

AMENDED IN ASSEMBLY JUNE 22, 2017

AMENDED IN SENATE MAY 26, 2017

AMENDED IN SENATE APRIL 6, 2017

SENATE BILL

No. 312

Introduced by Senator Skinner

February 13, 2017

An act to amend Sections 781 and 786 of the Welfare and Institutions Code, relating to juveniles.

LEGISLATIVE COUNSEL'S DIGEST

SB 312, as amended, Skinner. Juveniles: sealing of records.

(1) Existing law generally subjects any person under 18 years of age who commits a crime to the jurisdiction of the juvenile court, which may adjudge that person to be a ward of the court. Under existing law, juvenile court proceedings to declare a minor a ward of the court are commenced by the filing of a petition by the probation officer, the district attorney after consultation with the probation officer, or the prosecuting attorney, as specified. Existing law requires the juvenile court to order the petition of a minor who is subject to the jurisdiction of the court dismissed if the minor satisfactorily completes a term of probation or an informal program of supervision, as specified, and requires the court to seal all records pertaining to that dismissed petition in the custody of the juvenile court and in the custody of law enforcement agencies, the probation department, or the Department of Justice in accordance with a specified procedure. Existing law prohibits the court from sealing a record or dismissing a petition under this provision if the petition was sustained based on the commission of any specified serious or violent offense, including murder, that was

committed when the individual 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 among those specified offenses.

(2) Existing law generally authorizes a person who is the subject of a juvenile court record, or the county probation officer, to petition the court to seal his or her records, including records of arrest, relating to the person's case in the custody of the juvenile court and the probation officer and any other agencies, including law enforcement agencies and public officials. Existing law authorizes the petition to be filed 5 years or more after the jurisdiction of the juvenile court has terminated as to the person or, if no petition was filed, 5 years or more after the person was cited to appear before a probation officer or was taken before a probation officer or law enforcement officer, or, at any time after the person reaches 18 years of age.

(3) Existing law, as amended by Proposition 21 at the March 7, 2000, statewide primary election, prohibits a court from ordering the person's records sealed, as specified, in any case in which the person has been found by the juvenile court to have committed any specified serious or violent offense, including murder, when he or she was 14 years of age or older. Proposition 21 allows the Legislature to amend its provisions by *the enactment of* a statute passed in each house by a $\frac{2}{3}$ vote.

This bill would expand the exception described in (1) to require the court to seal a record or dismiss a petition under the provisions described in (1) if the finding on that serious or violent offense was reduced to a misdemeanor.

This bill would, except as specified, repeal the limitation of Proposition 21 on the authority of the court to order the sealing of records of those persons who were found to have committed those serious or violent offenses after attaining 14 years of ~~age or older~~, *age*, and instead would ~~prohibit~~ *only authorize* the filing of a petition to seal the record or records relating to those serious or violent offenses committed after attaining 14 years of ~~age or older until 3 years after the date of the commission of the offense~~. *that resulted in the adjudication of wardship by the juvenile court under specified limited circumstances*. The bill would authorize certain individuals to access, inspect, or utilize a record relating to those specified serious or violent offenses that has been sealed pursuant to the provisions described in (2) in a subsequent proceeding against the person for specified purposes, and would prohibit the access, inspection, or utilization of a sealed record from being deemed an unsealing of the record. The bill would provide that the

~~3-year prohibition~~ *above-mentioned provisions on sealing records in specified limited circumstances* and the authority to access sealed records relating to those serious or violent offenses that were committed after attaining 14 years of age ~~or older~~ do not apply in cases in which the offense was dismissed or reduced to a misdemeanor by the court.

