

Judicial Council of California

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INVITATION TO COMMENT LEG17-02

Title	Action Requested
Proposed Legislation (Appellate Procedure): Content of the Record in Certain Juvenile Appeals	Review and submit comments by April 28, 2017
Proposed Rules, Forms, Standards, or Statutes Amend Welf. & Inst. Code, §827	Proposed Effective Date January 1, 2019
Proposed by Appellate Advisory Committee Hon. Louis R. Mauro, Chair	Contact Heather Anderson, 415-865-7691 heather.anderson@jud.ca.gov

Executive Summary and Origin

This proposal would amend the statute that specifies who may access and copy records in a juvenile case file to clarify that people who are entitled to seek review of certain orders in juvenile proceedings or who are respondents in such appellate proceedings may, for purposes of those appellate proceeding, access and copy those records to which they were previously given access by the juvenile court. The proposal would also clarify that either the juvenile court or the Court of Appeal may permit such individuals to access and copy additional records in the juvenile case file. This proposal is based on a suggestion from the executive officer of a Court of Appeal.

Background

The confidentiality of juvenile case files is established by Welfare and Institutions Code section 827. This confidentiality is intended to protect the privacy rights of the child who is the subject of the juvenile court proceedings. Subdivision (a)(1) of this statute identifies those who may inspect and receive copies of a juvenile court case file.¹ These include the child who is the subject of the proceeding, the child's parent or guardian, the attorneys for the parties, the petitioning agency in a dependency action, or the district attorney, city attorney, or city prosecutor authorized to prosecute criminal or juvenile cases under state law.

¹ You can access the full text of this section at
http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=827.&lawCode=WIC.

The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.

Ordinarily, to help resolve these matters as quickly as possible, when an appeal or petition is filed challenging a judgment or order in a juvenile proceeding, the record for that appellate proceeding is prepared and sent to the Court of Appeal and the parties very quickly. The items that must be included in the record on appeal or for certain writ proceedings are listed in California Rules of Court, rules 8.407, 8.450, and 8.454. The trial court is required to begin preparing the record in these proceedings as soon as a notice of appeal or notice of intent to file a writ petition is filed. A premise of this practice seems to be that all the parties to the appellate proceeding are entitled under section 827 to inspect and receive copies of the records from the juvenile case file that would be included in the record.

Currently, however, some individuals who have been authorized to participate in juvenile proceedings and have the right to seek review of certain orders in those proceedings or who have a right to respond to an appeal or petition seeking such review are not entitled under section 827 to inspect or copy any records in a juvenile case file. This situation may occur, for example, when the appellant is a family member or other person who filed a petition seeking de facto parent status and is appealing the denial of that petition or who filed a petition under Welfare and Institutions Code section 388 to change, modify, or set aside a juvenile court order on grounds of change of circumstance or new evidence and is appealing the denial of that petition. In these cases, the juvenile courts and Courts of Appeal are following various procedures to decide, on a case-by-case basis, what records the parties to the appellate proceeding may receive. Doing so takes time and resources for the persons who are seeking review or who are respondents in such proceedings, for the juvenile court, and for the Court of Appeal. It also results in delays and, particularly when the appellant or petitioner is self-represented, procedural dismissals of these appeals without consideration of their merit.

The Proposal

The Appellate Advisory Committee is proposing an amendment to section 827 to provide that persons not otherwise entitled to access the juvenile case file under 827 who file a notice of appeal or petition challenging a juvenile court order or who are a respondent in such an appellate proceeding may, for purposes of the appellate proceeding, access and copy those records to which they were previously given access by the juvenile court. The amendment would also provide that an order from either the juvenile court or the Court of Appeal is required for such individuals to access any other item in the juvenile court record.

The committee believes that this proposed amendment appropriately balances the policy considerations favoring confidentiality of juvenile case files against these individuals' need for access to certain records for purposes of effectuating their right to participate in appellate proceedings in these cases. Since the individuals were already privy to the records in the juvenile court proceedings, the proposal would not dilute the confidentiality protections for the child. By eliminating the necessity for special procedures to authorize the individuals' access to these records, the proposal would increase efficiency and access to justice while reducing costs and delays for the parties and the courts. The amendment would also clarify the procedure for

providing the individuals with access to any additional records from the juvenile case file in these circumstances.

