

AMENDED IN SENATE JUNE 13, 2017

AMENDED IN SENATE JUNE 7, 2017

AMENDED IN SENATE MAY 26, 2017

CALIFORNIA LEGISLATURE—2017–18 REGULAR SESSION

ASSEMBLY BILL

No. 529

Introduced by Assembly Member Mark Stone

February 13, 2017

An act to amend Section 786 of, and to add Section 786.5 to, the Welfare and Institutions Code, relating to juveniles.

LEGISLATIVE COUNSEL'S DIGEST

AB 529, as amended, Mark Stone. Juveniles: sealing of records.

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 authorizes a judge of the juvenile court to dismiss a petition, or set aside the findings and dismiss a petition, if the court finds that the interests of justice and the welfare of the minor require that dismissal, or if the court finds that the minor is not in need of treatment or rehabilitation.

This bill would require, if a person who has been alleged to be a ward of the juvenile court and has his or her petition dismissed or if the petition is not sustained by the court after an adjudication hearing, the court to seal all records pertaining to that dismissed petition that are 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. ~~The bill would also delete an obsolete provision.~~ *The bill would make additional technical changes.* By imposing new duties on local agencies relating to sealing juvenile records, the bill would impose a state-mandated local program.

The bill would require a probation department to seal the records of a juvenile upon satisfactory completion of a program of diversion or supervision to which a juvenile is referred by the probation department or prosecutor in lieu of filing a petition to adjudge the juvenile a ward. The bill would also require a public or private agency operating a diversion program to seal the records in its custody. The bill would require the probation department to notify the juvenile, in writing, that his or her records have been sealed or notify the juvenile, in writing, of the reasons that the records were not sealed. If the records are not sealed, the bill would allow the juvenile to petition the court to review the decision. The bill would authorize a probation department to access sealed records under these provisions for a limited purpose, as specified. By imposing new duties on local probation departments relating to sealing juvenile records, the bill would impose a state-mandated local program.

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: majority. 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 786 of the Welfare and Institutions Code
- 2 is amended to read:
- 3 786. (a) If a person who has been alleged or found to be a ward
- 4 of the juvenile court satisfactorily completes (1) an informal
- 5 program of supervision pursuant to Section 654.2, (2) probation
- 6 under Section 725, or (3) a term of probation for any offense, the

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

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

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

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

39 (d) A court shall not seal a record or dismiss a petition pursuant
40 to this section if the petition was sustained based on the

1 commission of an offense listed in subdivision (b) of Section 707
2 that was committed when the individual was 14 years of age or
3 older unless the finding on that offense was dismissed or was
4 reduced to a lesser offense that is not listed in subdivision (b) of
5 Section 707.

6 (e) If a person who has been alleged to be a ward of the juvenile
7 court has his or her petition dismissed by the court, whether on
8 the motion of the prosecution or on the court's own motion, or if
9 the petition is not sustained by the court after an adjudication
10 hearing, the court shall order sealed all records pertaining to the
11 dismissed petition in the custody of the juvenile court, and in the
12 custody of law enforcement agencies, the probation department,
13 or the Department of Justice. The court shall send a copy of the
14 order to each agency and official named in the order, direct the
15 agency or official to seal its records, and specify a date by which
16 the sealed records shall be destroyed. Each agency and official
17 named in the order shall seal the records in its custody as directed
18 by the order, shall advise the court of its compliance, and, after
19 advising the court, shall seal the copy of the court's order that was
20 received. The court shall also provide notice to the person and the
21 person's counsel that it has ordered the petition dismissed and the
22 records sealed in the case. The notice shall include an advisement
23 of the person's right to nondisclosure of the arrest and proceedings,
24 as specified in subdivision (b).

25 (f) (1) The court may, in making its order to seal the record and
26 dismiss the instant petition pursuant to this section, include an
27 order to seal a record relating to, or to dismiss, any prior petition
28 or petitions that have been filed or sustained against the individual
29 and that appear to the satisfaction of the court to meet the sealing
30 and dismissal criteria otherwise described in this section.

31 (2) An individual who has a record that is eligible to be sealed
32 under this section may ask the court to order the sealing of a record
33 pertaining to the case that is in the custody of a public agency other
34 than a law enforcement agency, the probation department, or the
35 Department of Justice, and the court may grant the request and
36 order that the public agency record be sealed if the court determines
37 that sealing the additional record will promote the successful
38 reentry and rehabilitation of the individual.

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

4 (A) By the prosecuting attorney, the probation department, or
5 the court for the limited purpose of determining whether the minor
6 is eligible and suitable for deferred entry of judgment pursuant to
7 Section 790 or is ineligible for a program of supervision as defined
8 in Section 654.3.

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

12 (C) If a new petition has been filed against the minor for a felony
13 offense, by the probation department for the limited purpose of
14 identifying the minor's previous court-ordered programs or
15 placements, and in that event solely to determine the individual's
16 eligibility or suitability for remedial programs or services. The
17 information obtained pursuant to this subparagraph shall not be
18 disseminated to other agencies or individuals, except as necessary
19 to implement a referral to a remedial program or service, and shall
20 not be used to support the imposition of penalties, detention, or
21 other sanctions upon the minor.

