

Date of Hearing: May 19, 2020
Counsel: Nikki Moore

ASSEMBLY COMMITTEE ON PUBLIC SAFETY

Reginald Byron Jones-Sawyer, Sr., Chair

AB 2425 (Mark Stone) – As Amended May 4, 2020

SUMMARY: Prohibits the release of information by a law enforcement or probation agency when a juvenile has participated in or completed a diversion program. Specifically, **this bill:**

- 1) Imposes a duty on a probation department to notify an arresting law enforcement agency, and public or private agency operating a diversion program, to seal the arrest records of a minor referred to the agency by a probation officer or a prosecutor in lieu of the filing of a petition to adjudge the juvenile a ward of the juvenile court. Requires the arresting law enforcement agency to seal the records in its custody relating to the arrest no later than 60 days from the date of notification by the probation department and notify the probation department that the records have been sealed.
- 2) States that a law enforcement agency shall not release a copy of a juvenile police record in the following cases:
 - a) A minor who has been diverted by police officers from arrest, citation, detention, or referral to probation or any district attorney, and who is currently participating in a diversion program or has satisfactorily completed a diversion program;
 - b) A minor who has been counseled and released by police officers without an arrest, citation, detention, or referral to probation or any district attorney, and for whom no referral to probation has been made within 60 days of the release; and,
 - c) A minor who no longer falls within the jurisdiction of the juvenile delinquency court under current state law.
- 3) States that a law enforcement agency shall release, upon request, a copy of a juvenile police record to the minor who is the subject of the juvenile police record and their parent or guardian only if identifying information pertaining to any other juvenile has been removed from the record.
- 4) A law enforcement agency shall notify a minor in writing that their police record has been sealed under the provisions of this bill, and if the law enforcement agency determines that a minor's juvenile police record is not eligible for sealing, the agency shall notify the minor in writing of that determination. Provides a juvenile the right to appeal a finding of ineligibility for sealing.
- 5) Defines "diversion" to mean "an intervention that redirects youth away from formal processing in the juvenile justice system, including a referral to a diversion program, as defined, or an intervention that redirects youth who can no longer be prosecuted under

current state law.”

- 6) Defines “diversion service provider” to mean “an agency or organization providing diversion services to a minor.”
- 7) Defines “satisfactory completion” to mean “to substantial compliance by the participant with the reasonable terms of program participation that are within the capacity of the participant to perform, as determined by the service provider.”
- 8) Repeals the provision which states that an evaluation of the efficacy of the procedures for the release of police records containing information about minors as described in this section shall be conducted by the juvenile court and law enforcement in Los Angeles County and the results of that evaluation shall be reported to the Legislature on or before December 31, 2006.
- 9) Provides that the Judicial Council, in consultation with the California Law Enforcement Association of Record Supervisors (CLEARs), shall develop forms for distribution by law enforcement agencies to the public to implement this section. States that the forms shall include, but are not limited to, the Petition to Seal Report of Law Enforcement Agency. The material for the public shall include information about the persons who are entitled to a copy of the juvenile police record and the specific procedures for requesting a copy of the record if a petition is necessary.
- 10) Makes legislative findings to justify the limitation on access to public records, stating that there is a need to keep these records from being disclosed to the public in order to preserve the confidential information of a minor who is currently participating in a diversion program or who has satisfactorily completed a diversion program, a minor who has been counseled and released by police officers without an arrest, citation, detention, or referral to probation or any district attorney, and a minor who no longer falls within the jurisdiction of the juvenile delinquency court under current state law.

EXISTING LAW:

- 1) 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. (Welf. & Inst. Code, § 786, subd. (a).)
- 2) Requires the court to send a copy of the order of dismissal and sealing to the agencies named in the order and directing the agencies to destroy the sealed records. (Welf. & Inst. Code, § 786, subd. (a).)
- 3) Allows the court access a file that has been sealed for the limited purpose of verifying the prior jurisdictional status of a ward who is petitioning the court to resume its dependency or delinquency jurisdiction. (Welf. & Inst. Code, § 786, subd. (f)(1).)
- 4) Gives the prosecuting attorney and the probation department of any county access to those records after they are sealed for the limited purposes. (Welf. & Inst. Code, § 786, subd.