Please note, to help commentators to see this proposed amendment in context, the full text of section 827, with the proposed amendment incorporated, is attached.

Alternatives Considered

The committee considered several options for possible changes to the California Rules of Court to address this issue, including:

- Specifically requiring appellants to file a petition in the juvenile court requesting access to the juvenile case file and allowing the dismissal of the appeal if they fail to do so;
- Requiring the Court of Appeal to determine, on a case-by-case basis, what items from the juvenile case file to include in the record on appeal in these cases and who can access that record on appeal; and
- Setting the contents of the record on appeal in these cases by rule.

The committee ultimately concluded, however, that none of these approaches, by themselves, was sufficient to address the issue.

Implementation Requirements, Costs, and Operational Impacts

The committee believes that this proposal will reduce burdens on litigants, trial courts, and the Courts of Appeal associated with preparing the record on appeal in these cases.

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose? Is there an alternative approach for addressing this problem that would be preferable to the proposed amendment to section 827?
- Does the proposal appropriately identify the individuals who should have access to certain items from the juvenile case file without court order? Should other individuals be included? Is there a better way to identify who should have this access?
- Does the proposal appropriately identify the items from the juvenile case file that should be accessible without court order? Should other items be included?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?
- Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?

Attachments and Links

1. Proposed amendments to Welfare and Institutions Code section 827, at pages 5–10

Welfare and Institutions Code section 827 would be amended, effective January 1, 2019 to read:

1
2 **§ 827. Limited dissemination of records; Misdemeanor violation of confidentiality**
3 **provisions.**
4

- 5 (a) (1) Except as provided in Section 828, a case file may be inspected only by the following:
6
7 (A) Court personnel.
8
9 (B) The district attorney, a city attorney, or city prosecutor authorized to prosecute
10 criminal or juvenile cases under state law.
11
12 (C) The minor who is the subject of the proceeding.
13
14 (D) The minor's parents or guardian.
15
16 (E) The attorneys for the parties, judges, referees, other hearing officers, probation
17 officers, and law enforcement officers who are actively participating in criminal
18 or juvenile proceedings involving the minor.
19
20 (F) The county counsel, city attorney, or any other attorney representing the
21 petitioning agency in a dependency action.
22
23 (G) The superintendent or designee of the school district where the minor is enrolled
24 or attending school.
25
26 (H) Members of the child protective agencies as defined in Section 11165.9 of the
27 Penal Code.
28
29 (I) The State Department of Social Services, to carry out its duties pursuant to
30 Division 9 (commencing with Section 10000), and Part 5 (commencing with
31 Section 7900) of Division 12, of the Family Code to oversee and monitor county
32 child welfare agencies, children in foster care or receiving foster care assistance,
33 and out-of-state placements, Section 10850.4, and paragraph (2).
34
35 (J) Authorized legal staff or special investigators who are peace officers who are
36 employed by, or who are authorized representatives of, the State Department of
37 Social Services, as necessary to the performance of their duties to inspect, license,
38 and investigate community care facilities, and to ensure that the standards of care
39 and services provided in those facilities are adequate and appropriate and to
40 ascertain compliance with the rules and regulations to which the facilities are
41 subject. The confidential information shall remain confidential except for
42 purposes of inspection, licensing, or investigation pursuant to Chapter 3
43 (commencing with Section 1500) and Chapter 3.4 (commencing with Section
44 1596.70) of Division 2 of the Health and Safety Code, or a criminal, civil, or
45 administrative proceeding in relation thereto. The confidential information may be
46 used by the State Department of Social Services in a criminal, civil, or

1 administrative proceeding. The confidential information shall be available only to
2 the judge or hearing officer and to the parties to the case. Names that are
3 confidential shall be listed in attachments separate to the general pleadings. The
4 confidential information shall be sealed after the conclusion of the criminal, civil,
5 or administrative hearings, and may not subsequently be released except in
6 accordance with this subdivision. If the confidential information does not result in
7 a criminal, civil, or administrative proceeding, it shall be sealed after the State
8 Department of Social Services decides that no further action will be taken in the
9 matter of suspected licensing violations. Except as otherwise provided in this
10 subdivision, confidential information in the possession of the State Department of
11 Social Services may not contain the name of the minor.
12

