

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

SB 1161 (Becker)
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Fiscal: Yes
Urgency: No
AWM

SUBJECT

Juveniles

DIGEST

This bill makes numerous changes to the process by which, and under what circumstances, a juvenile case file may be sealed; and clarifies that the dependency court may retain transition jurisdiction over a nonminor dependent whose underlying adjudication was dismissed pursuant to existing statutory procedures.

EXECUTIVE SUMMARY

California's juvenile court exercises jurisdiction over two categories of minors: those who have been, or are at risk of being, abused, abandoned, or neglected by their parents or guardians; and those who have committed various criminal offenses or other specified offenses. (There is often overlap between the two categories.) For the latter category, known as the juvenile justice system, existing law is intended to ensure that minors are provided with rehabilitation opportunities. To that end, the law provides a mechanism by which a person who was a ward of the juvenile court to have their juvenile case record sealed under specified conditions, and makes juvenile case files presumptively confidential.

Current law also permits a juvenile court to exercise jurisdiction over nonminors aged 18 to 20 years, inclusive, who were wards or dependents of the juvenile court in foster care and who meet other specified conditions. This extended foster care jurisdiction gives young adults continued access to services and benefits to help ease them into adulthood and life without support from the county.

This bill makes a number of changes, some clarifying to the statutes surrounding juvenile case files and records, most of which are within the jurisdiction of the Senate Public Safety Committee. Relevant to this Committee's jurisdiction are the provisions clarifying that a juvenile court may exercise transition jurisdiction, and transition

jurisdiction over a nonminor dependent, who was a ward of the juvenile court and the underlying adjudication has been dismissed pursuant to existing provisions for sealing a juvenile court record. As the bill's supporters note, this change will allow nonminor dependent youth to have their charges dismissed without losing their eligibility for extended foster care services, so that they do not have to choose between earning a "clean slate" and receiving critical foster care assistance. This bill also permits an attorney who represented a person who was subject to juvenile justice proceedings to view a juvenile case file, and clarifies that a juvenile case file includes all digital records and electronically stored information filed in the case or made available to the probation officer, judge, referee, or other hearing officer.

This bill is sponsored by the Pacific Juvenile Defender Center and is supported by the Alliance for Boys and Men of Color, the California Alliance for Youth and Community Justice, California Attorneys for Criminal Justice, the California Public Defenders Association, the Center on Juvenile and Criminal Justice, Communities United for Restorative Youth Justice, the East Bay Community Law Center, Fresh Lifelines for Youth, the Haywood Burns Institute, MILPA Collective, the National Youth Law Center, and the San Francisco Public Defender's Office. The Committee has not received timely opposition to this bill. The Senate Public Safety Committee passed this bill with a vote of 5-0.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Establishes the juvenile court (Welf. & Inst. Code, § 245), which has jurisdiction over:
 - a) Minors who have suffered, or are at substantial risk of suffering, abuse or serious physical harm as a result of abandonment or neglect, or serious emotional damage, as specified. The juvenile court may adjudge such a minor to be a dependent of the juvenile court. (Welf. & Inst. Code, § 300.)
 - b) Minors between 12 and 17 years of age, inclusive, who persistently or habitually refuse to obey the reasonable or proper orders or directions of their parents, guardians, or custodians,¹ or who are beyond the control of that person, or who violate specified county or local ordinances, or who commit specified criminal acts. The juvenile court may adjudge such a minor to be a ward of the juvenile court. (Welf. & Inst. Code, §§ 601, 602.)
 - c) Persons between the ages of 18 and 20, inclusive, who were dependents or wards of the juvenile court and were in foster care when they attained the age 18, provided that they satisfy certain other criteria. These persons are known as nonminor dependents; if the court terminates its jurisdiction over a nonminor dependent before the nonminor dependent turns 21 years of age, the juvenile court retains general jurisdiction over the nonminor dependent

¹ Going forward, the term "parent" includes guardians and custodians.

and the nonminor dependent may petition to resume the juvenile court's jurisdiction. (Welf. & Inst. Code, §§ 303, 388, 11400(v).)

