

CONCURRENCE IN SENATE AMENDMENTS

AB 2425 (Mark Stone)

As Amended August 20, 2020

Majority vote

SUMMARY:

Prohibits the release of information by a law enforcement, social worker, or probation agency when a juvenile has participated in or completed a diversion program.

As Passed by the Assembly this bill:

- 1) Defined "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."
- 2) Defined "diversion service provider" to mean "an agency or organization providing diversion services to a minor."
- 3) Defined "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."
- 4) Provided 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.

The Senate Amendments:

- 1) Provide that any record that has been sealed pursuant to this section 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.
- 2) State that a prosecuting attorney shall not use information contained in a record sealed pursuant to this section for any purpose other than those specified.
- 3) States that once the case referenced has been closed and is no longer subject to review on appeal, the prosecuting attorney shall destroy any records obtained pursuant to this provision.

COMMENTS:

Need For This Bill: According to the author, "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:

"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."

Arguments in Support:

According to the *Elle Baker Center for Human Rights*, "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:

- 1) 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;
- 2) Ensuring the confidentiality of diversion program service provider records;
- 3) 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."

Arguments 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."

FISCAL COMMENTS:

According to the Senate Appropriations Committee:

- 1) 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)
- 2) Judicial Council: The Judicial Council reports minor and absorbable fiscal impacts related to AB 2425.

VOTES:**ASM PUBLIC SAFETY: 6-2-0**

YES: Jones-Sawyer, Bauer-Kahan, Kamlager, Carrillo, Santiago, Wicks

NO: Lackey, Diep

ASM APPROPRIATIONS: 13-4-1

YES: Gonzalez, Bauer-Kahan, Bloom, Bonta, Calderon, Carrillo, Chau, Eggman, Gabriel, Eduardo Garcia, Petrie-Norris, McCarty, Robert Rivas

NO: Bigelow, Diep, Fong, Voepel

ABS, ABST OR NV: Megan Dahle

ASSEMBLY FLOOR: 56-15-8

YES: 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

NO: Bigelow, Brough, Chen, Choi, Megan Dahle, Diep, Flora, Fong, Gallagher, Kiley, Lackey, Mathis, Obernolte, Patterson, Voepel

ABS, ABST OR NV: Cervantes, Cooper, Frazier, Mayes, Ramos, Rodriguez, Salas, Waldron

SENATE FLOOR: 26-10-4

YES: Allen, Archuleta, Atkins, Beall, Bradford, Caballero, Dodd, Durazo, Glazer, Lena Gonzalez, Hertzberg, Hill, Hueso, Jackson, Leyva, McGuire, Mitchell, Monning, Pan, Portantino, Roth, Rubio, Skinner, Umberg, Wieckowski, Wiener

NO: Bates, Borgeas, Chang, Dahle, Grove, Melendez, Moorlach, Morrell, Nielsen, Wilk

ABS, ABST OR NV: Galgiani, Hurtado, Jones, Stern

UPDATED:

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