

STATUTORY AND CASELAW GUIDE TO SEALING CASES
Beyond the Bench
December, 2017

STATUTORY AUTHORITY FOR SEALING JUVENILE OFFENSES

Original Sealing Statute: Welfare and Institutions Code section 781

Sealing Upon Conclusion of the Matter Statute: Welfare and Institutions Code section 786

See also Welfare and Institutions Code section 793 for sealing matters dismissed pursuant to Welfare and Institutions Code section 790.

LEGISLATION REGARDING SEALING EFFECTIVE JANUARY, 2018

S.B. 312:

https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB312

Amends Welfare and Institutions Code (herein WIC) section 781 to permit sealing of WIC 707 (b) offenses after a certain age and completion of supervision. This legislation also amends WIC 786 to provide for sealing of WIC 707(b) offenses that were reduced to misdemeanors. In addition, this amendment includes a provision to address *Brady* if records are sealed per WIC 781 sealings, but there is no similar provision for WIC 786 sealings.

A.B. 529:

https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB529

Amends WIC 786 to permit sealing of petitions not sustained by the court after an adjudication hearing. If the court seals a dismissed petition, or the petition is dismissed at the request of the prosecution, this legislation allows the prosecutor, within 6 months of the date of dismissal, to petition the court to access, inspect, or utilize the sealed record for the limited purpose of refiling the dismissed petition based on new circumstances, and would require the court to determine whether the new circumstances alleged by the prosecutor provide sufficient justification for accessing, inspecting, or utilizing the sealed record in order to refile the dismissed petition.

SEALING CASES BY TOPIC

Discovery for Confrontation & Brady Purposes

***S. V. v. Superior Court* (2017) 13 Cal.App.5th 1174, Review Pending, California Supreme Court S244192, California Supreme Court has extended time for granting or denying review to December 6, 2017.**

This case is quite complicated and requires careful review. S.V. and an adult Harris were detained together. Harris was ultimately charged with several felonies including trafficking S.V. In addition, S.V. was the subject of a WIC 602 petition which was dismissed after six

months and subsequently sealed. Harris filed a WIC 827 petition to access S.V.'s dependency and delinquency records in preparation for his trial. The juvenile court ordered redacted records be provided. S.V. filed a writ of mandate to halt the release of her delinquency file. This case addresses the interplay among confidentiality of juvenile case files, sealing, and the sixth amendment right of defendants to confront witnesses.

Firearms Restrictions

In re Joshua R. (2016) 7 Cal.App.5th 864.

Sealing does not relieve youth of Penal Code section 29820 firearms restrictions.

SVP Proceedings

In re James H. (2007) 154 Cal.App.4th 1078

Sealed records cannot be provided to the Board of Parole Hearings for determining whether Sexually Violent Predator (SVP) proceedings should be initiated pursuant to WIC 6600 et seq.

Watson Advisements

In re Dean W. (2017) G053807, issued November 3, 2017, by Fourth Appellate District Division Three.

The juvenile court sealed the record but for the Watson advisement. This case holds that the juvenile court did not have the discretion to seal only a portion of the records regarding the youth's case and reversed with directions to seal the entire record. *As of the date for creating this handout, this case is not final and may be subject to further appellate review.*

WIC 782 Motions to Dismiss & Sealing WIC 707 (b) Offenses

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

This case addresses the effect of WIC 782 dismissals upon WIC 707 (b) offenses and sealing. *David T.* was issued prior to the enactment of SB 312. David T. was declared a ward for a WIC 707 (b) offense. Years later he petitioned the court to dismiss his case pursuant to WIC 782. The court granted his WIC 782 motion to dismiss and set aside the robbery finding and dismissed the petition. However, the court denied the sealing motion that was filed after the WIC 782 motion to dismiss was granted. The Court of Appeal reversed the denial of the sealing motion finding that once the court set aside the robbery finding, WIC 781's prohibition of sealing WIC 707 (b) offenses no longer applied since there was no longer a finding that David T. committed a WIC 707 (b) offense. Although SB 312 allows sealing of WIC 707 (b) offenses, *David T.* is still relevant because in those matters where a court grants a WIC 782 motion to dismiss and sets aside the finding of the WIC 707 (b) offense, the time limitations for sealing WIC 707 (b) offenses enacted by SB 312, appear

to no longer apply. The opinion is also of interest for its discussion of the impact of WIC 782 as a “general dismissal statute” that is “intended to erase a prior adjudication—not merely reduce or mitigate it—and to thereby protect the person from any and all future adverse consequences based on that adjudication”.

Sealing When Multiple Petitions Are Involved

In re W.R. (2017), issued November 6, 2017, First District, Division One.