- 2) Provides that a person is within the transition jurisdiction of the juvenile court if they following criteria are met:
 - a) The person is a minor and a ward of the juvenile court, and is older than 17 years and 5 months of age and younger than 18 years of age, and is in foster care placement; or the person is a nonminor ward in foster care placement and was subject to the foster care placement order on the day they attained 18 years of age and has not yet attained 18 years of age.
 - b) The ward has been removed from the custody of their parents and ordered into foster care as a ward; or the ward has been removed from the custody of their parents and placed in foster care as a dependent of the juvenile court.
 - c) The rehabilitative goals of the minor or nonminor, as set forth in their case plan, have been met, and juvenile court jurisdiction over the minor or nonminor as a ward is no longer required.
 - d) If the ward is a minor, reunification services have been terminated, there is not otherwise a plan to place the minor in the custody of a parent or guardian, and the minor has indicated an intent to proceed as a nonminor dependent; if the ward is a nonminor, they have signed an agreement to proceed as a nonminor dependent, as specified. (Welf. & Inst. Code, §§ 450, 451.)
- 3) A minor or nonminor may satisfy the transition jurisdiction criteria in 2) if the underlying criminal adjudication that rendered them a ward was a nonviolent offense committed while they were the victim of human trafficking and the adjudication was vacated. (Pen. Code, § 236.14; Welf. & Inst. Code, §§ 303(f), 450(a)(1)(B).)
- 4) Requires a criminal court, upon determining that a person charged was, at the date the offense is alleged to have been committed, under 18 years of age, to immediately suspend all proceedings against the person charged and determine the age of the person. If the court determines that the person was, as of the alleged date of the offense, under the age of 18 years, the court must immediately certify the case to the juvenile court. The criminal court may not resume the case unless the juvenile court finds that the minor is not a fit subject for consideration under the juvenile court law and has ordered that the proceedings under the general law resume or be commenced. (Welf. & Inst. Code, § 604.)
- 5) Establishes procedures by which a probation officer or district attorney may elect to commence proceedings in the juvenile court against a minor alleged to have committed a criminal offense so as to declare a minor the ward of the juvenile court; and procedures by which the juvenile court may adjudicate a minor to be a ward. (Welf. & Inst. Code, §§ 650-742.)

- 6) Permits a juvenile court to dismiss a petition to declare a minor a ward, or set aside the findings and dismiss the petition, if the court finds that the interests of justice and the welfare of the person who is the subject of the petition require that dismissal, or if it finds that they are not in need of treatment or rehabilitation. (Welf. & Inst. Code, § 782.)
- 7) Establishes procedures for the sealing of records relating to a case before the juvenile court, under specified circumstances, in the possession of the court, law enforcement, the probation department, and others, as specified. (Welf. & Inst. Code, §§ 781, 782, 786, 786.5, 787.)
- 8) Establishes procedures for the sealing of a criminal court record for a person who was cited or arrested as a minor for a misdemeanor and the proceedings were dismissed, the person was discharged without conviction or adjudication, or the person was acquitted, as specified. (Pen. Code, § 851.7.)
- 9) Provides that a juvenile case file, which includes a petition filed in a juvenile court proceeding, reports of the probation officer, and all other related documents in the case, may be inspected only by specified individuals in specified circumstances without a court order. (Welf. & Inst. Code, § 827.)

This bill:

- 1) Clarifies that the juvenile court's transition jurisdiction, and jurisdiction over a nonminor dependent, is not eliminated when a minor or nonminor dependent's underlying adjudication is dismissed pursuant to the record-sealing provisions of the Welfare and Institutions Code; and that a nonminor dependent who exited juvenile court jurisdiction, and whose record was sealed pursuant to those provisions, may petition to resume juvenile court jurisdiction.
- 2) Requires the juvenile court, if the person whose case has been certified to a juvenile court has their records sealed in juvenile court, to order all criminal court records associated with that juvenile record sealed.
- 3) Prohibits defense counsel for a minor from being ordered to seal their records under the record-sealing provisions in sections 782 and 786 of the Welfare and Institutions Code.
- 4) Provides that a person who has been convicted of a felony, or misdemeanor involving moral turpitude, may obtain record sealing relief pursuant to section 781 of the Welfare and Institutions Code if all of that person's felony convictions, and misdemeanor convictions involving moral turpitude, have been subsequently dismissed, vacated, pardoned, or reduced to misdemeanors that do not involve moral turpitude.