- 13 (K) Members of children's multidisciplinary teams, persons, or agencies providing
14 treatment or supervision of the minor.
15
- 16 (L) A judge, commissioner, or other hearing officer assigned to a family law case
17 with issues concerning custody or visitation, or both, involving the minor, and the
18 following persons, if actively participating in the family law case: a family court
19 mediator assigned to a case involving the minor pursuant to Article 1
20 (commencing with Section 3160) of Chapter 11 of Part 2 of Division 8 of the
21 Family Code, a court-appointed evaluator or a person conducting a court-
22 connected child custody evaluation, investigation, or assessment pursuant to
23 Section 3111 or 3118 of the Family Code, and counsel appointed for the minor in
24 the family law case pursuant to Section 3150 of the Family Code. Prior to
25 allowing counsel appointed for the minor in the family law case to inspect the file,
26 the court clerk may require counsel to provide a certified copy of the court order
27 appointing him or her as the minor's counsel.
28
- 29 (M) When acting within the scope of investigative duties of an active case, a
30 statutorily authorized or court-appointed investigator who is conducting an
31 investigation pursuant to Section 7663, 7851, or 9001 of the Family Code, or who
32 is actively participating in a guardianship case involving a minor pursuant to Part
33 2 (commencing with Section 1500) of Division 4 of the Probate Code and acting
34 within the scope of his or her duties in that case.
35
- 36 (N) A local child support agency for the purpose of establishing paternity and
37 establishing and enforcing child support orders.
38
- 39 (O) Juvenile justice commissions as established under Section 225. The
40 confidentiality provisions of Section 10850 shall apply to a juvenile justice
41 commission and its members.
42
- 43 (P) Any other person who may be designated by court order of the judge of the
44 juvenile court upon filing a petition.
45

- 1 (2) (A) Notwithstanding any other law and subject to subparagraph (A) of paragraph (3),
2 juvenile case files, except those relating to matters within the jurisdiction of the
3 court pursuant to Section 601 or 602, that pertain to a deceased child who was
4 within the jurisdiction of the juvenile court pursuant to Section 300, shall be
5 released to the public pursuant to an order by the juvenile court after a petition has
6 been filed and interested parties have been afforded an opportunity to file an
7 objection. Any information relating to another child or which could identify another
8 child, except for information about the deceased, shall be redacted from the juvenile
9 case file prior to release, unless a specific order is made by the juvenile court to the
10 contrary. Except as provided in this paragraph, the presiding judge of the juvenile
11 court may issue an order prohibiting or limiting access to the juvenile case file, or
12 any portion thereof, of a deceased child only upon a showing by a preponderance of
13 evidence that release of the juvenile case file or any portion thereof is detrimental to
14 the safety, protection, or physical or emotional well-being of another child who is
15 directly or indirectly connected to the juvenile case that is the subject of the petition.
16
- 17 (B) This paragraph represents a presumption in favor of the release of documents when
18 a child is deceased unless the statutory reasons for confidentiality are shown to
19 exist.
20
- 21 (C) If a child whose records are sought has died, and documents are sought pursuant to
22 this paragraph, no weighing or balancing of the interests of those other than a child
23 is permitted.
24
- 25 (D) A petition filed under this paragraph shall be served on interested parties by the
26 petitioner, if the petitioner is in possession of their identity and address, and on the
27 custodian of records. Upon receiving a petition, the custodian of records shall serve
28 a copy of the request upon all interested parties that have not been served by the
29 petitioner or on the interested parties served by the petitioner if the custodian of
30 records possesses information, such as a more recent address, indicating that the
31 service by the petitioner may have been ineffective.
32
- 33 (E) The custodian of records shall serve the petition within 10 calendar days of receipt.
34 If any interested party, including the custodian of records, objects to the petition,
35 the party shall file and serve the objection on the petitioning party no later than 15
36 calendar days after service of the petition.
37
- 38 (F) The petitioning party shall have 10 calendar days to file any reply. The juvenile
39 court shall set the matter for hearing no more than 60 calendar days from the date
40 the petition is served on the custodian of records. The court shall render its
41 decision within 30 days of the hearing. The matter shall be decided solely upon the
42 basis of the petition and supporting exhibits and declarations, if any, the objection
43 and any supporting exhibits or declarations, if any, and the reply and any
44 supporting declarations or exhibits thereto, and argument at hearing. The court may
45 solely upon its own motion order the appearance of witnesses. If no objection is
46 filed to the petition, the court shall review the petition and issue its decision within

