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SB-1126 Juvenile court records. (2019-2020)

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Senate Bill No. 1126

CHAPTER 338

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

[Approved by Governor September 30, 2020. Filed with Secretary of State September 30, 2020.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1126, Jones. Juvenile court 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 requires a judge of the juvenile court to dismiss a petition if the ward satisfactorily completes an informal program of supervision or a term of probation, as specified. Existing law requires the court to order sealed all records pertaining to the 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. Existing law authorizes the sealed records of juveniles to be accessed, inspected, or utilized only under limited circumstances, including by the person whose record has been sealed.

This bill would additionally authorize those records to be accessed, inspected, or utilized by the probation department, the prosecuting attorney, counsel for the minor, and the court for the purpose of assessing the minor's competency in the proceedings on a subsequent petition against the minor if the issue of competency has been raised in those proceedings.

This bill would incorporate additional changes to Section 786 of the Welfare and Institutions Code proposed by AB 2321 to be operative only if this bill and AB 2321 are enacted and this bill is enacted 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 a person who has been alleged or found to be a ward of the juvenile court 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 the 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. If a record contains a sustained petition rendering the person ineligible to own or possess a firearm until 30 years of age pursuant to Section 29820 of the Penal Code, then the date

the sealed records shall be destroyed is the date upon which the person turns 33 years of age. 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 person and the person's counsel that it has ordered the petition dismissed and the records sealed in the case. The notice shall include an advisement of the person'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 an 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 the person has not failed to substantially comply with the reasonable orders of supervision or probation that are within their 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 misdemeanor or to a lesser offense that is not listed in subdivision (b) of Section 707.

(e) If a person who has been alleged to be a ward of the juvenile court has their petition dismissed by the court, whether on the motion of the prosecution or on the court's own motion, or if the petition is not sustained by the court after an adjudication hearing, the court shall order sealed all records pertaining to the 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 person and the person's counsel that it has ordered the petition dismissed and the records sealed in the case. The notice shall include an advisement of the person's right to nondisclosure of the arrest and proceedings, as specified in subdivision (b).

(f) (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.

(g) (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 the record in the prior case.

(E) Upon the prosecuting attorney's motion, made in accordance with Section 707, to initiate court proceedings to determine whether the case should be transferred to a court of criminal jurisdiction, by the probation department, the prosecuting attorney, counsel for the minor, or the court for the limited purpose of evaluating and determining if such a transfer is appropriate. 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 their request and petition to the court to permit inspection of the records.

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

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

(I) By the prosecuting attorney for the evaluation of charges and prosecution of offenses pursuant to Section 29820 of the Penal Code.

(J) By the Department of Justice for the purpose of determining if the person is suitable to purchase, own, or possess a firearm, consistent with Section 29820 of the Penal Code.

(K) (i) A record that has been sealed pursuant to this section may be accessed, inspected, or utilized by the prosecuting attorney in order to meet a statutory or constitutional obligation to disclose favorable or exculpatory evidence to a defendant in a criminal case in which the prosecuting attorney has reason to believe that access to the record is necessary to meet the disclosure obligation. A request to access information in the sealed record for this purpose, including the prosecutor's rationale for believing that access to the information in the record may be necessary to meet the disclosure obligation and the date by which the records are needed, shall be submitted by the prosecuting attorney to the juvenile court. The juvenile court shall notify the person having the sealed record, including the person's attorney of record, that the court is considering the prosecutor's request to access the record, and the court shall provide that person with the opportunity to respond, in writing or by appearance, to the request prior to making its determination. The juvenile court shall review the case file and records that have been referenced by the prosecutor as necessary to meet the disclosure obligation and any response submitted by the person having the sealed record. The court shall approve the prosecutor's request to the extent that the court has, upon review of the relevant records, determined that access to a specific sealed record or portion of a sealed record is necessary to enable the prosecuting attorney to comply with the disclosure obligation. If the juvenile court approves the prosecuting attorney's request, the court shall state on the record appropriate limits on the access, inspection, and utilization of the sealed record information in order to protect the confidentiality of the person whose sealed record is accessed pursuant to this subparagraph. A ruling allowing disclosure of information pursuant to this subdivision does not affect whether the information is admissible in a criminal or juvenile proceeding. This subparagraph does not impose any discovery obligations on a prosecuting attorney that do not already exist.