- 5) Adds citation records to the records that must be sealed following the juvenile's satisfactory completion of diversion or supervision to which the juvenile was referred, as specified.
- 6) Adds the citing law enforcement agency to the list of entities that must be notified by the probation department to seal the citation records, requires the citing law enforcement agency to seal the records in its custody relating to the citation following notification by the probation department, and requires the citing law enforcement agency to notify the probation department that its records have been sealed.
- 7) Requires the probation department, the Department of Justice, and law enforcement agencies to seal the citation, arrest, and other records in their custody relating to a juvenile's citation, arrest, and detention, if the prosecutor has declined to initiate proceedings within the applicable statute of limitations and notified the probation department of that decision. The probation department must seal the citation, arrest, and other records in its custody upon notification of the prosecutor's decision, and must notify the relevant law enforcement agencies regarding record sealing. This provision of the bill does not affect any other applicable remedies for sealing of juvenile case files.
- 8) Requires a probation department to seal the citation, arrest, and other records in its custody and notify the relevant law enforcement agencies regarding record sealing, if the probation department deems it unnecessary to refer the juvenile to a program of diversion or supervision or elects to counsel the juvenile and take no further action. The probation department must seal the arrest and other records in its custody relating to the juvenile's arrest in any case that was referred to the prosecuting attorney and the prosecuting attorney notified the probation officer that it has declined to file a petition, and must notify the relevant law enforcement agencies regarding record sealing.
- 9) Adds, to the provisions allowing a criminal record to be sealed when the person was arrested as a minor and the person was released without charges, charges were dismissed, or the person was acquitted, citation records for misdemeanors and arrest and citation records for a felony.
- 10) Requires a probation officer, in all matters where the probation officer determines proceedings should not be commenced, or the prosecuting attorney refers the matter to the probation officer for whatever action the probation officer may deem appropriate, as specified, to promptly release, upon request, copies of the juvenile probation record to the minor who is the subject of the juvenile probation record, their parent or guardian, or their counsel. The probation officer must remove identifying information pertaining to any other juvenile from any juvenile probation record provided under this provision, except as provided.

- a) "Juvenile probation record" is defined as records or information relating to the taking of a minor into custody, temporary custody, or detention, including the police, arrest, and crime reports.
 - b) "Any other juvenile" is defined as additional minors who were taken into custody or temporary custody, or detained, and who also could be considered a subject of the juvenile police record, as defined, or juvenile probation record, as defined.
- 11) Authorizes counsel for a minor requesting the juvenile probation record to receive an unredacted juvenile probation record for the sole purpose of complying with counsel's ethical duties to evaluate whether a conflict of interest exists, as specified.
 - 12) Requires that a minor be given equal consideration for informal probation regardless of whether the minor lives in the county where the offense occurred.
 - 13) Requires, in an appeal from a judgment in a juvenile justice proceeding, the record on appeal to be prepared and made available to the parties and the appellate court notwithstanding a juvenile court's order to seal the record pursuant to sections 781 or 786 of the Welfare and Institutions Code.
 - 14) Permits a juvenile court to transfer jurisdiction to another county, terminate its jurisdiction, or seal the record or records of the youth under section 781 or 786 of the Welfare and Institutions Code while an appeal is pending. The transfer of jurisdiction to another county, termination of jurisdiction, or sealing of records under section 781 or 786 does not affect the jurisdiction of the appellate court; the juvenile court must access its records and assume jurisdiction to the extent necessary to follow the directions of the appellate court if the appellate court remands the matter to the juvenile court after jurisdiction has been terminated or the record has been sealed under section 781 or 786. The matter shall return to the juvenile court that last exercised jurisdiction if the matter returns to the juvenile court after jurisdiction has been transferred to another county.
 - 15) Adds, to the categories of individuals who may inspect a juvenile case file without a court order, the attorney representing a person who is, or was, subject to juvenile justice proceedings.
 - 16) Adds, to the provisions limiting access to a juvenile case file when the matter arises under dependency jurisdiction, the same limitations for when the matter arises under juvenile justice jurisdiction.
 - 17) Modifies the definition of "juvenile case file" to include all records, including any writing as defined in Section 250 of the Evidence Code, or electronically stored information relating to the minor.

