

SEALING PAST JUVENILE DELINQUENCY RECORDS: Welfare and Institutions Code Section 786 and Coming Modifications to It

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Background

Historically, the long, cumbersome process set forth in Welfare and Institutions Code¹ [section 781](#) guided when the juvenile court could seal certain records on past juvenile delinquency proceedings. That statute imposes a 5-year waiting period or alternatively requires the person to attain 18 years of age. While that section still exists, the Legislature enacted new, broader sealing procedures in [section 786](#), effective January 1, 2015. Section 786 currently directs when the juvenile court must dismiss a petition and seal the juvenile court records relating to that dismissed petition, and what agency still maintains access to these now-sealed records. This sealing procedure is not constrained by the 5-year waiting period or by age. The Judicial Branch of California website includes a helpful discussion of [Sealing Juvenile Records](#).

Multiple concerns and ambiguities in this new law surfaced when the courts began to implement the new statutory scheme. Two separate, but complimentary, bills arose to address the apparent problems: [Assembly Bill 666](#) (Stone) contained broad language to address these glitches and [Assembly Bill 989](#) (Cooper) presented limited language to ensure access to the sealed records for data reporting and future placement considerations. So that the bills would not compete, the Legislature joined them together in a complimentary fashion and passed them both. The governor signed them both into law on September 30, 2015. Section 1.5 of each bill becomes effective January 1, 2016.

This article highlights some of the main changes created by the presently-effective section 786 and the changes to come in 2016 with additions to section 786 and enactment of new section 787.

Provisions of section 786

Currently, section 786 mandates the juvenile court dismiss a juvenile petition and seal all juvenile records in the custody of the juvenile court pertaining to that dismissed petition when the minor satisfactorily completes (1) an informal supervision program under section 654.2, or (2) probation under section 725, or (3) probation for any offense

¹All statutory references are to the Welfare and Institutions Code unless otherwise specified.

not listed in section 707, subdivision (b). In addition, the statute provides the arrest upon which the judgment was deferred must be deemed to have not occurred.

Supplemental legislation

Problems with the remedies offered by section 786 have surfaced in the months since its enactment. One problem is that the courts were acting only on a most recent petition and could seal only the records held by the juvenile court. Another was that only an arrest that led to *deferred judgment* could be deemed to have not occurred, whereas one resulting in *probation* could not.

Effective January 1, 2016, new legislation addresses some of these problems and fills some gaps not covered by the original version of section 786. Assembly Bill No. 666 and Assembly Bill No. 989 have these provisions:

Records to be sealed: The records to be sealed include those in the custody of law enforcement agencies, the probation department, and the Department of Justice. (New § 786, subd. (a); Stats. 2015, ch. 368, § 1.5 [AB 666] and Stats. 2015, ch. 375, § 1.5 [AB 989].)

Notice of right to nondisclosure: Both the minor and minor's counsel are to receive notice of the right to nondisclosure of the arrest and proceedings. (New § 786, subd. (a).)

Right to state that arrest and proceedings never occurred: Because the arrest and proceedings in the case are deemed to have not occurred, the person who was the subject of the petition can respond to any inquiry by employers, educational institutions and anyone else that the arrest and proceedings never occurred.

Limitations on arrests that can be deemed not have occurred: The amended statute does not include the restrictive "arrest upon which the judgment was deferred" language. Instead, its change applies to all petitions that are dismissed under new subdivision (a), regardless of the disposition. (New § 786, subd. (b).)

What constitutes satisfactory completion of program: An important addition is the new law's description of when a minor has met his burden. A minor satisfactorily completes the program or supervision when he has no new finding of wardship, felony conviction, or misdemeanor involving moral turpitude and the minor has substantially complied with the reasonable orders of such supervision or probation that are in his capacity to perform. (New § 786, subd. (c)(1).) The minor's failure to complete restitution

does not constitute unsatisfactory completion. (New § 786, subd. (c)(2).) The court cannot seal or dismiss a petition where a minor over 14 committed a section 707, subdivision (b) offense. (New § 786, subd. (d).)

Scope of cases in which relief is possible: The new statute broadens the cases the court can reach. The court may order sealed prior petitions that have been sustained against the minor, if they are eligible for sealing and the minor has satisfactorily completed the ordered program. (New § 786, subd. (e)(1).) The court also has the power to seal relevant public agency records, not in the custody of a law enforcement-related agency. (New § 786, subd. (e)(2).)

Access to sealed records: The new law clarifies what entity may access, inspect and utilize data from the sealed records. For example, sealed records may be viewed by the prosecuting agency or probation department, to determine section 654.3 eligibility (new § 786, subd. (f)(1)(A)); by the court, to evaluate jurisdiction under section 388, subdivision (e) (new § 786, subd. (f)(1)(B)); by the probation department, to address proper future disposition (new § 786, subd. (f)(1)(C)); by the prosecuting attorney, to assess proper disposition (new § 786, subd. (f)(1)(D)) or decide whether to initiate section 707 proceedings (new § 786, subd. (f)(1)(E)). The person whose record has been sealed may also petition the court to view the sealed records. (New § 786, subd. (f)(1)(F).) Sealed records can also be viewed for specific data collecting. (New § 786, subs. (f)(1)(G) and (h); new § 787.) Finally, sealed records cannot bar victim restitution enforcement. (New § 786, subd. (g).)

New rules and forms related to § 786: Revised section 786 tasks the Judicial Council with adopting rules of court and making appropriate forms so both minor and the court can pursue the new sealing procedures. (New § 786, subd. (i).)