(f)(1).)

- 5) States that access for these limited purposes shall not be considered an unsealing of the records. (Welf. & Inst. Code, § 786, subd. (f).)
- 6) 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).)
- 7) 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).)
- 8) 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).)
- 9) 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.)
- 10) Allows the probation officer to destroy all records and papers in the proceedings concerning a minor after five years from the date on which the jurisdiction of the juvenile court over the minor is terminated. (Welf. & Inst. Code, § 826.)
- 11) Authorizes a county child welfare agency responsible for the supervision and placement of a minor or non-minor dependent of the court to access sealed juvenile records for the limited purpose of determining an appropriate placement or service that has been ordered by the court for that dependent. (Welf. & Inst. Code, § 827.9.)
- 12) States that, except as limited by sealing laws, there is an ability to access any information gathered by a law enforcement agency, including the Department of Justice, relating to the taking of a minor into custody may be disclosed to another law enforcement agency, including a school district police or security department, or to any person or agency that has a legitimate need for the information for purposes of official disposition of a case. When the disposition of a taking into custody is available, it shall be included with any information disclosed. (Welf. & Inst. Code, § 828.)
- 13) 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.)

- 14) 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).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "As recent reforms have expanded diversion programs throughout California, some of the code sections meant to ensure the confidentiality of youth police records have become outdated. AB 2425 will update those code sections to ensure that youth who go through diversion programs are protected from the negative collateral consequences of a police record they weren't aware existed. This bill will prevent records that should remain confidential from being disseminated and used against juveniles who were diverted from the juvenile justice system."
- 2) **Sealing and Dismissals of Juvenile Records:** 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. (Welf. & Inst. Code, § 826.) The person of record also may petition to destroy records retained by agencies other than the court. (Welf. & Inst. Code, § 826, subd. (b).) The request must be granted unless good cause is shown for retention of the records. (Welf. & Inst. Code, § 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." (Welf. & Inst. Code, § 826, subd. (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.)

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.) To seal a juvenile court record, either the minor or the probation department must petition the court. (*Ibid.*) Juvenile court jurisdiction must have lapsed five years previously, or the person must be at least 18 years old. (Welf. & Inst. Code, § 781, subd. (a).) The records are not sealed if the person of record has been convicted of a felony or a misdemeanor involving moral turpitude. (*Ibid.*) No offenses listed in Welfare and Institutions Code 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.

In 2014, the Legislature enacted a process for automatic juvenile record sealing (i.e. without a petition from the minor) in cases involving satisfactorily-completed informal supervision or probation, except in cases involving serious offenses, namely Welfare and Institutions Code section 707, subdivision (b) offenses. (Welf. & Inst. Code, § 786.) When the record is sealed, the arrest in the case is deemed never to have occurred. (*Ibid.*) The court must order all records in its custody pertaining to the petition sealed. However, the prosecuting attorney and the probation department can access these records after they are sealed for the limited purpose of determining whether the minor is eligible for deferred entry of judgment. Also, 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.*) Additionally in 2018, the law was amended to allow prosecutors greater access to files to locate Brady material.

- 3) **Need For This Bill:** The Legislature has made numerous adjustments to the juvenile record sealing statutes since they were first passed. As the law has been implemented, the need for additional confidentiality protections has arisen. According to the bill's author, "the law needs to be updated to accord with recent juvenile justice reforms that expanded diversion and prohibited certain children from entering the juvenile justice system. Ensuring the confidentiality of records for youth who have been diverted furthers the goals of both the sealing record statutes and broader reforms.

"Current law does not distinguish between a record of a youth who is counseled and released, and a youth who avoids arrest because they no longer fall within the jurisdiction of the juvenile court. The law also fails to distinguish between a juvenile police record that documents a diversion program referral, and a record that documents an arrest and subsequent referral to probation or the district attorney. Additionally, current law allows other law enforcement agencies to obtain a complete copy of the juvenile police record without notice or the consent of the youth who is the subject of the record.

