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AB-989 Juveniles: sealing of records. (2015-2016)

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Assembly Bill No. 989

CHAPTER 375

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

[Approved by Governor September 30, 2015. Filed with Secretary of State September 30, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

AB 989, Cooper. Juveniles: sealing of records.

Existing law 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, except as specified. 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 requires the juvenile court to order the petition of a minor who is subject to the jurisdiction of the court dismissed if the minor satisfactorily completes a term of probation or an informal program of supervision, as specified, and requires the court to seal all records in the custody of the juvenile court pertaining to that dismissed petition, except that the prosecuting attorney and the probation department of any county may have access to the records for the limited purpose of determining whether the minor is eligible for deferred entry of judgment.

This bill would additionally authorize the prosecuting attorney and the probation department to have access to the records for the limited purpose of determining a minor's eligibility for informal supervision and would authorize the probation department of any county to have access to the records for the limited purpose of meeting federal Title IV-B and Title IV-E compliance. The bill would also authorize the probation department to access the records for the limited purpose of identifying the minor's previous court-ordered programs or placements, as specified. The bill would also authorize a law enforcement agency, probation department, court, or other local agency that has custody of the sealed record to access the record, as specified.

This bill would incorporate changes to Section 786 of the Welfare and Institutions Code proposed by both this bill and AB 666, which would become operative only if both bills are enacted and become effective on or before January 1, 2016, and this bill is chaptered last.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 786 of the Welfare and Institutions Code is amended to read:

786. (a) If the minor satisfactorily completes (1) an informal program of supervision pursuant to Section 654.2, (2) probation under Section 725, or (3) a term of probation served after a finding that the minor was a ward pursuant to Section 602 for any offense not listed in subdivision (b) of Section 707, the court shall order the petition dismissed, and the arrest shall be deemed not to have occurred.

(b) (1) The court shall order sealed all records pertaining to that dismissed petition in the custody of the juvenile court.

(2) The prosecuting attorney and the probation department of any county shall have access to the records after they are sealed for the limited purpose of determining whether the minor is eligible for deferred entry of judgment pursuant to Section 790 or ineligible for informal supervision pursuant to Section 654.3.

(3) If a new petition has been filed against the minor for a felony offense, the probation department of any county shall have access to the records for the limited purpose of identifying the minor's previous court-ordered programs or placements, and in that event solely to determine the individual's eligibility or suitability for remedial programs or services. The information obtained pursuant to this paragraph shall not be disseminated to other agencies or individuals, except as necessary to implement a referral to a remedial program or service, and shall not be used to support the imposition of penalties, detention, or other sanctions upon the minor.

(4) The court may access a file that has been sealed pursuant to this section for the limited purpose of verifying the prior jurisdictional status of a ward who is petitioning the court to resume its jurisdiction pursuant to subdivision (e) of Section 388.

(5) The probation department of any county may access the records for the limited purpose of meeting federal Title IV-B and Title IV-E compliance.

(6) (A) Notwithstanding any other law, a record sealed pursuant to Section 781 and this section may be accessed by a law enforcement agency, probation department, court, or other local agency that has custody of the sealed record for the limited purpose of complying with data collection or data reporting requirements that are imposed by other law subject to subparagraph (B).

(B) Personally identifying information from a sealed record accessed under this paragraph shall not be released, disseminated, or published by or through a law enforcement agency, probation department, court, or other local agency.

(c) The access authorizations described in subdivision (b) shall not be deemed an unsealing of the record and shall not require notice to any other entity.

(d) (1) This section does not prohibit a court from enforcing a civil judgment for an unfulfilled order of restitution obtained pursuant to Section 730.6. A minor is not relieved from the obligation to pay victim restitution, a restitution fine, or court-ordered fines and fees or any combination thereof, because the minor's records are sealed.

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

(e) This section does not prohibit the Department of Social Services from meeting its obligations to monitor and conduct periodic evaluations of, and provide reports on, the programs carried under federal Title IV-B and Title IV-E as required by Sections 622, 629 et seq., and 671(a)(7) and (22) of Title 42 of the United States Code, as implemented by federal regulation and state statute.

SEC. 1.5. Section 786 of the Welfare and Institutions Code is amended to read:

786. (a) If a minor satisfactorily completes (1) an informal program of supervision pursuant to Section 654.2, (2) probation under Section 725, or (3) a term of probation for any offense, the court shall order the petition dismissed. The court shall order sealed all records pertaining to that dismissed petition in the custody of the juvenile court, and in the custody of law enforcement agencies, the probation department, or the Department of Justice. The court shall send a copy of the order to each agency and official named in the order, direct the agency or official to seal its records, and specify a date by which the sealed records shall be destroyed. Each agency and official named in the order shall seal the records in its custody as directed by the order, shall advise the court of its compliance, and, after advising the court, shall seal the copy of the court's order that was received. The court shall also provide notice to the minor and minor's counsel that it has ordered the petition dismissed and the records sealed in the case. The notice shall include an advisement of the minor's right to nondisclosure of the arrest and proceedings, as specified in subdivision (b).

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

(c) (1) For purposes of this section, satisfactory completion of an informal program of supervision or another term of probation described in subdivision (a) shall be deemed to have occurred if the person has no new findings of wardship or conviction for a felony offense or a misdemeanor involving moral turpitude during the period of supervision or probation and if he or she has not failed to substantially comply with the reasonable orders of supervision or probation that are within his or her capacity to perform.

The period of supervision or probation shall not be extended solely for the purpose of deferring or delaying eligibility for dismissal of the petition and sealing of the records under this section.

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

(d) A court shall not seal a record or dismiss a petition pursuant to this section if the petition was sustained based on the commission of an offense listed in subdivision (b) of Section 707 that was committed when the individual was 14 years of age or older unless the finding on that offense was dismissed or was reduced to a lesser offense that is not listed in subdivision (b) of Section 707.

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

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

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

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

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

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

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

(E) Upon the prosecuting attorney's motion, made in accordance with Section 707, to initiate court proceedings to determine the minor's fitness to be dealt with under the juvenile court law, by the probation department, the prosecuting attorney, counsel for the minor, or the court for the limited purpose of evaluating and determining the minor's fitness to be dealt with under the juvenile court law. Access, inspection, or use of a sealed record as provided under this subparagraph shall not be construed as a reversal or modification of the court's order dismissing the petition and sealing the record in the prior case.

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

(G) The probation department of any county may access the records for the limited purpose of meeting federal Title IV-B and Title IV-E compliance.

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

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

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

(h) This section does not prohibit the Department of Social Services from meeting its obligations to monitor and conduct periodic evaluations of, and provide reports on, the programs carried under federal Title IV-B and Title IV-E as required by Sections 622, 629 et seq., and 671(a)(7) and (22) of Title 42 of the United States Code, as implemented by federal regulation and state statute.

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

SEC. 2. Section 1.5 of this bill incorporates amendments to Section 786 of the Welfare and Institutions Code proposed by both this bill and Assembly Bill 666. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2016, (2) each bill amends Section 786 of the Welfare and Institutions Code, and (3) this bill is enacted after Assembly Bill 666, in which case Section 1 of this bill shall not become operative.