By expanding the duties imposed on local agencies relating to sealing of juvenile records, this bill would impose a state-mandated local program.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 781 of the Welfare and Institutions Code
2 is amended to read:
3 781. (a) (1) (A) If a petition has been filed with a juvenile
4 court to commence proceedings to adjudge a person a ward of the
5 court, if a person is cited to appear before a probation officer or is
6 taken before a probation officer pursuant to Section 626, or if a
7 minor is taken before any officer of a law enforcement agency,
8 the person or the county probation officer may, five years or more
9 after the jurisdiction of the juvenile court has terminated as to the
10 person, or, if a petition is not filed, five years or more after the
11 person was cited to appear before a probation officer or was taken
12 before a probation officer pursuant to Section 626 or was taken
13 before any officer of a law enforcement agency, or, if, at any time
14 after the person has reached 18 years of age, petition the court for
15 sealing of the records, including records of arrest, relating to the
16 person's case, in the custody of the juvenile court and probation
17 officer and any other agencies, including law enforcement agencies,
18 entities, and public officials as the petitioner alleges, in his or her

1 petition, to have custody of the records. The court shall notify the
2 district attorney of the county and the county probation officer, if
3 he or she is not the petitioner, and the district attorney or probation
4 officer or any of their deputies or any other person having relevant
5 evidence may testify at the hearing on the petition. If, after hearing,
6 the court finds that since the termination of jurisdiction or action
7 pursuant to Section 626, as the case may be, he or she has not been
8 convicted of a felony or of any misdemeanor involving moral
9 turpitude and that rehabilitation has been attained to the satisfaction
10 of the court, it shall order all records, papers, and exhibits in the
11 person's case in the custody of the juvenile court sealed, including
12 the juvenile court record, minute book entries, and entries on
13 dockets, and any other records relating to the case in the custody
14 of the other agencies, entities, and officials as are named in the
15 order. Once the court has ordered the person's records sealed, the
16 proceedings in the case shall be deemed never to have occurred,
17 and the person may properly reply accordingly to any inquiry about
18 the events, the records of which are ordered sealed.

19 (B) The court shall send a copy of the order to each agency,
20 entity, and official named in the order, directing the agency or
21 entity to seal its records. Each agency, entity, and official shall
22 seal the records in its custody as directed by the order, shall advise
23 the court of its compliance, and thereupon shall seal the copy of
24 the court's order for sealing of records that the agency, entity, or
25 official received.

26 (C) If a ward of the juvenile court is subject to the registration
27 requirements set forth in Section 290 of the Penal Code, a court,
28 in ordering the sealing of the juvenile records of the person, shall
29 also provide in the order that the person is relieved from the
30 registration requirement and for the destruction of all registration
31 information in the custody of the Department of Justice and other
32 agencies, entities, and officials.

33 (D) (i) A petition to seal the record or records relating to an
34 offense listed in subdivision (b) of Section 707 that was committed
35 after attaining 14 years of age ~~or older shall not~~ *and resulted in*
36 *the adjudication of wardship by the juvenile court may only be*
37 *filed or considered by the court under pursuant to this section prior*
38 *to the expiration of a period of three years from the date of the*
39 *commission of the offense. under the following circumstances:*

1 (I) *The person was committed to the Department of Corrections*
2 *and Rehabilitation, Division of Juvenile Justice, has attained 21*
3 *years of age, and has completed his or her period of probation*
4 *supervision after release from the division.*

5 (II) *The person was not committed to the Department of*
6 *Corrections and Rehabilitation, Division of Juvenile Justice, has*
7 *attained 18 years of age, and has completed any period of*
8 *probation supervision related to that offense imposed by the court.*

9 (ii) A record relating to an offense listed in subdivision (b) of
10 Section 707 that was committed after attaining 14 years of age ~~or~~
11 ~~older~~ that has been sealed pursuant to this section may be accessed,
12 inspected, or utilized in a subsequent proceeding against the person
13 under ~~all~~ any of the following circumstances:

14 (I) By the district attorney, as necessary, to make appropriate
15 charging decisions or to initiate prosecution in a court of criminal
16 jurisdiction for a subsequent felony offense, or by the district
17 attorney or the court to determine the appropriate sentencing for
18 a subsequent felony offense.

