
THIRD READING

Bill No: AB 2425
Author: Mark Stone (D)
Amended: 8/20/20 in Assembly
Vote: 21

SENATE PUBLIC SAFETY COMMITTEE: 5-1, 8/7/20
AYES: Skinner, Bradford, Jackson, Mitchell, Wiener
NOES: Morrell
NO VOTE RECORDED: Moorlach

SENATE APPROPRIATIONS COMMITTEE: 5-2, 8/20/20
AYES: Portantino, Bradford, Hill, Leyva, Wieckowski
NOES: Bates, Jones

ASSEMBLY FLOOR: 56-15, 6/15/20 - See last page for vote

SUBJECT: Juvenile police records

SOURCE: National Center for Youth Law

DIGEST: This bill limits the ability of a law enforcement agency to release a copy of a juvenile police record, as specified, and to prohibit the release of information by the arresting law enforcement agency when a juvenile has successfully completed a program of diversion or supervision.

ANALYSIS:

Existing law:

- 1) Requires the juvenile court to order the petition dismissed if the juvenile satisfactorily completes an informal program of supervision, probation as specified, or a term of probation for any offense. Requires the court to order sealed all records pertaining to that dismissed petition in the custody of the juvenile court, law enforcement agencies, probation department, or the

Department of Justice (DOJ). Prohibits the court from sealing a record or dismissing a petition 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. Provides that upon the dismissal of the petition, the arrest and other proceedings in the case shall be deemed not to have occurred. (Welf. & Inst. Code, § 786, subds. (a), (b), (d).)

- 2) Requires, if a person who has been alleged to be a ward of the juvenile court has their petition dismissed by the court, whether on the motion of the prosecution or on the court's own motion, or if the petition is not sustained by the court after an adjudication hearing, the court to 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 DOJ. (Welf. & Inst. Code, § 786, subd. (e).)
- 3) Specifies the circumstances under which a sealed juvenile record may be accessed, utilized, or inspected. Provides that access to or inspection of a sealed juvenile records shall not be considered an unsealing of the records. (Welf. & Inst. Code, § 786, subd. (g).)
- 4) Requires, notwithstanding any other law, upon satisfactory completion of a program of diversion or supervision to which a juvenile is referred by the probation officer or the prosecutor in lieu of the filing of a petition to adjudge the juvenile a ward of the juvenile court, the probation department to seal the arrest and other records in its custody relating to the juvenile's arrest or referral and participation in the diversion or supervision program. Requires the probation department to notify a public or private agency operating a diversion program to which the juvenile has been referred under these circumstances to seal records in the program operator's custody relating to the arrest or referral and the participation of the juvenile in the diversion or supervision program. Requires the operator of the program to promptly seal the records in its custody relating to the juvenile's arrest or referral and participation in the program. Provides that upon sealing of the records, the arrest or offense giving rise to the person's participation in the program shall be deemed not to have occurred. (Welf. & Inst. Code, § 786.5, subd. (a).)
- 5) Defines satisfactory completion of the program of supervision or diversion to mean substantial compliance by the participant with the reasonable terms of program participation that are within the capacity of the participant to perform. Requires a determination of satisfactory or unsatisfactory completion to be

made by the probation department within 60 days of completion of the program by the juvenile, or if the juvenile does not complete the program, within 60 days of determining that the program has not been completed by the juvenile. (Welf. & Inst. Code, § 786.5, subd. (c).)

- 6) Provides that the probation department of a county responsible for the supervision of a person may access a record sealed by a probation department for the sole purpose of determining eligibility for informal probation. Requires that the information contained in the sealed record and accessed by the probation department remain in all other respects confidential and not be disseminated to any other person or agency. Provides that access to, or inspection of, a sealed record shall not be deemed an unsealing of the record. (Welf. & Inst. Code, § 786.5, subd. (e).)
- 7) Authorizes 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, subd. (a).)
- 8) Authorizes specific persons or entities to inspect a juvenile case file. (Welf. & Inst. Code, § 827, subd. (a).)
- 9) Defines “juvenile case file” as a petition filed in a 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 the probation officer’s 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).)
- 10) Prohibits a case file that is covered by, or included in, an order of the court sealing a record pursuant to Section 781 or 786 from being inspected, except as specified by those provisions of law. (Welf. & Inst. Code, § 827, subd. (g).)
- 11) Provides that any information gathered by a law enforcement agency 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, except as limited by sealing statutes. Requires the disposition of a taking into custody to be included with any information disclosed if available. (Welf. & Inst. Code, § 828.)