1 10 calendar days of the final day for filing the objection. Any order of the court
2 shall be immediately reviewable by petition to the appellate court for the issuance
3 of an extraordinary writ.
4

5 (3) Access to juvenile case files pertaining to matters within the jurisdiction of the juvenile
6 court pursuant to Section 300 shall be limited as follows:
7

8 (A) If a juvenile case file, or any portion thereof, is privileged or confidential pursuant
9 to any other state law or federal law or regulation, the requirements of that state
10 law or federal law or regulation prohibiting or limiting release of the juvenile case
11 file or any portions thereof shall prevail. Unless a person is listed in subparagraphs
12 (A) to (O), inclusive, of paragraph (1) and is entitled to access under the other state
13 law or federal law or regulation without a court order, all those seeking access,
14 pursuant to other authorization, to portions of, or information relating to the
15 contents of, juvenile case files protected under another state law or federal law or
16 regulation, shall petition the juvenile court. The juvenile court may only release the
17 portion of, or information relating to the contents of, juvenile case files protected
18 by another state law or federal law or regulation if disclosure is not detrimental to
19 the safety, protection, or physical or emotional well-being of a child who is directly
20 or indirectly connected to the juvenile case that is the subject of the petition. This
21 paragraph shall not be construed to limit the ability of the juvenile court to carry
22 out its duties in conducting juvenile court proceedings.
23

24 (B) Prior to the release of the juvenile case file or any portion thereof, the court shall
25 afford due process, including a notice of and an opportunity to file an objection to
26 the release of the record or report to all interested parties.
27

28 (4) A juvenile case file, any portion thereof, and information relating to the content of the
29 juvenile case file, may not be disseminated by the receiving agencies to any persons
30 or agencies, other than those persons or agencies authorized to receive documents
31 pursuant to this section. Further, a juvenile case file, any portion thereof, and
32 information relating to the content of the juvenile case file, may not be made as an
33 attachment to any other documents without the prior approval of the presiding judge
34 of the juvenile court, unless it is used in connection with and in the course of a
35 criminal investigation or a proceeding brought to declare a person a dependent child
36 or ward of the juvenile court.
37

38 (5) Individuals listed in subparagraphs (A), (B), (C), (D), (E), (F), (H), and (I) of
39 paragraph (1) may also receive copies of the case file. In these circumstances, the
40 requirements of paragraph (4) shall continue to apply to the information received.
41

42 (6) Any individual not listed in paragraph (1) who files a notice of appeal or writ petition
43 challenging a juvenile court order or who is a respondent in such an appeal or writ
44 proceeding, may, for purposes of that appeal or writ proceeding, inspect and copy
45 any records in the juvenile case file to which the individual was previously granted
46 access by the juvenile court, including the record on appeal that contains such

1 records, and, on order of either the judge of the juvenile court or the Court of
2 Appeal, such individual may inspect and copy any other record or portion thereof in
3 the juvenile case file or appellate record. The requirements of paragraph (4) shall
4 continue to apply to documents received under this paragraph. The Judicial Council
5 shall adopt rules to implement this paragraph.
6

7 (b) (1) While the Legislature reaffirms its belief that juvenile court records, in general, should
8 be confidential, it is the intent of the Legislature in enacting this subdivision to provide for
9 a limited exception to juvenile court record confidentiality to promote more effective
10 communication among juvenile courts, family courts, law enforcement agencies, and
11 schools to ensure the rehabilitation of juvenile criminal offenders as well as to lessen the
12 potential for drug use, violence, other forms of delinquency, and child abuse.
13