19 (II) By the district attorney, as necessary, to initiate a juvenile
20 court proceeding to determine whether a minor shall be transferred
21 from the juvenile court to a court of criminal jurisdiction pursuant
22 to Section ~~707~~. 707, and by the juvenile court to make that
23 determination.

24 (III) By the district attorney, the probation department, or the
25 juvenile court upon a subsequent finding by the juvenile court that
26 the minor has committed a felony offense, for the purpose of
27 determining an appropriate disposition of the case.

28 (IV) *By the district attorney, or a court of criminal jurisdiction,*
29 *for the purpose of proving a prior serious or violent felony*
30 *conviction, and determining the appropriate sentence pursuant to*
31 *Section 667 of the Penal Code.*

32 (iii) A sealed record that is accessed, inspected, or utilized
33 pursuant to clause (ii) shall be accessed, inspected, or utilized only
34 for the purposes described therein, and the information contained
35 in the sealed record shall otherwise remain confidential and shall
36 not be further disseminated. The access, inspection, or utilization
37 of a sealed record pursuant to clause (ii) shall not be deemed an
38 unsealing of the record and shall not require notice to any other
39 entity.

1 (iv) Clauses (i), (ii), and (iii) do not apply in cases in which the
2 offense listed in subdivision (b) of Section 707 that was committed
3 after attaining 14 years of age ~~or older~~ was dismissed or reduced
4 to a misdemeanor by the court. In those cases, the person may
5 petition the court to have the record sealed, and the court may
6 order the sealing of the record in the same manner and with the
7 same effect as otherwise provided in this section for records that
8 do not relate to an offense listed in subdivision (b) of Section 707
9 that was committed after the person had attained 14 years of ~~age~~
10 ~~or older~~. *age*.

11 (E) Notwithstanding subparagraph (D), a record relating to an
12 offense listed in subdivision (b) of Section 707 *that was committed*
13 *after attaining 14 years of age* for which the person is required to
14 register pursuant to Section 290.008 of the Penal Code shall not
15 be sealed.

16 (2) An unfulfilled order of restitution that has been converted
17 to a civil judgment pursuant to Section 730.6 shall not be a bar to
18 sealing a record pursuant to this subdivision.

19 (3) Outstanding restitution fines and court-ordered fees shall
20 not be considered when assessing whether a petitioner's
21 rehabilitation has been attained to the satisfaction of the court and
22 shall not be a bar to sealing a record pursuant to this subdivision.

23 (4) The person who is the subject of records sealed pursuant to
24 this section may petition the superior court to permit inspection
25 of the records by persons named in the petition, and the superior
26 court may order the inspection of the records. Except as provided
27 in subdivision (b), the records shall not be open to inspection.

28 (b) In any action or proceeding based upon defamation, a court,
29 upon a showing of good cause, may order any records sealed under
30 this section to be opened and admitted into evidence. The records
31 shall be confidential and shall be available for inspection only by
32 the court, jury, parties, counsel for the parties, and any other person
33 who is authorized by the court to inspect them. Upon the judgment
34 in the action or proceeding becoming final, the court shall order
35 the records sealed.

36 (c) (1) Subdivision (a) does not apply to Department of Motor
37 Vehicles records of any convictions for offenses under the Vehicle
38 Code or any local ordinance relating to the operation, stopping
39 and standing, or parking of a vehicle where the record of any such
40 conviction would be a public record under Section 1808 of the

1 Vehicle Code. However, if a court orders a case record containing
2 any such conviction to be sealed under this section, and if the
3 Department of Motor Vehicles maintains a public record of such
4 a conviction, the court shall notify the Department of Motor
5 Vehicles of the sealing and the department shall advise the court
6 of its receipt of the notice.