COMMENTS

1. Author's comment

According to the author:

The Welfare and Institutions (WIC) code governing juvenile justice has not been updated to reflect technological advances or process changes. This lack of updates has created lengthy processes in juvenile court and breakdowns in communication which have negatively impacted youth in the system.

For example, due to a gap in current law, youth who are arrested but never charged must utilize the same complex process to have their records sealed as youth who have been formally adjudicated. These non-adjudicated youth would have to wait until they are 18 or 5 years after the referral, prove they have not suffered any crimes involving moral turpitude, and demonstrate rehabilitation to the court even though they were never charged with a crime.

SB 1161 makes clarifying amendments to the WIC in a number of areas, including access to juvenile records, record sealing when charges will not be filed, availability of informal probation, access to institutional records, and preservation of foster care benefits for non-minor dependent youth in order to improve the clarity and efficacy of the WIC.

This bill helps to ultimately streamline both access and sealing opportunities for eligible youth in the juvenile justice system.

2. This bill clarifies that the juvenile court retains transition jurisdiction over a minor or nonminor dependent when the underlying adjudication was dismissed by the juvenile court and clarifies who may view a juvenile case file without a court order

This bill makes a number of changes to the operation of the juvenile justice system and the juvenile court's treatments of persons adjudged to be wards of the juvenile court. The Senate Public Safety Committee, which passed this bill with a vote of 5-0, has jurisdiction over juvenile justice matters; that Committee's analysis is incorporated herein by reference.

With respect to this Committee's jurisdiction, the bill makes two changes.

First, the bill clarifies that, if a ward, transition dependent, or nonminor dependent of the juvenile court has their record sealed pursuant to existing procedures, the juvenile court does not lose transition jurisdiction or extended foster jurisdiction over the nonminor dependent. While existing law explicitly permits a juvenile court to maintain transition jurisdiction over a person whose conviction was vacated because the crime

was committed while the minor was a victim of human trafficking,² the statutes do not specify whether a juvenile court may retain transition jurisdiction over a minor or nonminor dependent whose record was sealed under other procedures.³ This creates the perverse situation noted by the bill's supporters, wherein a minor or nonminor dependent has to choose between remaining in transition jurisdiction or extended foster care, or having their record sealed, thereby enabling them to proceed with a clean slate. By clarifying that the sealing of a juvenile record does not preclude the juvenile court's transition jurisdiction, this bill will ensure that minors and nonminors who have made meaningful progress to rehabilitate themselves will be able to remain eligible for extended foster services and also move through the world without the stigma of a criminal record.

Second, the bill makes clarifications to what material is included in, and who may view, a juvenile case file. A juvenile case file is comprised of the petition filed in a juvenile court proceeding, reports of the probation officer, and other documents filed in the case or made available to the probation officer.⁴ As a general rule, juvenile case files are confidential and may be accessed only by specified classes of persons and entities unless a juvenile court finds good cause to release the files.⁵ This bill clarifies that the attorney representing a person who is, or was, subject to juvenile justice proceedings in the juvenile court may inspect a juvenile case file without a court order. The bill also clarifies that protections for accessing a juvenile case file in connection with the court's dependency jurisdiction also apply to juvenile case files in connection with the court's juvenile justice jurisdiction; and states that in both cases, the protections are in addition to other applicable standards or laws providing for the protection of privileged information. Finally, the bill updates the definition of "juvenile case file" to expressly include electronic records and electronically stored information. According to stakeholders, some attorneys have had difficulty obtaining digital or electronically stored information included in a case file because the entities in possession of these records read the existing statute to refer to physical documents only. This change, therefore, should ensure that access to – and protections for – a juvenile case file are applied equally to physical and digital or electronic records.

