a right to respond to an appeal or petition seeking such review, are not entitled to inspect or copy any records in a juvenile case file under section 827. This situation may occur, for example, when the appellant is a family member or other person who filed a petition seeking de facto parent status and is appealing the denial of that petition, or who filed a petition under Welfare and Institutions Code section 388 to change, modify, or set aside a juvenile court order on grounds of change of circumstance or new evidence and is appealing the denial of that petition. In these cases, the juvenile courts and Courts of Appeal decide, on a case-by-case basis, what records the parties to the appellate proceeding may receive. Doing so takes time and resources for the parties in the appellate proceedings, for the juvenile court, and for the Court of Appeal. It also results in delays and, particularly when the appellant and/or petitioner is self-represented, procedural dismissals of these appeals without consideration of their merit. (Judicial Council of California, *Judicial Council-Sponsored Legislation: Access to Juvenile Case File for Purposes of Appellate Proceedings* (2017) at p. 3.)

This bill would provide that either the juvenile court or the Court of Appeal may release the records when the individual who was previously granted access to the records petitions either court for the re-release of the records. This petition would be a ministerial request for a previously identified set of records, and thus would not require any additional exercise of discretion on the part of the court ordering the re-release of the records, as the juvenile court would have previously made that decision. This assures that juvenile courts continue to use their sensitivity and expertise in determining which records may be released, but also enables the Courts of Appeal to directly re-release those records.

The intent of the bill is to streamline access the juveniles case files by a narrow subset of parties—those the juvenile court previously designated as eligible to access the files—in order to hasten the resolution of the appeal of juvenile court decisions. The prohibition on the dissemination of the records by receiving parties that is applicable in the juvenile court setting would continue to apply to the records released in this context. Thus, the bill seems to present minimal risk of eroding confidentiality protections, while offering the benefit of enabling individuals in appellate proceedings to forgo special procedures to obtain records to which they were already privy.

4. Amendments

Based on ongoing discussions between the author's office, the sponsor, and stakeholder groups expressing concerns, the author has proposed to amend the bill. Before this bill was amended to its current form, some parties expressed concerns regarding the appropriateness of enabling the Courts of Appeal to release juvenile case files. Child Welfare Directors Association (CWDA), which initially took an “oppose unless amend” position, wrote:

[...] The appellate court is not the court of original jurisdiction and does not have the expertise nor the manpower to sift through what could be thousands of pages of case documents to figure out what is appropriate to provide access to. The appellate court could—potentially due to lack of time, personnel or expertise—

grant access to individual documents or the entire case file that are inappropriate to release and ultimately do harm to the child. [...]

Although the most recent amendments to the bill caused CWDA to remove its opposition, the sponsor asserts that the current version of the bill effectively does not change the law. The sponsor and author have instead opted for amendments that had previously been proposed by CWDA.

The proposed amendments strike all references to the “court of appeal” in Welfare and Institutions Code section 827(a)(3)(A) in the current version of the bill. The proposed amendments also strike the entirety of Welfare and Institutions Code section 827(a)(6)(B) and 827(a)(6)(C) of the current version of the bill. Instead, the following italicized language is added to Welfare and Institutions Code section 827(a)(6)(A):

An individual other than a person described in subparagraphs (A) to (P), inclusive, of paragraph (1) who files a notice of appeal or writ of petition challenging a juvenile court order, or who is a respondent in that appeal or writ proceeding, may, for purposes of that appeal or writ proceeding, inspect and copy any records in a juvenile case file to which the individual was previously granted access by the juvenile court pursuant to subparagraph (Q) of paragraph (1), including any records or portions thereof that are made a part of the appellate record. The requirements of paragraph (3) shall continue to apply to any other record, or portion thereof, in the juvenile case file or made a part of the appellate record. The requirements of paragraph (4) shall continue to apply to files received pursuant to this paragraph. The Judicial Council shall adopt rules to implement this paragraph.

5. Argument in Support

According to the Judicial Council of California, the bill’s sponsor:

AB 1617. . . would clarify that people who are entitled to seek review of certain orders in juvenile proceedings or who are respondents in such appellate proceedings may, for purposes of those appellate proceedings, access and copy those records to which they were previously given access by the juvenile court.

By addressing the importance of making sure parties to appeals have access to appropriate juvenile case files, litigation will be more streamlined and further writs and appeals can be kept to a minimum. The bill would ensure that the people who have a right to appeal the case have the right information to help their appeal.

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