(ii) This subparagraph shall not apply to juvenile case files pertaining to matters within the jurisdiction of the juvenile court pursuant to Section 300.

(L) If a new petition has been filed against the minor in juvenile court and the issue of competency is raised, by the probation department, the prosecuting attorney, counsel for the minor, and the court for the purpose of assessing the minor's competency in the proceedings on the new petition. Access, inspection, or utilization of the sealed records is limited to any prior competency evaluations submitted to the court, whether ordered by the court or not, all reports concerning remediation efforts and success, all court findings and orders relating to the minor's competency, and any other evidence

submitted to the court for consideration in determining the minor's competency, including, but not limited to, school records and other test results. The information obtained pursuant to this subparagraph shall not be disseminated to any other person or agency except as necessary to evaluate the minor's competency or provide remediation services, and shall not be used to support the imposition of penalties, detention, or other sanctions on the minor. Access to the sealed record under this subparagraph shall not be construed as a modification of the court's order dismissing the petition and sealing the record in the case.

(2) When a record has been sealed by the court based on a dismissed petition pursuant to subdivision (e), the prosecutor, within six months of the date of dismissal, may petition the court to access, inspect, or utilize the sealed record for the limited purpose of refiling the dismissed petition based on new circumstances, including, but not limited to, new evidence or witness availability. The court shall 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.

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

(h) (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 records sealed pursuant to this section for the limited purpose of enforcing a civil judgment or restitution order.

(i) This section does not prohibit the State 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.

(j) 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. 1.5. Section 786 of the Welfare and Institutions Code is amended to read:

786. (a) If a person who has been alleged or found to be a ward of the juvenile court 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 the 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. If a record contains a sustained petition rendering the person ineligible to own or possess a firearm until 30 years of age pursuant to Section 29820 of the Penal Code, then the date the sealed records shall be destroyed is the date upon which the person turns 33 years of age. 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 person and the person's counsel that it has ordered the petition dismissed and the records sealed in the case. The notice shall include an advisement of the person'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 an 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 the person has not failed to substantially comply with the reasonable orders of supervision or probation that are within their 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 misdemeanor or to a lesser offense that is not listed in subdivision (b) of Section 707.
- (e) If a person who has been alleged to be a ward of the juvenile court has their petition dismissed by the court, whether on the motion of the prosecution or on the court's own motion, or if the petition is not sustained by the court after an adjudication hearing, the court shall order sealed all records pertaining to the 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 person and the person's counsel that it has ordered the petition dismissed and the records sealed in the case. The notice shall include an advisement of the person's right to nondisclosure of the arrest and proceedings, as specified in subdivision (b).
- (f) (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.
- (g) (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 the record in the prior case.
- (E) Upon the prosecuting attorney's motion, made in accordance with Section 707, to initiate court proceedings to determine whether the case should be transferred to a court of criminal jurisdiction, by the probation department, the prosecuting attorney, counsel for the minor, or the court for the limited purpose of evaluating and determining if such a transfer is appropriate. 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 their request and petition to the court to permit inspection of the records.
- (G) By the probation department of any county to access the records for the limited purpose of meeting federal Title IV-B and Title IV-E compliance.

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

(I) By the prosecuting attorney for the evaluation of charges and prosecution of offenses pursuant to Section 29820 of the Penal Code.

(J) By the Department of Justice for the purpose of determining if the person is suitable to purchase, own, or possess a firearm, consistent with Section 29820 of the Penal Code.

