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SEALING JUVENILE OFFENSE RECORDS--POLICY UPDATE & CHALLENGES FOR PRACTITIONERS

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Presenters

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Course Objectives

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- ❑ Review recent changes to sealing laws
- ❑ Update on case law addressing sealing
- ❑ Identify implementation issues and challenges
- ❑ Discuss need for any further legislation

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LEGISLATION UPDATE

California Sealing Law Prior to 2014

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- ❑ Sealing by petition– WIC 781
 - Long wait periods, cumbersome process, rarely used
- ❑ For WIC 707s committed at 14 or older-- lifetime sealing ban (Prop 21)
- ❑ No process for court-initiated or “auto” sealing
- ❑ Limited access to sealing under WIC 793 Deferred Entry of Judgment

CA Sealing Law Reforms 2014-2016

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- ❑ **2014: SB 1038 adds new “auto-sealing” process – WIC 786**
 - Court must order sealing upon *satisfactory completion of probation or diversion*
 - No auto sealing for 707 (b)/ over 14 offenses
 - Auto-sealing does not replace 781 petition sealing, key differences remain
- ❑ **2015: AB 666 clarifies & expands WIC 786 sealing provisions**
 - Defines satisfactory completion
 - Expands post sealing access to records
 - Other important changes: e.g. agencies covered by order, priors
- ❑ **2016: AB 1945, minor additional changes to WIC 786**

2017: AB 529 expands auto-sealing

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Expands auto sealing statute (WIC 786) in 2 ways:

- ❑ Court must order sealing of records upon dismissal of petition or acquittal
 - Includes re-filing provisions for sealed/dismissed petitions where new circumstances are alleged

- ❑ Adds WIC 786.5 to require probation to unilaterally seal records upon youth's satisfactory completion of non-court diversion (WIC 654)
 - Probation must also notify a service agency operating the diversion program to seal their records

2017: SB 312 modifies lifetime ban on sealing of WIC 707 (b) records

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Amends WIC 781 to permit sealing of WIC 707 (b) offense record under defined circumstances:

- Longer "crime free" wait periods than for non-707s
- Must petition the Juv. court & show "attainment of rehabilitation"
- Sealing is **provisional only**– if a new felony is alleged, prosecutors and others may access sealed record.
- Dismissals/misdemeanor reductions of WIC 707(b) now sealable. In re GY fix

SB 312- Access to Sealed Records

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Access to WIC 707 record sealed under WIC 781 as follows:

- To make felony charging decision
- To determine felony sentence
- Transfer (fitness) hearing cases
- “Strike” enhancement
- “Brady” amendment.*Provides sealed records under WIC 781 may be accessed, inspected or used by prosecutors to meet a statutory or constitutional obligation to disclose favorable evidence to a defendant in a criminal case.*
(Note: No similar provision in WIC 786)

Monitoring the Impact of New Sealing Laws

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- ❑ **Impact of record sealing on youth**
 - Can youth safely “non-disclose” offense history on job and other applications?
 - What’s the impact of sealing on military service enlistment?
- ❑ **Key practice concern:** *Are youth & counsel adequately informed of new sealing options?*
- ❑ **Impact on research and data collection** – Section 787
- ❑ **Monitoring sealing activity-** *No current plan or legal requirement to track sealing activity on a statewide basis.*
 - Volume increase in record sealing since WIC 786 enacted: estimated in the “tens of thousands” per year statewide

Lingering Practice Issues

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Panelists will seek to address practice issues including:

- Differing approaches to what is “satisfactory completion”
- What is a disqualifying “moral turpitude” offense?
- How is record sealing accomplished by non-court agencies?
- How do you seal records having mixed 707/non 707 material?
- Are counties taking different approaches to how records are sealed?
- Do statutes adequately address *Brady* disclosure need?
- Is WIC 782 dismissal a “better way to go” to gain 707 sealing?
- Are Judicial Council sealing rules and forms adequate?

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NOTEWORTHY CASES

Sealing & Its Impact on *Brady* and Confrontation Issues

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- ❑ *S.V. v. Superior Court* (2017) 13 Cal.App.5th 866
- ❑ Youth was detained with adult. Youth had 602 proceedings and adult faced prosecution.
- ❑ Youth's 602 petition was sealed.
- ❑ Case addresses interplay between confidentiality of juvenile case files, sealing, and the sixth amendment rights of defendants to confront witnesses.
- ❑ How does this affect *Davis v. Alaska* (1974) 415 U.S. 308

Sealing and its Impact on Gun, SVP, and Watson Advisements

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- ❑ Sealing does not eliminate firearms restrictions (See *In re Joshua R.* (2016) 7 Cal.App.5th 864)
- ❑ Sealed records cannot be provided to Board of Parole Hearings for SVP proceedings (See *In re James H.* (2007) 154 Cal.App.4th 1078)
- ❑ Sealing the record includes *Watson* advisements. (See *In re Dean W.* (2017) 16 Cal.App.5th 970)

In re David T. (2017) 13 Cal.App.5th 866

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- This case was decided before SB 312 was enacted. Court of Appeal found that 782 dismissal of finding and petition permitted sealing of WIC 707 (b) offense
 - Case still noteworthy regarding discussion of WIC 782 motions to dismiss

Sealing Multiple Petitions

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- Caselaw a bit all over the place
 - *In re W. R.* (A154035)
 - *In re Jose S.* (2017) 12 Cal.App.5th 1107
 - *In re Y.A.* (2016) 246 Cal.App.4th 523
 - *In re I.F.* (2017) 13 Cal.App.5th 679 (Not directly on this issue, but case involves multiple petitions)

What Constitutes Satisfactory Completion?