"This law provides for the sealing of probation records and diversion service provider records for youth who are referred to a diversion program by a probation officer or a prosecutor. But no such protection exists for the juvenile police records and service provider records of youth who are referred to diversion programs directly by police and who avoid contact with the juvenile delinquency court system."

According to the author, "there is ample evidence illustrating that even an arrest increases a youth's chance of further system involvement. In addition, a juvenile police record has far-reaching consequences related to access to education, housing, employment and participation in the military. Without a change to the law, youth who no longer fall under the jurisdiction of the juvenile delinquency court and those who participate in diversion programs will continue to suffer the negative collateral consequences of system involvement."

- 4) **Brady Material:** Opposition to the bill have expressed concern that the provisions of the bill making records confidential and "deemed not to exist" while the minor is completing a diversion program could hinder a prosecutor's ability to access material pursuant to *Brady v. Maryland* (1963) 373 U.S. 83. The author should consider whether to amend the bill to address this issue by creating an exception and permit access to a sealed record if necessary to meet a statutory obligation.

- 5) **Argument in Support:** According to the *Ella Baker Center for Human Rights*, “Welfare and Institutions Code § 827.9 ensures the confidentiality of information gathered by law enforcement agencies related to the taking of a minor into custody, temporary custody, or detention (‘juvenile police records’). It governs who may access a juvenile police record and specifically allows for other law enforcement agencies to obtain a complete copy of the record without notice or the consent of the youth who is the subject of the record. The law fails to distinguish between a record that documents an arrest and subsequent referral to probation or the district attorney and a record that documents a referral to a diversion program intended to prevent arrest or further system involvement. Nor does the law differentiate a police record that documents an encounter with a youth who is counseled and released from a record of an encounter with a youth who avoids arrest because they no longer fall within the jurisdiction of the juvenile court.

“Welfare and Institutions Code § 827.9 predates recent juvenile justice reforms that expanded diversion programs throughout the state and that prohibited certain categories of children from entering the juvenile justice system. In addition, Welfare and Institutions Code § 786.5 provides for the sealing of probation records and diversion service provider records for youth who are referred to a diversion program by a probation officer or a prosecutor, but not for the sealing of juvenile police records for those same youth. Youth who participate in diversion programs at the referral of probation departments or prosecutors currently have more confidentiality protections than youth who are diverted directly by police and who avoid contact with the juvenile delinquency court system. The protections provided by Welfare and Institutions Code § 786.5 and § 827.9 need to be updated to address this gap and to respond to recent reforms.

“There is ample evidence illustrating that even an arrest increases a youth’s chance of further system involvement. In addition, a juvenile police record has far-reaching consequences related to access to education, housing, employment, and participation in the military.

“AB 2425 will ensure that youth who no longer fall under the jurisdiction of the juvenile delinquency court and those who participate in diversion programs will not suffer the negative collateral consequences of system involvement by:

- Ensuring that records maintained by a diverting law enforcement agency for youth who are currently participating in a diversion program, have successfully completed a diversion program, or who no longer fall within the jurisdiction of the juvenile court are not disseminated;
- Ensuring the confidentiality of diversion program service provider records;
- Ensuring the automatic sealing of police records of youth who have satisfactorily completed diversion programming, those who have been counseled and released without a probation referral within 60 days, and youth who no longer fall under the jurisdiction of juvenile court under State law.

“California has recognized through recent legislation that all children deserve the opportunity to alter, learn, grow, and thrive in their communities. AB 2425 is a vital step to ensure that the juvenile justice reforms California has made are not undermined because of a gap in existing law that continues to harm youth. By ensuring the confidentiality of police contacts

for youth who never enter the juvenile justice system, we will further realize the intent of legislation that has and will continue to have a meaningful impact on the health and well-being of our children.”

- 6) **Argument in Opposition:** According to the *California District Attorneys Association*, “Although we have no qualms with the general intention behind the measure, we are concerned about the “and deemed not to exist” portion of the bill, as this phrase would appear to prevent law enforcement and prosecutorial agencies from ever disclosing the existence of underlying information contained in those reports which may be considered Brady material, pursuant to *Brady v. Maryland* (1963) 373 U.S. 83. This constitutional requirement cannot be overridden by statute, and places a duty upon law enforcement and prosecutorial agencies to disclose that information which they possess that shows a person behaved in ways which may reflect upon their credibility if they become witnesses in a criminal prosecution.