(K) (i) A record that has been sealed pursuant to this section may be accessed, inspected, or utilized by the prosecuting attorney in order to meet a statutory or constitutional obligation to disclose favorable or exculpatory evidence to a defendant in a criminal case in which the prosecuting attorney has reason to believe that access to the record is necessary to meet the disclosure obligation. A request to access information in the sealed record for this purpose, including the prosecutor's rationale for believing that access to the information in the record may be necessary to meet the disclosure obligation and the date by which the records are needed, shall be submitted by the prosecuting attorney to the juvenile court. The juvenile court shall notify the person having the sealed record, including the person's attorney of record, that the court is considering the prosecutor's request to access the record, and the court shall provide that person with the opportunity to respond, in writing or by appearance, to the request prior to making its determination. The juvenile court shall review the case file and records that have been referenced by the prosecutor as necessary to meet the disclosure obligation and any response submitted by the person having the sealed record. The court shall approve the prosecutor's request to the extent that the court has, upon review of the relevant records, determined that access to a specific sealed record or portion of a sealed record is necessary to enable the prosecuting attorney to comply with the disclosure obligation. If the juvenile court approves the prosecuting attorney's request, the court shall state on the record appropriate limits on the access, inspection, and utilization of the sealed record information in order to protect the confidentiality of the person whose sealed record is accessed pursuant to this subparagraph. A ruling allowing disclosure of information pursuant to this subdivision does not affect whether the information is admissible in a criminal or juvenile proceeding. This subparagraph does not impose any discovery obligations on a prosecuting attorney that do not already exist.

(ii) This subparagraph shall not apply to juvenile case files pertaining to matters within the jurisdiction of the juvenile court pursuant to Section 300.

(L) If a new petition has been filed against the minor in juvenile court and the issue of competency is raised, by the probation department, the prosecuting attorney, counsel for the minor, and the court for the purpose of assessing the minor's competency in the proceedings on the new petition. Access, inspection, or utilization of the sealed records is limited to any prior competency evaluations submitted to the court, whether ordered by the court or not, all reports concerning remediation efforts and success, all court findings and orders relating to the minor's competency, and any other evidence submitted to the court for consideration in determining the minor's competency, including, but not limited to, school records and other test results. The information obtained pursuant to this subparagraph shall not be disseminated to any other person or agency except as necessary to evaluate the minor's competency or provide remediation services, and shall not be used to support the imposition of penalties, detention, or other sanctions on the minor. Access to the sealed record under this subparagraph shall not be construed as a modification of the court's order dismissing the petition and sealing the record in the case.

(M) A record that was sealed pursuant to this section that was generated in connection with the investigation, prosecution, or adjudication of a qualifying offense as defined in subdivision (c) of Section 679.10 of the Penal Code may be accessed by a judge or prosecutor for the limited purpose of processing a request of a victim or victim's family member to certify victim helpfulness on the Form I-918 Supplement B certification or Form I-914 Supplement B declaration. The information obtained pursuant to this subparagraph shall not be disseminated to other agencies or individuals, except as necessary to certify victim helpfulness on the Form I-918 Supplement B certification or Form I-914 Supplement B declaration, and under no circumstances shall it be used to support the imposition of penalties, detention, or other sanctions upon an individual.

(2) When a record has been sealed by the court based on a dismissed petition pursuant to subdivision (e), the prosecutor, within six months of the date of dismissal, may petition the court to access, inspect, or utilize the sealed record for the limited purpose of refiling the dismissed petition based on new circumstances, including, but not limited to, new evidence or witness availability. The court shall 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.

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

(h) (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 records sealed pursuant to this section for the limited purpose of enforcing a civil judgment or restitution order.

(i) This section does not prohibit the State 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.

(j) 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 2321. That section of this bill shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2021, (2) each bill amends Section 786 of the Welfare and Institutions Code, and (3) this bill is enacted after Assembly Bill 2321, in which case Section 1 of this bill shall not become operative.