This bill:

- 1) Requires the probation department to seal the arrest and other records in its custody relating to a juvenile's arrest and referral and participation in a diversion or supervision program upon a juvenile's satisfactory completion of a program of diversion or supervision to which a juvenile is referred by the probation officer or the prosecuting attorney in lieu of filing a petition to adjudge the juvenile a ward of the juvenile court, including a program of informal supervision.
- 2) Requires the probation department to notify an arresting law enforcement agency to seal the arrest records in its custody. Requires the law enforcement agency to seal the arrest records no later than 60 days from the date of notification from the probation department. Requires the arresting law enforcement agency to notify the probation department once that records have been sealed.
- 3) Requires the probation department to notify the minor in writing that their record has been sealed within 30 days from receipt of notification by the arresting law enforcement agency that the records have been sealed.
- 4) Requires a public or private agency operating a diversion program to seal the records in its custody relating to the arrest or referral and the participation of the juvenile in the program no later than 60 days from the date of notification from the probation department to seal the records. Requires the agency operating the diversion program to notify the probation department once the records have been sealed.
- 5) Provides that any record sealed pursuant to the process described above may be accessed, inspected, or utilized by the prosecuting attorney 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 is necessary to meet the disclosure obligation. Prohibits a prosecutor from using information contained in the sealed record for any other purpose. Requires the prosecuting attorney to destroy any records obtained once the case that necessitated access to the sealed record has been closed and is no longer subject to review on appeal.
- 6) Prohibits, generally, a law enforcement agency in this state from releasing a copy of a juvenile police record if the subject of the juvenile police record is any of the following:

- 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.
 - c) A minor who does not fall within the jurisdiction of the juvenile delinquency court under current state law.
- 7) Requires the law enforcement agency in possession of the juvenile police records to seal the applicable juvenile police records and all other records in its custody relating to the minor's law enforcement contact or referral and participation in a diversion program.
- 8) Provides that any juvenile police record created following a law enforcement contact with a minor, as described, shall be considered confidential and deemed not to exist while the minor is completing a diversion program, except to the law enforcement agency, the service provider, the minor who is the subject of the police record, and the minor's parent or guardian. Requires the diversion service provider to notify the referring law enforcement agency of a minor's satisfactory completion of a diversion program within 30 days of the minor's satisfactory completion. Requires the law enforcement agency to seal the juvenile police record no later than 30 days from the date of notification by the diversion service provider of the minor's satisfactory completion of a diversion program.
- 9) Requires any juvenile police record created following a law enforcement contact with a minor, as described, to be sealed no later than 60 days from the date of verification that the minor has not been referred to probation or any district attorney. Requires verification to be completed within six months of the decision to counsel and release the minor.
- 10) Requires any juvenile police record created following a law enforcement contact with a minor, as described, to be sealed immediately upon verification that the minor does not fall within the jurisdiction of the juvenile delinquency court under current state law.

- 11) Provides that upon sealing of the records, the offense giving rise to the police record shall be deemed to not have occurred and the individual may respond accordingly to any inquiry, application, or process in which disclosure of this information is requested or sought.
- 12) Requires a law enforcement agency that seals a juvenile police record to notify the applicable diversion service provider immediately upon sealing the record. Prohibits the inspection, by anyone other than the diversion service provider, of any records in the diversion service provider's custody relating to the minor's law enforcement contact or referral and participation in the program. Provides that the records are only released to the minor and the minor's parent or guardian.
- 13) Requires a law enforcement agency to notify a minor in writing that their police record has been sealed. Requires the law enforcement agency to notify the minor if it determines that a minor's juvenile police record is not eligible for sealing. Provides that an individual who receives notice from a law enforcement agency that their juvenile police record is not eligible for sealing may request reconsideration of the law enforcement agency's determination by submitting to the law enforcement agency a petition to seal a report of a law enforcement agency and any documentation supporting their eligibility for sealing. Specifies that a sworn statement by the petitioner qualifies as supporting documentation.
- 14) Provides that police records sealed under the provisions of this bill are not be considered part of the "juvenile case file," as defined.
- 15) Provides that any police record that has been sealed may be accessed, inspected, or utilized by the prosecuting attorney 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 is necessary to meet the disclosure obligation. Prohibits a prosecutor from using information contained in the sealed record for any other purpose. Requires the prosecuting attorney to destroy any records obtained once the case that necessitated access to the sealed record has been closed and is no longer subject to review on appeal.
- 16) Provides that diversion service provider records related to the provision of diversion services to a minor, as described, shall not be considered part of a "juvenile case file," as defined. Requires that these records be kept confidential

except to the minor who is the subject of the record or information and their parent or guardian.

- 17) Provides the following definitions: “juvenile police record” refers to records or information relating to the taking of a minor into custody, temporary custody, or detention; “any other juvenile” refers to additional minors who were taken into custody or temporary custody, or detained and who also could be considered a subject of the juvenile police record; “diversion” refers to an intervention that redirects youth away from formal processing in the juvenile justice system, including, but not limited to, counsel and release or a referral to a diversion program, as defined; “diversion service provider” refers to an agency or organization providing diversion services to a minor; “diversion service provider record” refers to any records or information collected, created, or maintained by the service provider in connection to providing diversion program services to the minor; and “satisfactory completion” refers 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.
- 18) Requires the Judicial Council to develop forms for distribution by law enforcement agencies to the public to implement the provisions of this bill on or before January 1, 2022.

