SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair
2015 - 2016 Regular

Bill No:	AB 666	**Hearing Date:**	June 23, 2015
Author:	Mark Stone		
Version:	June 11, 2015		
Urgency:	No	**Fiscal:**	Yes
Consultant:	AA		

Subject: ***Juveniles: Sealing of Records***

HISTORY

Source: Commonweal, The Juvenile Justice Program

Prior Legislation: SB 1038 (Leno), Chapter 249, Statutes of 2014

Support: American Civil Liberties Union of California; Aspiranet; California Attorneys for Criminal Justice; California Coalition for Youth; California Public Defenders Association; Center on Juvenile and Criminal Justice; Juvenile Court Judges of California; League of Women Voters of California; Legal Services for Prisoners with Children; National Association of Social Workers, California Chapter; Youth Law Center

Opposition: California District Attorneys Association; California State Sheriffs' Association

Assembly Floor Vote: 42 - 33

PURPOSE

The purpose of this bill is to make a number of clarifications and revisions concerning the sealing of juvenile records and the dismissal of juvenile cases, as specified.

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. (Welf. & Inst. Code, § 781, subd. (a).)

Current law states 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. (Welf. & Inst. Code, § 781, subd. (a).)

Current law prohibits, notwithstanding any other provision of law, the court from ordering a person's records sealed in any case in which the person has been found to have committed an offense listed in section 707(b), which are offenses for which certain minors could be tried in adult court under specified circumstances. (Welf. & Inst. Code, § 781, subd. (a).)

Current law permits the court to access a file that has been sealed for the limited purpose of verifying the prior jurisdictional status of the ward who is petitioning the court to resume its jurisdiction, as specified. This access is not to be deemed an unsealing of the records. (Welf. & Inst. Code, § 781, subd. (e).)

Current law allows a judge of the juvenile court in which a petition was filed to dismiss the petition, or to set aside the findings and dismiss the petition, if the court finds that the interests of justice and the welfare of the person who is the subject of the petition require that dismissal, or if it finds that he or she is not in need of treatment or rehabilitation. The court has jurisdiction to order dismissal or setting aside of the findings and dismissal regardless of whether the person who is the subject of the petition is, at the time of the order, a ward or dependent child of the court. (Welf. & Inst. Code, § 782.)

Current law states that any person who was under the age of 18 when he or she was arrested for a misdemeanor may 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, in certain circumstances. (Pen. Code, § 851.7.)

Current law provides that a person who was under the age of 18 at the time of 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 arrest records and records relating to other offenses charged in the accusatory pleading, whether the defendant was acquitted, or the charges 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 provides that, if a minor satisfactorily completes an informal program of supervision, probation as specified, or a term of probation for any offense other than a specified serious, sexual, or violent offense, then the court shall order sealed all records pertaining to that dismissed petition in the custody of the juvenile court, except that the prosecuting attorney and the probation department of any county shall have access to these records after they are sealed for the limited purpose of determining whether the minor is eligible for deferred entry of judgment. 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. This access shall not be deemed an unsealing of the record and shall not require notice to any other entity. (Welf. & Inst. Code, § 786.)

This bill would revise this provision to provide the following:

1) Require the court to send a copy of the order to each agency and official named therein, directing the agency to seal its records and specifying a date thereafter to destroy the sealed records.

2) State that each such agency and official shall seal the records in its custody as directed by the order, advise the court of its compliance and thereupon seal the copy of the court's order or sealing of records that was received.

3) Require the court to provide notice to the minor and minor's counsel that it has ordered the petition dismissed and the record sealed in the case, including notice of the minor's right to nondisclosure of the arrest and proceedings as specified.

4) State that upon the court's order of dismissal of the petition, 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 properly reply accordingly to any inquiry by employers, educational institutions or other persons or entities regarding the arrest and proceedings in the case.

5) Provide that satisfactory completion of informal supervision or another term of probation shall be deemed to have occurred if the person has no new finding of wardship or conviction for a felony offense for or a misdemeanor involving moral turpitude during the period of supervision or probation and if he or she has not failed substantially to comply with the reasonable orders of supervision or probation that are within his or her capacity to perform.

6) Prohibit the extension of the period of supervision or probation solely for the purpose of deferring or delaying eligibility for dismissal of the petition and sealing of the records.

7) State that an unfulfilled order or condition of restitution that can be converted to a civil judgment shall not be deemed to constitute unsatisfactory completion of supervision or probation.