3. Arguments in support

According to the bill's sponsor, the Pacific Juvenile Defender Center:

Nonminor dependents are youth who have recently exited the foster care system and have not yet attained the age of 21. Sometimes these youth have also been involved in the juvenile justice system, and having been rehabilitated, are able to successfully obtain a dismissal of their offenses. By amending WIC §§ 303, 388,

² Pen. Code, § 236.14; Welf. & Inst. Code, §§ 450, 451.

³ Welf. & Inst. Code, §§ 303, 388, 450, 451, 11400(v).

⁴ *Id.*, § 827(e).

⁵ *Id.*, § 827.

450 and 451, SB 1161 clarifies that nonminor dependent youth are still able to receive services and benefits despite their previous charges being dismissed. Nonminor dependents should not have to choose between receiving necessary and critical foster care benefits and the relief offered by dismissal of an adjudication if the juvenile court believes the youth's positive behavior merits a dismissal of the delinquency case.

SUPPORT

Pacific Juvenile Defender Center (sponsor)
Alliance for Boys and Men of Color
California Alliance for Youth and Community Justice
California Attorneys for Criminal Justice
California Public Defenders Association
Center on Juvenile and Criminal Justice
Communities United for Restorative Youth Justice
East Bay Community Law Center
Fresh Lifelines for Youth
Haywood Burns Institute
MILPA Collective
National Center for Youth Law
San Francisco Public Defender's Office

OPPOSITION

None received

RELATED LEGISLATION

Pending Legislation:

SB 1005 (Ashby, 2024) authorizes a probation officer, in lieu of filing a petition to declare a minor a ward of the juvenile court, to refer an offense to a youth, peer, or teen court, as specified, to implement restorative justice practices. SB 1005 is pending before the Senate Public Safety Committee.

AB 1877 (Jackson, 2024) requires a county probation officer, once a person who was the subject of a petition or cited to appear before a probation officer has reached 18 years of age, to petition the court for sealing of certain records, except as specified; and requires the court to order all records sealed if the court finds that the person has not been convicted of a felony or of any misdemeanor involving moral turpitude and that rehabilitation has been attained to satisfaction of the court. AB 1877 is pending before the Assembly Appropriations Committee.

Prior Legislation:

SB 448 (Becker, Ch. 608, Stats. 2023) prohibited a juvenile court from basing the decision to detain a minor in custody solely on the minor's county of residence.

AB 2926 (Santiago, Ch. 970, Stats. 2022) required a juvenile court, upon termination of jurisdiction, to consider and afford great weight to the presence of one or more specified mitigating circumstances when deciding to dismiss a petition.

AB 2425 (Stone, Ch. 330, Stats. 2020) prohibited a law enforcement agency from releasing a juvenile police record if the juvenile satisfied certain conditions.

SB 1126 (Jones, Ch. 338, Stats. 2020) authorized sealed juvenile court record 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.

AB 2952 (Stone, Ch. 1002, Stats. 2018) authorized a prosecuting attorney to access, inspect, or utilize a juvenile record that has been sealed under the automatic sealing process in order to meet a statutory or constitutional obligation to disclose favorable or exculpatory evidence to a defendant in a criminal case.

AB 529 (Stone, Ch. 685, Stats. 2017) required the juvenile court to seal all records pertaining to a dismissed or unsustainable petition alleging wardship that are in the custody of the juvenile court and other government agencies, as specified; and required the following entities to seal the records of a juvenile: 1) a probation department upon a juvenile's satisfactory completion of a program of diversion or supervision; and 2) a public or private agency operating a diversion program, as specified.

SB 312 (Skinner, Ch. 679, Stats. 2017) authorized the court to order the sealing of records for certain serious or violent offenses committed when a juvenile was 14 years of age or older, as specified, and subject to a waiting period and certain exceptions.

PRIOR VOTES:

Senate Public Safety Committee (Ayes 5, Noes 0)
