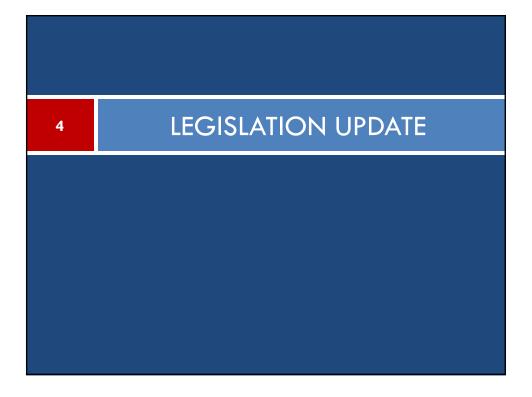
# SEALING JUVENILE OFFENSE RECORDS--POLICY UPDATE & CHALLENGES FOR PRACTITIONERS

Beyond the Bench, December 2017, San Diego

## **Presenters**

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



## 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. <u>In re GY</u> 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?
- o 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.
  - o 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?

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) 415U.S. 308

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

- 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

- □ 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?

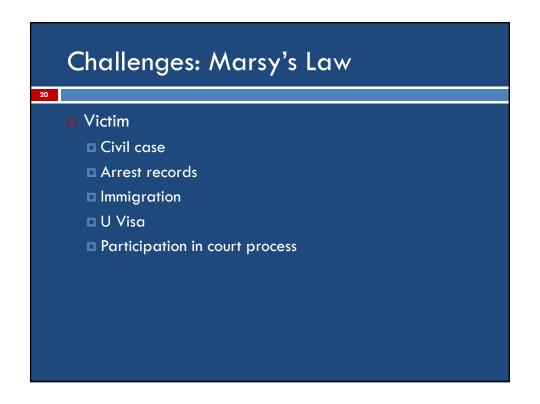
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- In re A.V. (2017) 11 Cal.App.5th 697
  - □ If probation is satisfactorily completed, then per WIC 786 sealing must occur.

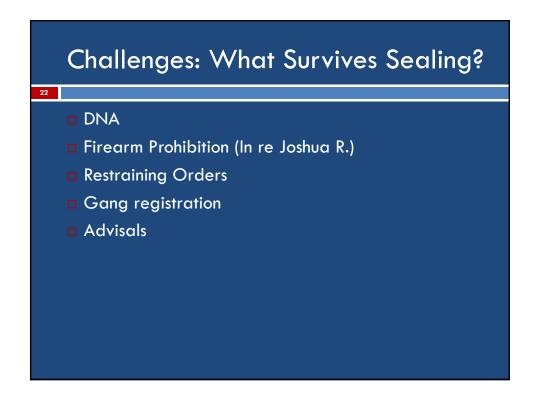
Remember failure to pay restitution in full is not a reason to deem probation not satisfactorily completed. (WIC 786 (c)(2). (See also In re J.G. (2016) 3 Cal.App.4th 521)

CHALLENGES—
Judicial Viewpoint

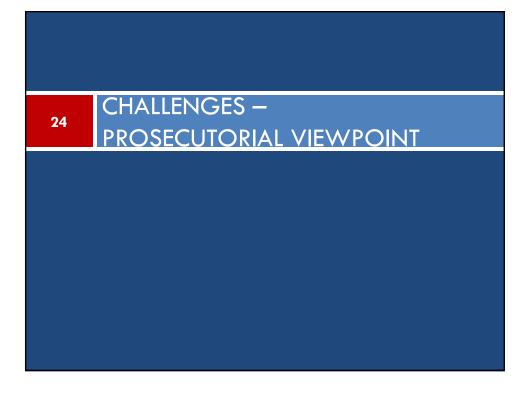
# Common Challenges What records can be sealed? When records can be sealed? Automatic or not? When records can be viewed Who can view records? When records can be utilized? Destruction Dates Need to seal under both WIC 781 and 786? Acknowledge existence of sealed records (or not)?

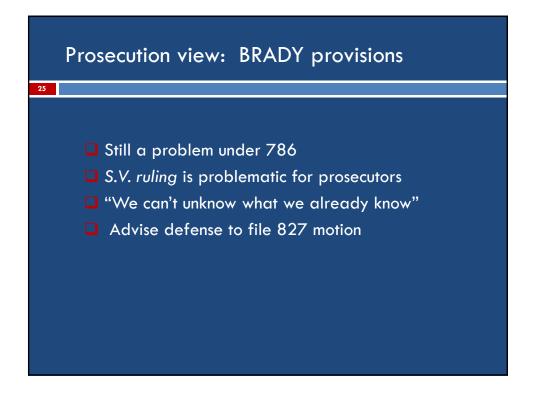


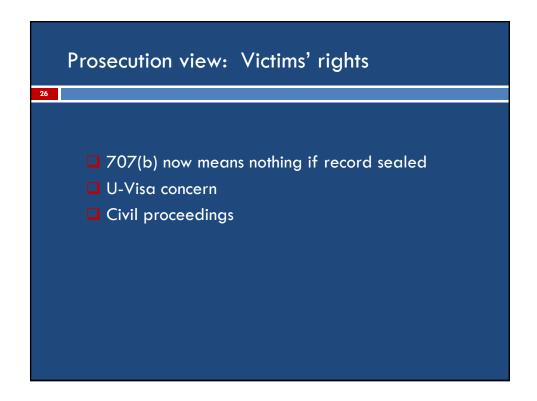
# Challenges: Brady View or not view Reveal or not Memory erased or not Gang cases 781 (D)(iii)- Brady exception vs. None in WIC 786



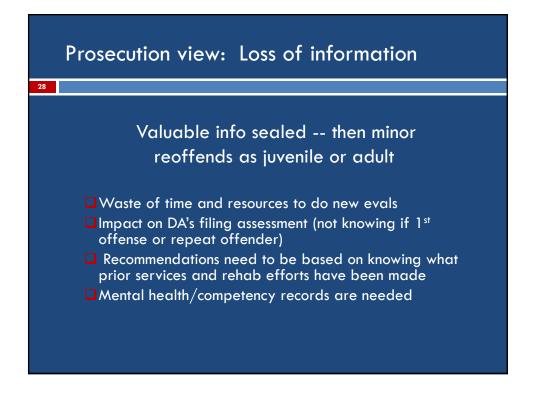
# Working WIC 786 works well if youth doesn't pick up new arrest or charges

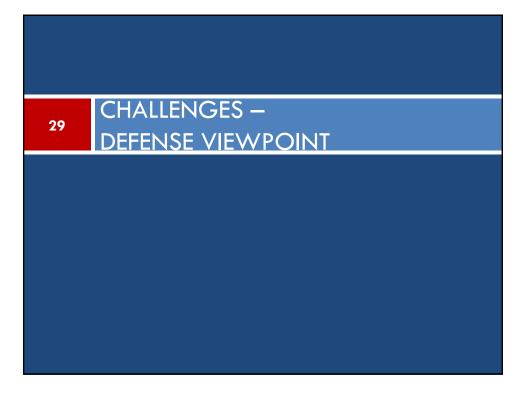






# Prosecution view: Satisfactory completion? What about willful failure to pay restitution? Marginal compliance— What's a passing grade for satisfactory completion? is that a "C" grade? • Even with multiple VOPs?





# Defense view: Protecting the underlying principles of record sealing 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

- 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?



## Is legislation needed to address...?

- □ 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?