8) Specify that a record that has been ordered sealed by the court under this section may be accessed, inspected or used only under the following circumstances:

    a) By the prosecuting attorney and the probation department for the limited purpose of determining whether the minor is eligible for deferred entry of judgment or for a program of supervision, as defined.

    b) By the court for the limited purpose of verifying the prior jurisdictional purpose of a ward who is petitioning the court to resume its jurisdiction.

    c) If a new petition has been filed against a minor for a felony offense, by the probation department for the limited purpose of identifying the minor's previous court-ordered programs or placements, and in that event solely to determine the individual's eligibility or suitability for remedial programs or services. The information obtained under this exception shall not be disseminated to other agencies or individuals, except as necessary to implement referral to a remedial program or service, and shall not be used to support the imposition of penalties or detention or other sanctions upon the minor.

    d) By the person whose record has been sealed, upon his or her request and petition to the court to permit inspection of the records.

9) State that access to or inspection of a sealed record authorized by these provisions shall not be deemed an opening of the record and shall not require notice to any other agency.

10) Require the Judicial Council to adopt rules of court, and shall make available appropriate forms, providing for the standardized implementation of this section by the juvenile courts.

11) Revise the exclusion of 707(b) offenses from sealing under this section to specify that the offense must have been committed when the minor was 14 years of age or older unless the finding on that offense was dismissed or was reduced to a lesser offense that is not listed in subdivision (b) of Section 707.

12) State the finding of the Legislature that in order to protect the privacy of children who have had their juvenile delinquency court records sealed, it is necessary that related records in the custody of law enforcement agencies, the probation department, or any other public agency also be sealed.

13) Authorize the court, in making its order to seal the record and dismiss the instant petition pursuant to this section, include an order to seal a record relating to, or to dismiss, any prior petition or petitions that have been filed or sustained against the individual and that appear to the satisfaction of the court to meet the sealing and dismissal criteria otherwise described in this section.

This bill would enact a new law to provide that, "(n)otwithstanding any other law, a record sealed pursuant to Section 781 or 786 may be accessed by a law enforcement agency, probation department, court, or other state or local agency that has custody of the sealed record for the limited purpose of complying with data collection or data reporting requirements that are imposed by other provisions of law. However, no personally identifying information from a sealed record accessed under this subdivision may be released, disseminated, or published by or through an agency, department, court, or individual that has accessed or obtained information from the sealed record."

This bill would provide that "(n)otwithstanding any other law, a court may authorize a researcher or research organization to access information contained in records that have been sealed pursuant to Section 781 or 786 for the purpose of conducting research on juvenile justice populations, practices, policies, or trends, if both of the following are true:

1) The court is satisfied that the research project or study includes a methodology for the appropriate protection of the confidentiality of an individual whose sealed record is accessed pursuant to this subdivision.

2) Personally identifying information relating to the individual whose sealed record is accessed pursuant to this subdivision is not further released, disseminated, or published by or through the researcher or research organization.

This bill provides that for the purposes of this section "personally identifying information" 6 has the same meaning as in Section 1798.79.8 of the Civil Code.

This bill makes legislative findings concerning limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution "to demonstrate the interest protected by this limitation and the need for protecting that interest: ¶ In order to protect the privacy of children who have had their juvenile delinquency court records sealed, it is necessary that related records in the custody of law enforcement agencies, the probation department, or any other public agency also be sealed."

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:

> AB 666 clarifies and amends Section 786 of the Welfare and Institutions Code (WIC), added last year by Senator Leno's SB 1038. SB 1038 provided for the automatic sealing of court records and auto-dismissal of charges upon satisfactory completion of diversion or probation by juveniles with non-violent/non-serious ("non 707") offenses. Since enactment of SB 1038 problems have arisen with the implementation of the statute. AB 666 seeks break down the barriers to achieving the goals set out in SB 1038.
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> Specifically AB 666 does the following:
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> - Requires Judicial Council to adopt rules and forms to assure the consistent and standardized implementation of the new sealing law established by SB 1038.
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> - Provides better guidance to courts in determining what constitutes "satisfactory completion" of probation or supervision, which is a requirement for auto-sealing.
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> - Includes arrest and probation records in the sealing requirement.
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> - States that an unfulfilled order or condition of restitution that can be converted to a civil judgment shall not delay the sealing of a record.
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> - Permits probation departments to unseal records for the limited purpose of identifying the juvenile's previous court-ordered programs or placements only for the purpose of determining eligibility of suitability for programs for services.