7 (2) Notwithstanding any other law, subsequent to the
8 notification, the Department of Motor Vehicles shall allow access
9 to its record of convictions only to the subject of the record and
10 to insurers which have been granted requestor code numbers by
11 the department. Any insurer to which a record of conviction is
12 disclosed, when the conviction record has otherwise been sealed
13 under this section, shall be given notice of the sealing when the
14 record is disclosed to the insurer. The insurer may use the
15 information contained in the record for purposes of determining
16 eligibility for insurance and insurance rates for the subject of the
17 record, and the information shall not be used for any other purpose
18 nor shall it be disclosed by an insurer to any person or party not
19 having access to the record.

20 (3) This subdivision does not prevent the sealing of any record
21 which is maintained by any agency or party other than the
22 Department of Motor Vehicles.

23 (4) This subdivision does not affect the procedures or authority
24 of the Department of Motor Vehicles for purging department
25 records.

26 (d) Unless for good cause the court determines that the juvenile
27 court record shall be retained, the court shall order the destruction
28 of a person's juvenile court records that are sealed pursuant to this
29 section as follows: five years after the record was ordered sealed,
30 if the person who is the subject of the record was alleged or
31 adjudged to be a person described by Section 601; or when the
32 person who is the subject of the record reaches 38 years of age if
33 the person was alleged or adjudged to be a person described by
34 Section 602, except that if the subject of the record was found to
35 be a person described in Section 602 because of the commission
36 of an offense listed in subdivision (b) of Section 707 when he or
37 she was 14 years of age or older, the record shall not be destroyed.
38 Any other agency in possession of sealed records may destroy its
39 records five years after the record was ordered sealed.

1 (e) The court may access a file that has been sealed pursuant to
2 this section for the limited purpose of verifying the prior
3 jurisdictional status of a ward who is petitioning the court to resume
4 its jurisdiction pursuant to subdivision (e) of Section 388. This
5 access shall not be deemed an unsealing of the record and shall
6 not require notice to any other entity.

7 (f) This section shall not permit the sealing of a person's juvenile
8 court records for an offense where the person is convicted of that
9 offense in a criminal court pursuant to the provisions of Section
10 707.1. This subdivision is declaratory of existing law.

11 (g) (1) This section does not prohibit a court from enforcing a
12 civil judgment for an unfulfilled order of restitution obtained
13 pursuant to Section 730.6. A minor is not relieved from the
14 obligation to pay victim restitution, restitution fines, and
15 court-ordered fines and fees because the minor's records are sealed.

16 (2) A victim or a local collection program may continue to
17 enforce victim restitution orders, restitution fines, and court-ordered
18 fines and fees after a record is sealed. The juvenile court shall have
19 access to any records sealed pursuant to this section for the limited
20 purposes of enforcing a civil judgment or restitution order.

21 (h) (1) On and after January 1, 2015, each court and probation
22 department shall ensure that information regarding the eligibility
23 for and the procedures to request the sealing and destruction of
24 records pursuant to this section shall be provided to each person
25 who is either of the following:

26 (A) A person for whom a petition has been filed on or after
27 January 1, 2015, to adjudge the person a ward of the juvenile court.

28 (B) A person who is brought before a probation officer pursuant
29 to Section 626.

30 (2) The Judicial Council shall, on or before January 1, 2015,
31 develop informational materials for purposes of paragraph (1) and
32 shall develop a form to petition the court for the sealing and
33 destruction of records pursuant to this section. The informational
34 materials and the form shall be provided to each person described
35 in paragraph (1) when jurisdiction is terminated or when the case
36 is dismissed.

37 SEC. 2. Section 786 of the Welfare and Institutions Code is
38 amended to read:

39 786. (a) If a person who has been alleged or found to be a ward
40 of the juvenile court satisfactorily completes (1) an informal

1 program of supervision pursuant to Section 654.2, (2) probation
2 under Section 725, or (3) a term of probation for any offense, the
3 court shall order the petition dismissed. The court shall order sealed
4 all records pertaining to the dismissed petition in the custody of
5 the juvenile court, and in the custody of law enforcement agencies,
6 the probation department, or the Department of Justice. The court
7 shall send a copy of the order to each agency and official named
8 in the order, direct the agency or official to seal its records, and
9 specify a date by which the sealed records shall be destroyed. Each
10 agency and official named in the order shall seal the records in its
11 custody as directed by the order, shall advise the court of its
12 compliance, and, after advising the court, shall seal the copy of
13 the court's order that was received. The court shall also provide
14 notice to the person and the person's counsel that it has ordered
15 the petition dismissed and the records sealed in the case. The notice
16 shall include an advisement of the person's right to nondisclosure
17 of the arrest and proceedings, as specified in subdivision (b).