Comments

This bill contains a number of provisions designed to limit the dissemination of information related to a juvenile who has had contact, however minimal, with the juvenile justice system. The author argues that recent reforms necessitate additional statutory changes to ensure that juveniles who come into contact with the justice system are not harmed by the record resulting from that contact. One of the recent reforms most relevant to this bill is SB 439 (Mitchell, Chapter 1006, Statutes of 2018), which established a minimum age of juvenile court jurisdiction. Specifically, a child under 12 can no longer be adjudicated for alleged criminal conduct unless the child is accused of murder or specified sex offenses. The author contends that juveniles in this situation as well as those who were merely counseled and released or were diverted away from formal processing in the juvenile justice system should be able to have the records associated with that law enforcement contact sealed.

Although a record sealing would result in the offense giving rise to the police record being deemed not to have occurred, this bill does allow a sealed record to be

accessed, inspected, or utilized by the prosecuting attorney 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 is necessary to meet the disclosure obligation. This bill requires the prosecuting attorney to destroy any sealed records obtained once the case that necessitated access to the sealed record has been closed and is no longer subject to review on appeal.

FISCAL EFFECT: Appropriation: No Fiscal Com.:Yes Local:Yes

According to the Senate Appropriations Committee:

- *Local agencies:* Unknown, potentially-significant costs in the hundreds of thousands of dollars in the aggregate for probation departments and local law enforcement agencies to seal, and facilitating the sealing of, juvenile records as required by this measure and for local law enforcement agencies specifically, to provide notice to the minor of whether the records have been sealed, and if not, an opportunity to petition for reconsideration, which would require additional time and resources to review supporting documents. Actual new costs to each agency would depend on its current practices related to record sealing in general and the number of affected youth arrests in that jurisdiction. These costs likely would be reimbursable by the state if they surpass the threshold amount required to file a state mandate claim. The extent of the reimbursement would be determined by the Commission on State Mandates. (General Fund, local funds)
- *Judicial Council:* The Judicial Council reports minor and absorbable fiscal impacts related to AB 2425.

SUPPORT: (Verified 8/21/20)

National Center for Youth Law (source)
 Alliance for Boys and Men of Color
 American Civil Liberties Union of California
 Asian Americans Advancing Justice
 Bill Wilson Center
 California Alliance for Youth and Community Justice
 California Attorneys for Criminal Justice
 California Public Defenders Association
 Californians United for a Responsible Budget
 Center on Juvenile and Criminal Justice

Children Now
Children's Defense Fund- California
Children's Law Center of California
Communities United for Restorative Youth Justice
Community Works
Drug Policy Alliance
East Bay Community Law Center
Ella Baker Center for Human Rights
Empowering Pacific Islander Communities
Fresh Lifelines for Youth
Fresno Barrios Unidos
Friends Committee on Legislation of California
Immigrant Legal Resource Center
John Burton Advocates for Youth
Kids in Need of Defense
MILPA
National Association of Social Workers, California Chapter
National Institute for Criminal Justice Reform
Pacific Juvenile Defender Center
Public Counsel
Public Health Advocates
Root & Rebound
RYSE Center
San Jose/Silicon Valley NAACP
Santa Clara County Office of the Public Defender
Santa Cruz Barrios Unidos
United Friends of the Children
W. Haywood Burns Institute
Young Women's Freedom Center
Youth ALIVE!
Youth Alliance
Youth Forward
Youth Law Center

OPPOSITION: (Verified 8/21/20)

California District Attorneys Association
California Law Enforcement Association of Records Supervisors
California State Sheriffs Association
Juvenile Court Judges of California

Orange County District Attorney

ASSEMBLY FLOOR: 56-15, 6/15/20

AYES: Aguiar-Curry, Arambula, Bauer-Kahan, Berman, Bloom, Boerner
Horvath, Bonta, Burke, Calderon, Carrillo, Chau, Chiu, Chu, Cooley,
Cunningham, Daly, Eggman, Friedman, Gabriel, Cristina Garcia, Eduardo
Garcia, Gipson, Gloria, Gonzalez, Gray, Grayson, Holden, Irwin, Jones-Sawyer,
Kalra, Kamlager, Levine, Limón, Low, Maienschein, McCarty, Medina, Mullin,
Muratsuchi, Nazarian, O'Donnell, Petrie-Norris, Quirk, Quirk-Silva, Reyes, Luz
Rivas, Robert Rivas, Blanca Rubio, Santiago, Smith, Mark Stone, Ting, Weber,
Wicks, Wood, Rendon

NOES: Bigelow, Brough, Chen, Choi, Megan Dahle, Diep, Flora, Fong,
Gallagher, Kiley, Lackey, Mathis, Obernolte, Patterson, Voepel

NO VOTE RECORDED: Cervantes, Cooper, Frazier, Mayes, Ramos, Rodriguez,
Salas, Waldron

Prepared by: Stephanie Jordan / PUB. S. /
8/24/20 15:35:26

**** END ****