“We have been in touch with your office and the sponsors of the bill regarding a potential amendment that would allow for such information to be accessed in order to meet Brady obligations. In the event this or a substantially similar amendment is not included, we must oppose this measure, in order to respect a criminal defendant's right to a fair trial as well as to not place in legal or ethical jeopardy California prosecutors who every day seek to uphold the constitution while ensuring public safety.”

7) **Related Legislation:**

- a) SB 1126 (Jones), would allow the probation department, the prosecuting attorney, counsel for a minor, and the court to access sealed juvenile records for the purpose of assessing competency, and not for any other purpose. This bill is currently pending before the Senate Public Safety Committee.
- b) AB 2321 (Jones-Sawyer), Permits an agency to access sealed juvenile records for the limited purpose of certifying victim helpfulness in an application for a U-Visa or a T-Visa. AB 2321 is pending before this committee.
- c) AB 2426 (Reyes) clarifies the law enforcement agencies that are required to process a victim certification for an immigrant victim of a crime for the purposes of obtaining U-Visas and T-Visas. AB 2426 is pending before this committee.

8) **Prior Legislation:**

- a) AB 1537 (Cunningham), Chapter 50, Statutes of 2019, expanded 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.
- b) AB 2952 (Stone), Chapter 1002, Statutes of 2018, provided that a prosecutor may access, inspect, or use certain juvenile records that have been sealed by the court if the prosecutor believes that it is necessary to meet a legal obligation to provide evidence to a defendant in a criminal case.

- c) AB 529 (Stone), Chapter 685, Statutes of 2017, required the sealing of records relating to dismissed or unsustained juvenile court petitions and relating to diversion and supervision programs, as specified.
- d) SB 312 (Skinner), Chapter 679, Statutes of 2017, authorized a sealing procedure for juveniles convicted of a serious or violent felony and allowed for access by the prosecutor in order to determine whether they have a disclosure obligation.
- e) AB 1945 (Stone), Chapter 858, Statutes of 2016, authorized a child welfare agency to access sealed juvenile records for limited purposes.
- f) AB 666 (Stone), Chapter 368, Statutes of 2015, among other things, specified that the prohibition against automatic sealing of a record or dismissing a petition if the petition was sustained based on the commission of a specified serious or violent offense that was committed when the individual was 14 years of age or older does not apply if the finding on that offense was dismissed or was reduced to a lesser offense.
- g) SB 1038 (Leno), Chapter 249, Statutes of 2014, provides for the automatic dismissal of juvenile petitions and sealing of records in cases where a juvenile offender successfully completes probation for any offense other than a specified violent or serious offense.

REGISTERED SUPPORT / OPPOSITION:

Support

National Center for Youth Law (Sponsor)
 Children's Defense Fund-california (Co-Sponsor)
 Youth Law Center (Co-Sponsor)
 Alliance for Boys and Men of Color
 Asian Americans Advancing Justice - California
 California Alliance for Youth and Community Justice
 California Attorneys for Criminal Justice
 California Public Defenders Association
 Children Now
 Children's Law Center of California
 Drug Policy Alliance
 East Bay Community Law Center
 Ella Baker Center for Human Rights
 Empowering Pacific Islander Communities (EPIC)
 Fresno Barrios Unidos
 John Burton Advocates for Youth
 Milpa (motivating Individual Leadership for Public Advancement)
 National Institute for Criminal Justice Reform
 Pacific Juvenile Defender Center
 Public Counsel
 Root & Rebound
 Ryse Center

San Francisco Public Defender
San Jose/silicon Valley NAACP
Santa Cruz Barrios Unidos INC.
The W. Haywood Burns Institute
United Friends of The Children
Young Women's Freedom Center
Youth Alive!
Youth Alliance
Youth Forward

Oppose

California District Attorneys Association
California Law Enforcement Association of Records Supervisors (CLEARs)
California State Sheriffs' Association

Analysis Prepared by: Nikki Moore / PUB. S. / (916) 319-3744