22 (D) Upon a subsequent adjudication of a minor whose record
23 has been sealed under this section and a finding that the minor is
24 a person described by Section 602 based on the commission of a
25 felony offense, by the probation department, the prosecuting
26 attorney, counsel for the minor, or the court for the limited purpose
27 of determining an appropriate juvenile court disposition. Access,
28 inspection, or use of a sealed record as provided under this
29 subparagraph shall not be construed as a reversal or modification
30 of the court's order dismissing the petition and sealing the record
31 in the prior case.

32 (E) *Upon the prosecuting attorney's motion, made in accordance*
33 *with Section 707, to initiate court proceedings to determine whether*
34 *the case should be transferred to a court of criminal jurisdiction,*
35 *by the probation department, the prosecuting attorney, counsel*
36 *for the minor, or the court for the limited purpose of evaluating*
37 *and determining if such a transfer is appropriate. Access,*
38 *inspection, or use of a sealed record as provided under this*
39 *subparagraph shall not be construed as a reversal or modification*

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

3 ~~(E)~~

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

7 ~~(F)~~

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

11 ~~(G)~~

12 (H) The child welfare agency of a county responsible for the
13 supervision and placement of a minor or nonminor dependent may
14 access a record that has been ordered sealed by the court under
15 this section for the limited purpose of determining an appropriate
16 placement or service that has been ordered for the minor or
17 nonminor dependent by the court. The information contained in
18 the sealed record and accessed by the child welfare worker or
19 agency under this subparagraph may be shared with the court but
20 shall in all other respects remain confidential and shall not be
21 disseminated to any other person or agency. Access to the sealed
22 record under this subparagraph shall not be construed as a
23 modification of the court’s order dismissing the petition and sealing
24 the record in the case.

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

28 (h) (1) This section does not prohibit a court from enforcing a
29 civil judgment for an unfulfilled order of restitution ordered
30 pursuant to Section 730.6. A minor is not relieved from the
31 obligation to pay victim restitution, restitution fines, and
32 court-ordered fines and fees because the minor’s records are sealed.

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

38 (i) This section does not prohibit the State Department of Social
39 Services from meeting its obligations to monitor and conduct
40 periodic evaluations of, and provide reports on, the programs

1 carried under federal Title IV-B and Title IV-E as required by
2 Sections 622, 629 et seq., and 671(a)(7) and (22) of Title 42 of the
3 United States Code, as implemented by federal regulation and state
4 statute.

5 (j) The Judicial Council shall adopt rules of court, and shall
6 make available appropriate forms, providing for the standardized
7 implementation of this section by the juvenile courts.

8 SEC. 2. Section 786.5 is added to the Welfare and Institutions
9 Code, to read:

10 786.5. (a) Notwithstanding any other law, upon satisfactory
11 completion of a program of diversion or supervision to which a
12 juvenile is referred by the probation officer or the prosecutor in
13 lieu of the filing of a petition to adjudge the juvenile a ward of the
14 juvenile court, including a program of informal supervision
15 pursuant to Section 654, the probation department shall seal the
16 arrest and other records in its custody relating to the juvenile's
17 arrest or referral and participation in the diversion or supervision
18 program. Additionally, the probation department shall notify a
19 public or private agency operating a diversion program to which
20 the juvenile has been referred under these circumstances to seal
21 records in the program operator's custody relating to the arrest or
22 referral and the participation of the juvenile in the diversion or
23 supervision program, and the operator of the program shall then
24 promptly seal the records in its custody relating to the juvenile's
25 arrest or referral and participation in the program. Upon sealing
26 of the records under this section, the arrest or offense giving rise
27 to the person's participation in the program shall be deemed not
28 to have occurred and the individual may respond accordingly to
29 any inquiry, application, or process in which disclosure of this
30 information is requested or sought.

31 (b) The probation department shall notify the participant in the
32 supervision or diversion program in writing that his or her record
33 has been sealed pursuant to the provisions of this section based on
34 his or her satisfactory completion of the program. If the record is
35 not sealed, the probation department shall notify the participant in
36 writing of the reason or reasons for not sealing the record.

37 (c) Satisfactory completion of the program of supervision or
38 diversion shall be defined for purposes of this section as substantial
39 compliance by the participant with the reasonable terms of program
40 participation that are within the capacity of the participant to

1 perform. A determination of satisfactory or unsatisfactory
2 completion shall be made by the probation department within 30
3 days of completion of the program by the juvenile, or if the juvenile
4 does not complete the program, within 30 days of determining that
5 the program has not been completed by the juvenile.

6 (d) An individual who receives notice from the probation
7 department that he or she has not satisfactorily completed the
8 diversion program and that the record has not been sealed pursuant
9 to this section may petition the juvenile court for review of the
10 decision in a hearing in which the program participant may seek
11 to demonstrate, and the court may determine, that he or she has
12 met the satisfactory completion requirement and is eligible for the
13 sealing of the record by the probation department and by the
14 program operator under the provisions of this section.

15 (e) Notwithstanding subdivision (a), the probation department
16 of a county responsible for the supervision of a person may access
17 a record sealed by a probation department pursuant to this section
18 for the sole purpose of complying with subdivision (e) of Section
19 654.3. The information contained in the sealed record and accessed
20 by the probation department under this subdivision shall in all
21 other respects remain confidential and shall not be disseminated
22 to any other person or agency. Access to, or inspection of, a sealed
23 record authorized by this subdivision shall not be deemed an
24 unsealing of the record and shall not require notice to any other
25 agency.

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.

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