W.R. had numerous juvenile petitions. This case addresses the meaning of the phrase "in the case" used in several subsections of WIC 786. This Court of Appeal finds that the phrase "in the case does not reference the entire juvenile court file. This case is factually complicated and requires careful review. *As of the date for creating this handout, this case is not final and may be subject to further appellate review.*

In re Jose S. (2017) 12 Cal.App.5th 1107

Jose had one petition with a sealable offense and while on probation for that offense, picked up a subsequent petition, which included a WIC 707 (b) offense that was not sealable. After being discharged from DJF, Jose petitioned to have the sealable offense sealed. Ultimately, the juvenile court held that it could not seal one petition when another petition barred sealing, even though the underlying conduct for each petition was years apart. This case is important because it discusses the practice of filing successive petitions under one case number. Therefore, for purposes of sealing when multiple petitions are involved the court is to consider the individual petitions as part of one case. (However, see *In re W.R., cited above and In re Y.A. (2016)* cited below.)

Although the enactment of SB 312 makes all offenses sealable, this case is important because the rationale underlying the decision indicates that when multiple petitions are before the court, the court cannot seal some and not others. The implication is that if a court has a non-707 (b) petition and a subsequent WIC 707 (b) petition sealing could not occur for both petitions unless the newly amended WIC 781 sealing conditions for sealing WIC 707 (b) offenses have been met. This case also appears to differ in its evaluation of looking at numerous petitions as part of one case for sealing purposes as opposed to individual petitions.

In re Y.A. (2016) 246 Cal.App.4th 523

Y.A. was a ward for a misdemeanor petition. While on probation she picked up another petition and successfully completed probation as to the second petition. The juvenile court only issued a sealing order as to the second petition. Y.A. appealed arguing the court erred in not sealing the first petition. The Court of Appeal affirmed. Interestingly, there is no substantive discussion regarding the juvenile court's rehabilitative focus resulting in the aggregation of petitions under once case number.

Potentially related case to this issue: Please note, *In re I.F.* cited in the next section also involves sealing multiple petitions. In fact the youth in that case had eight additional wardship petitions while he was on probation and had over 21 referrals to the probation department. The Court of Appeal had no issues considering all the petitions as one juvenile case and sealing all of them.

Rehabilitation for WIC 781 Purposes

In re I.F. (2017) 13 Cal.App.5th 679

I.F. plead to one petition and was declared a ward of the juvenile court. After his initial petition, he continued to struggle resulting in eight additional wardship petitions and had over 21 referrals to the probation department. Eventually he successfully completed probation and the court terminated jurisdiction. In November 2014 he filed a request to have his case sealed pursuant to WIC 781.

On January 1, 2015 WIC 786 was effective. I.F.'s sealing petition was not addressed until June 2015. During that time, I.F. now an adult, had a pending criminal matter. The court using the standard for sealing set forth in WIC 781, denied the sealing motion stating there was insufficient evidence of rehabilitation based on I.F.'s conduct since he successfully completed probation in juvenile court.

The Court of Appeal reversed. First the court noted that WIC 781 required rehabilitation as a necessary element for sealing, but WIC 786 does not. Because I.F.'s sealing petition was litigated after the passage of WIC 786, the Court of Appeal determined that the successful completion of probation standard of WIC 786 should have been applied when determining sealing as opposed to WIC 781's requirement that rehabilitation should have been achieved.

Please note that since I.F. was decided, WIC 781 was amended and did not delete the requirement that rehabilitation is a required factor for sealing. Undoubtedly, there will be additional appellate decisions addressing sealing motions for older offenses which have been filed after the enactment of WIC 786 and the interplay of WIC 781 and WIC 786 when applied to offenses and conduct occurring after the successful completion of probation that would bar sealing under WIC 781, but still allow for sealing under WIC 786.

In re J.W. (2015) 236 Cal.App.4th 663

The juvenile court denied J.W.'s sealing petition. In denying the sealing the motion the juvenile court did focus on the severity of the offense in and felt that although there was evidence of rehabilitation, due to the underlying facts, not enough time had elapsed between the offense and the sealing request to demonstrate full rehabilitation.

The Court of Appeal affirmed noting seriousness of the offense is within the juvenile court's discretion to evaluate when determining if rehabilitation has been achieved.

Satisfactory Completion of Probation for WIC 786 Purposes

In re A.V. (2017) 11 Cal.App.5th 697

The juvenile court found that A.V. had satisfactorily completed probation for dismissal purposes under WIC 786, but not for sealing purposes. The Court of Appeal reversed finding that if a bench officer finds the youth in substantial compliance so that he or she has satisfactorily completed probation, the court must dismiss the petition and seal the youth's records in accordance with the statute.

Sealing Cases Superseded by Subsequent Statutory Amendments

In Re G.Y. (2015) 234 Cal.App.4th 1196

This case held that when a WIC 707 (b) offense has been reduced to a misdemeanor, sealing is still barred. SB 312 and its amendments to both WIC 781 and 786 supersede this case.

In re Jeffrey T. (2006) 140 Cal.App.4th 1015

This case barred sealing non-707 (b) offenses if there is one WIC 707 (b) offense within the petition. SB 312 and its amendments to both WIC 781 and 786 supersede this case.