18 (b) Upon the court's order of dismissal of the petition, the arrest
19 and other proceedings in the case shall be deemed not to have
20 occurred and the person who was the subject of the petition may
21 reply accordingly to an inquiry by employers, educational
22 institutions, or other persons or entities regarding the arrest and
23 proceedings in the case.

24 (c) (1) For purposes of this section, satisfactory completion of
25 an informal program of supervision or another term of probation
26 described in subdivision (a) shall be deemed to have occurred if
27 the person has no new findings of wardship or conviction for a
28 felony offense or a misdemeanor involving moral turpitude during
29 the period of supervision or probation and if he or she has not
30 failed to substantially comply with the reasonable orders of
31 supervision or probation that are within his or her capacity to
32 perform. The period of supervision or probation shall not be
33 extended solely for the purpose of deferring or delaying eligibility
34 for dismissal of the petition and sealing of the records under this
35 section.

36 (2) An unfulfilled order or condition of restitution, including a
37 restitution fine that can be converted to a civil judgment under
38 Section 730.6 or an unpaid restitution fee shall not be deemed to
39 constitute unsatisfactory completion of supervision or probation
40 under this section.

1 (d) A court shall not seal a record or dismiss a petition pursuant
2 to this section if the petition was sustained based on the
3 commission of an offense listed in subdivision (b) of Section 707
4 that was committed when the individual was 14 years of age or
5 older unless the finding on that offense was dismissed or was
6 reduced to a misdemeanor or to a lesser offense that is not listed
7 in subdivision (b) of Section 707.

8 (e) (1) The court may, in making its order to seal the record
9 and dismiss the instant petition pursuant to this section, include
10 an order to seal a record relating to, or to dismiss, any prior petition
11 or petitions that have been filed or sustained against the individual
12 and that appear to the satisfaction of the court to meet the sealing
13 and dismissal criteria otherwise described in this section.

14 (2) An individual who has a record that is eligible to be sealed
15 under this section may ask the court to order the sealing of a record
16 pertaining to the case that is in the custody of a public agency other
17 than a law enforcement agency, the probation department, or the
18 Department of Justice, and the court may grant the request and
19 order that the public agency record be sealed if the court determines
20 that sealing the additional record will promote the successful
21 reentry and rehabilitation of the individual.

22 (f) (1) A record that has been ordered sealed by the court under
23 this section may be accessed, inspected, or utilized only under any
24 of the following circumstances:

25 (A) By the prosecuting attorney, the probation department, or
26 the court for the limited purpose of determining whether the minor
27 is eligible and suitable for deferred entry of judgment pursuant to
28 Section 790 or is ineligible for a program of supervision as defined
29 in Section 654.3.

30 (B) By the court for the limited purpose of verifying the prior
31 jurisdictional status of a ward who is petitioning the court to resume
32 its jurisdiction pursuant to subdivision (e) of Section 388.

33 (C) If a new petition has been filed against the minor for a felony
34 offense, by the probation department for the limited purpose of
35 identifying the minor's previous court-ordered programs or
36 placements, and in that event solely to determine the individual's
37 eligibility or suitability for remedial programs or services. The
38 information obtained pursuant to this subparagraph shall not be
39 disseminated to other agencies or individuals, except as necessary
40 to implement a referral to a remedial program or service, and shall

1 not be used to support the imposition of penalties, detention, or
2 other sanctions upon the minor.