2. Sealing and Destruction of 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. (Welf. & Inst. Code, § 781.) A person may have his or her juvenile court records sealed by petitioning the court "five years or more after the jurisdiction of the juvenile court has terminated over [the] person adjudged a ward of the court or after [the] minor appeared before a probation officer, or, in any case, at any time after the person has reached the age of 18." (Welf. & Inst. Code, § 781, subd. (a).) Once the court has ordered the 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. (Ibid.) The relief consists of sealing all of the records related to the case, including the arrest record, court records, entries on dockets, and any other papers and exhibits. The court must send a copy of the order to each agency and official named in the petition for sealing records, directing the agency to seal its records and stating the date thereafter to destroy the sealed records. (Ibid.)

A minor's juvenile court case is dismissed and the court records are sealed without a petition from the minor if the minor has been found to have satisfactorily completed an informal program of supervision or probation, except in specified cases. (Welf. & Inst. Code, § 786.) Upon sealing of the record, the arrest upon which the judgment was deferred shall be deemed to have never occurred. (Ibid.) The court shall order sealed all records in its custody pertaining to a petition dismissed. (Ibid.) The prosecuting attorney and the probation department of any county shall have access to these records after they are sealed for the limited purpose of determining whether the minor is eligible for deferred entry of judgment. The court may access the sealed file for the limited purpose of verifying the prior jurisdictional status of a ward who is petitioning the court to resume its jurisdiction. (Ibid.)

3. Statement in Support

Commonweal, the Juvenile Justice Program, is the sponsor of this bill. It submits in part:

> Implementation of the auto-sealing and dismissal provisions of Section 786 under SB 1038 has been inconsistent among California courts, . . . Some courts are asking for prior probation department approval to initiate the SB 1038 sealing process or are requiring that the minor ask the court to proceed with sealing and dismissal, even though the process in qualifying cases was intended to be self-initiated by the Court. AB 666 would require the Judicial (Council) to adopt rules and forms to assure the consistent and standardized implementation of Section 786. . . .
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> . . . A key goal of SB 1038 was to open doors to employment and higher education for former juvenile offenders who have met their justice system obligations. To achieve this goal, arrest and probation records need to be included in the scope of records that the court orders to be sealed upon dismissing the charges. AB 666 adds this protection, which also brings Section 786 into alignment with the older sealing statute, WIC Section 781. . . .
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> SB 1038 (and section 786) require the court to seal the record and dismiss the petition in qualifying cases where the minor has satisfactorily completed a term of diversion or probation. However, SB 1038 did not define "satisfactory completion". AB 666 provides guidance to courts by adding a definition of "satisfactory completion". The definition now provided in AB 666 was circulated and essentially approved by multiple stakeholders prior to being amended into the bill, including the Juvenile Court Judges Association, the Chief Probation Officers of California and defense counsel organizations. . . .
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> AB 666 retains the SB 1038 limitation that the record cannot be sealed under Section 786 where the presenting offense is a serious or violent felony listed in subdivision (b) of Section 707 (offenses that are the basis for prosecution of juveniles in adult criminal court). This same exclusion appears in Section 781, the extant "sealing by petition" code section. AB 666 conforms to Section 786 to Section 781 in this respect by excluding minors whose 707 (b) offense was committed at age 14 or older. In addition, AB 666 adds the qualification that where the court has subsequently dismissed or reduced the 707 (b) finding to a

lesser (non 707) offense, the individual retains eligibility for sealing under section 786 if the other performance criteria for sealing are met. This responds to a request from the Sixth Appellate Court to make this statutory change, articulated in *In re G.Y.*, 234 Cal. App. 4th 1196 (2015). In the *G.Y.* decision, a minor adjudicated in Juvenile Court for making a victim threat with a firearm (without an actual shooting) was found to have committed a 707 (b) assault crime. After being sentenced to the Santa Clara County juvenile probation ranch, G.Y. enlisted in the military where he was promoted to the rank of sergeant and received three Army commendation medals for outstanding service in Iraq and Kuwait. Subsequently, the Court reduced the 707 (b) findings to misdemeanors, and G.Y. petitioned for sealing of the juvenile records in the case. The appeals court concluded that under Section 781 it lacked the authority to seal the record, even though the 707 charges had been reduced by the trial court to misdemeanors. The Court directed this request to the Legislature: "Though appellant provided overwhelming evidence of his rehabilitation, the juvenile court properly concluded that it had no authority to seal his juvenile records pursuant to Welfare and Institutions Code section 781. We respectfully invite the Legislature to enact legislation that would remedy this unjust result." AB 666 proposes this remedy, at least in relation to the Court's authority to seal the record under Section 786. . .