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- *In re A.V.* (2017) 11 Cal.App.5th 697
 - If probation is satisfactorily completed, then per WIC 786 sealing must occur.
- Remember failure to pay restitution in full is not a reason to deem probation not satisfactorily completed. (WIC 786 (c)(2). (See also *In re J.G.* (2016) 3 Cal.App.4th 521)

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CHALLENGES— Judicial Viewpoint

Common Challenges

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- ❑ What records can be sealed?
- ❑ When records can be sealed?
 - ❑ Automatic or not?
- ❑ When records can be viewed
- ❑ Who can view records?
- ❑ When records can be utilized?
- ❑ Destruction Dates
- ❑ Need to seal under both WIC 781 and 786?
- ❑ Acknowledge existence of sealed records (or not)?

Challenges: Marsy's Law

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- ❑ Victim
 - ❑ Civil case
 - ❑ Arrest records
 - ❑ Immigration
 - ❑ U Visa
 - ❑ Participation in court process

Challenges: Brady

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- ❑ View or not view
- ❑ Reveal or not
- ❑ Memory erased or not
- ❑ Gang cases
- ❑ 781(D)(iii)- Brady exception vs. None in WIC 786

Challenges: What Survives Sealing?

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- ❑ DNA
- ❑ Firearm Prohibition (In re Joshua R.)
- ❑ Restraining Orders
- ❑ Gang registration
- ❑ Advisals

Working

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- WIC 786 works well if youth doesn't pick up new arrest or charges

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CHALLENGES – PROSECUTORIAL VIEWPOINT

Prosecution view: BRADY provisions

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- Still a problem under 786
- S.V. *ruling* is problematic for prosecutors
- “We can’t unknow what we already know”
- Advise defense to file 827 motion

Prosecution view: Victims’ rights

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- 707(b) now means nothing if record sealed
- U-Visa concern
- Civil proceedings

Prosecution view: Satisfactory completion?

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- What about willful failure to pay restitution?
- Marginal compliance— What's a passing grade for satisfactory completion? is that a "C" grade?
 - Even with multiple VOPs?

Prosecution view: Loss of information

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Valuable info sealed -- then minor
reoffends as juvenile or adult

- Waste of time and resources to do new evals
- Impact on DA's filing assessment (not knowing if 1st offense or repeat offender)
- Recommendations need to be based on knowing what prior services and rehab efforts have been made
- Mental health/competency records are needed

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CHALLENGES – DEFENSE VIEWPOINT

Defense view: Protecting the underlying principles of record sealing

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- ❑ Need to maintain awareness of the goals of sealing in the context of the juvenile court law
 - Focus on facilitating rehabilitation, removing barriers to normalization and success

- ❑ Tension inherent in seeking to preserve the benefits of sealing while ensuring those benefits are not undermined by numerous exceptions

Defense view: Realities defense attorneys face

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There is no one side to the views and concerns expressed-- Most concerns being articulated also impact the defense

- ❑ Workups including psych evaluations or competency information in records sealed under Section 786. If there is a new 602 petition, do we re-invent the wheel? What's the right balance between extracting sealed information and honoring the purposes served by sealing?
- ❑ Satisfactory completion— defense counsel face inconsistent determinations or applications of what constitutes satisfactory completion
- ❑ Brady access to records: defense attorneys may be missing key evidence for previously sealed petitions
- ❑ Military service— how do we assist clients facing obscure or uneven criteria for military enlistment?

Defense view: Complications for defense offices

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- ❑ Ensuring everyone has the benefit of sealing law— that youth and defense counsel are adequately informed and able to assist
- ❑ Impact upon caseloads in choosing to file WIC 782 dismissal petitions and sealing motions
- ❑ How do PD offices, conflict panels, etc. reach previous clients?
 - Outreach events?
 - Social Media?

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LEGISLATIVE FIXES?

Is legislation needed to address...?

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- Victim access for civil, arrest reports, immigration
- Consistency in destruction dates
- Brady exception in 786 as permitted in 781
- Ability to view sealed records in prior dismissed petitions on basis of mental capacity or in WIC 241.1 dismissal
- Ability to refile felonies more than 6 months after dismissal (AB 529)
- DUI murder advisal (Watson) to survive sealing
- Other?