14 (2) (A) Notwithstanding subdivision (a), written notice that a minor enrolled in a public
15 school, kindergarten to grade 12, inclusive, has been found by a court of competent
16 jurisdiction to have committed any felony or any misdemeanor involving curfew,
17 gambling, alcohol, drugs, tobacco products, carrying of weapons, a sex offense
18 listed in Section 290 of the Penal Code, assault or battery, larceny, vandalism, or
19 graffiti shall be provided by the court, within seven days, to the superintendent of
20 the school district of attendance. Written notice shall include only the offense found
21 to have been committed by the minor and the disposition of the minor's case. This
22 notice shall be expeditiously transmitted by the district superintendent to the
23 principal at the school of attendance. The principal shall expeditiously disseminate
24 the information to those counselors directly supervising or reporting on the behavior
25 or progress of the minor. In addition, the principal shall disseminate the information
26 to any teacher or administrator directly supervising or reporting on the behavior or
27 progress of the minor whom the principal believes needs the information to work
28 with the pupil in an appropriate fashion, to avoid being needlessly vulnerable or to
29 protect other persons from needless vulnerability.
30

31 (B) Any information received by a teacher, counselor, or administrator under this
32 subdivision shall be received in confidence for the limited purpose of rehabilitating
33 the minor and protecting students and staff, and shall not be further disseminated
34 by the teacher, counselor, or administrator, except insofar as communication with
35 the juvenile, his or her parents or guardians, law enforcement personnel, and the
36 juvenile's probation officer is necessary to effectuate the juvenile's rehabilitation or
37 to protect students and staff.
38

39 (C) An intentional violation of the confidentiality provisions of this paragraph is a
40 misdemeanor punishable by a fine not to exceed five hundred dollars (\$500).
41

42 (3) If a minor is removed from public school as a result of the court's finding described in
43 subdivision (b), the superintendent shall maintain the information in a confidential
44 file and shall defer transmittal of the information received from the court until the
45 minor is returned to public school. If the minor is returned to a school district other
46 than the one from which the minor came, the parole or probation officer having

1 jurisdiction over the minor shall so notify the superintendent of the last district of
2 attendance, who shall transmit the notice received from the court to the
3 superintendent of the new district of attendance.
4

5 (c) Each probation report filed with the court concerning a minor whose record is subject to
6 dissemination pursuant to subdivision (b) shall include on the face sheet the school at
7 which the minor is currently enrolled. The county superintendent shall provide the court
8 with a listing of all of the schools within each school district, within the county, along with
9 the name and mailing address of each district superintendent.
10

11 (d) (1) Each notice sent by the court pursuant to subdivision (b) shall be stamped with the
12 instruction: "Unlawful Dissemination Of This Information Is A Misdemeanor." Any
13 information received from the court shall be kept in a separate confidential file at the
14 school of attendance and shall be transferred to the minor's subsequent schools of
15 attendance and maintained until the minor graduates from high school, is released from
16 juvenile court jurisdiction, or reaches the age of 18 years, whichever occurs first. After
17 that time the confidential record shall be destroyed. At any time after the date by which a
18 record required to be destroyed by this section should have been destroyed, the minor or
19 his or her parent or guardian shall have the right to make a written request to the principal
20 of the school that the minor's school records be reviewed to ensure that the record has been
21 destroyed. Upon completion of any requested review and no later than 30 days after the
22 request for the review was received, the principal or his or her designee shall respond in
23 writing to the written request and either shall confirm that the record has been destroyed
24 or, if the record has not been destroyed, shall explain why destruction has not yet
25 occurred.
26

27 (2) Except as provided in paragraph (2) of subdivision (b), no liability shall attach to any
28 person who transmits or fails to transmit any notice or information required under
29 subdivision (b).
30

31 (e) For purposes of this section, a "juvenile case file" means a petition filed in any juvenile
32 court proceeding, reports of the probation officer, and all other documents filed in that
33 case or made available to the probation officer in making his or her report, or to the judge,
34 referee, or other hearing officer, and thereafter retained by the probation officer, judge,
35 referee, or other hearing officer.
36

37 (f) The persons described in subparagraphs (A), (E), (F), (H), (K), (L), (M), and (N) of
38 paragraph (1) of subdivision (a) include persons serving in a similar capacity for an Indian
39 tribe, reservation, or tribal court when the case file involves a child who is a member of, or
40 who is eligible for membership in, that tribe.
41

42 (g) A case file that is covered by, or included in, an order of the court sealing a record
43 pursuant to Section 781 or 786 may not be inspected except as specified by Section 781 or
44 786.
45
46