The legal effect of sealing a record and dismissing a petition under Section 786 is that the arrest is then deemed not to have occurred. AB 666 removes a superfluous and confusing reference to deferred entry of judgment, inadvertently retained in Section 786. It also clarifies the legal effect of sealing and dismissal of the petition at subdivision (b) to state that "Upon the Court's order of dismissal of the petition, 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 properly reply accordingly to any inquiry by employers, educational institutions or other persons or entities". In part this change is intended to make it even clearer that the person whose petition is dismissed is legally entitled not to disclose the arrest and prosecution in subsequent employment, education and other re-entry situations. While stated a bit differently, this Section 786 right of nondisclosure mirrors the protection provided after sealing of the record in petitioned cases covered by Section 781. . . .

. . . AB 666 would permit the court to order the sealing and dismissal of prior petitions the individual may have, so long as the court determines that the person has met all other Section 786 criteria for sealing and dismissal in relation to the prior petitions. This discretion to seal priors would apply only in cases where the current petition (in an active probation case) is before the court. It would not apply retroactively by requiring the Court to initiate sealing of records in older cases. The added burden of sealing priors in a case that is already before the court under Section 786 is viewed as minimal. Defense counsel in particular have identified the need to be able to seal prior petitions in qualifying cases in order to meet the fundamental SB 1038 policy goal of opening pathways to employment and education for children who have completed their justice system obligations. The authorization to seal prior petitions, added at a new subdivision (e), is entirely discretionary and would be applied only if the court determines that the prior petitions merit sealing by meeting all WIC 786 sealing requirements. . . .

> To ensure that data reporting will not be disrupted by a growing volume of sealed juvenile case records, AB 666 adds a new Section 787 to the WIC, providing that law enforcement, probation and courts can access information in sealed records in order to make data reports required by other provisions of law, provided that personally identifying information obtained from sealed records for this reason cannot be released, disseminated or published by the acquiring agency. . . .
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> IN SUMMARY, we have endeavored with AB 666 to resolve a range of concerns . . . to ensure the uniform, fair and effective implementation of SB 1038. The fundamental policy reform underlying AB 666 has already been approved by the Senate, the Assembly and the Governor. That policy is that a minor who has satisfactorily completed his or her justice system obligations should, under the Juvenile Court law, not be hindered by the justice system record when it comes to seeking employment, enrolling in higher education or enlisting in the military. AB 666 is a clean-up and clarification measure that provides practical guidance to courts and allied justice agencies on implementation of the policy direction established last year by SB 1038. . . .

4. Statement in Opposition

The California District Attorneys Association, which opposes this bill, submits:

> Welfare and Institutions Code section 202(b) sets forth the key purposes of delinquency jurisdiction:
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> > Minors under the jurisdiction of the juvenile court as a consequence of delinquent conduct shall, in conformity with the interests of public safety and protection, receive care, treatment, and guidance that is consistent with their best interest, that holds them accountable for their behavior, and that is appropriate for their circumstances.
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> In determining what "care, treatment, and guidance" is best for a minor, a simple rule of thumb applies (and is articulated throughout the W&I Code) -- the more information the court and other involved agencies have, the more likely the juvenile justice system as a whole will be able to tailor the services provided to the minor to ensure that those services address the minor's specific needs. Restricting access to potentially important information about a minor's prior contacts with law enforcement or the juvenile justice system in this manner is tantamount to telling a diagnosing physician that she cannot consider a patient's entire medical record in determining a treatment plan.
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> In an effort to extend the confidentiality of juvenile records so that delinquency contacts from years past do not burden people unduly in the future, this bill will in fact have the unfortunate effect of preventing the juvenile court, probation, and other agencies from accurately assessing what level of intervention and treatment is appropriate for a minor who has multiple contacts with the system. This is certainly not of benefit to the minor, and is contrary to "conformity with the interests of public safety and protection."

5. Related Bills

This Committee heard and passed SB 504 (Lara) earlier this year (5-2). That bill has been narrowed since leaving this Committee to limiting fees associated with sealing juvenile records and other potential liabilities, and to prohibiting an unfulfilled order of restitution that has been converted to a civil judgment from barring the sealing of a juvenile record. The bill would also prohibit outstanding restitution fines and court-ordered fees from being considered when assessing whether a petitioner's rehabilitation has been attained to the satisfaction of the court and from barring the sealing of a record. SB 504 is now in the Assembly.

AB 989 (Cooper), also before the Committee, amends the same statute as this bill (AB 666) concerning the dismissal of juvenile petitions. As now in print AB 666 is broader than AB 989. The authors of these bills may wish to add chaptering amendments to harmonize these provisions.

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