3 (D) Upon a subsequent adjudication of a minor whose record
4 has been sealed under this section and a finding that the minor is
5 a person described by Section 602 based on the commission of a
6 felony offense, by the probation department, the prosecuting
7 attorney, counsel for the minor, or the court for the limited purpose
8 of determining an appropriate juvenile court disposition. Access,
9 inspection, or use of a sealed record as provided under this
10 subparagraph shall not be construed as a reversal or modification
11 of the court's order dismissing the petition and sealing the record
12 in the prior case.

13 (E) Upon the prosecuting attorney's motion, made in accordance
14 with Section 707, to initiate court proceedings to determine the
15 minor's fitness to be dealt with under the juvenile court law, by
16 the probation department, the prosecuting attorney, counsel for
17 the minor, or the court for the limited purpose of evaluating and
18 determining the minor's fitness to be dealt with under the juvenile
19 court law. Access, inspection, or use of a sealed record as provided
20 under this subparagraph shall not be construed as a reversal or
21 modification of the court's order dismissing the petition and sealing
22 the record in the prior case.

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

26 (G) By the probation department of any county to access the
27 records for the limited purpose of meeting federal Title IV-B and
28 Title IV-E compliance.

29 (H) The child welfare agency of a county responsible for the
30 supervision and placement of a minor or nonminor dependent may
31 access a record that has been ordered sealed by the court under
32 this section for the limited purpose of determining an appropriate
33 placement or service that has been ordered for the minor or
34 nonminor dependent by the court. The information contained in
35 the sealed record and accessed by the child welfare worker or
36 agency under this subparagraph may be shared with the court but
37 shall in all other respects remain confidential and shall not be
38 disseminated to any other person or agency. Access to the sealed
39 record under this subparagraph shall not be construed as a

1 modification of the court’s order dismissing the petition and sealing
2 the record in the case.

3 (2) Access to, or inspection of, a sealed record authorized by
4 paragraph (1) shall not be deemed an unsealing of the record and
5 shall not require notice to any other agency.

6 (g) (1) This section does not prohibit a court from enforcing a
7 civil judgment for an unfulfilled order of restitution ordered
8 pursuant to Section 730.6. A minor is not relieved from the
9 obligation to pay victim restitution, restitution fines, and
10 court-ordered fines and fees because the minor’s records are sealed.

11 (2) A victim or a local collection program may continue to
12 enforce victim restitution orders, restitution fines, and court-ordered
13 fines and fees after a record is sealed. The juvenile court shall have
14 access to records sealed pursuant to this section for the limited
15 purpose of enforcing a civil judgment or restitution order.

16 (h) This section does not prohibit the State Department of Social
17 Services from meeting its obligations to monitor and conduct
18 periodic evaluations of, and provide reports on, the programs
19 carried under federal Title IV-B and Title IV-E as required by
20 Sections 622, 629 et seq., and 671(a)(7) and (22) of Title 42 of the
21 United States Code, as implemented by federal regulation and state
22 statute.

23 (i) The Judicial Council shall adopt rules of court, and shall
24 make available appropriate forms, providing for the standardized
25 implementation of this section by the juvenile courts.

26 SEC. 3. To the extent that this act has an overall effect of
27 increasing certain costs already borne by a local agency for
28 programs or levels of service mandated by the 2011 Realignment
29 Legislation within the meaning of Section 36 of Article XIII of
30 the California Constitution, it shall apply to local agencies only to
31 the extent that the state provides annual funding for the cost
32 increase. Any new program or higher level of service provided by
33 a local agency pursuant to this act above the level for which
34 funding has been provided shall not require a subvention of funds
35 by the state or otherwise be subject to Section 6 of Article XIII B
36 of the California Constitution.

37 However, if the Commission on State Mandates determines that
38 this act contains other costs mandated by the state, reimbursement
39 to local agencies and school districts for those costs shall be made

- 1 pursuant to Part 7 (commencing with Section 17500) of Division
- 2 4 of Title 2 of the Government Code.

O