



PACIFIC JUVENILE DEFENDER CENTER

California Juvenile Record Sealing Toolkit



Introduction

This record sealing toolkit provides an overview of California record sealing statutes and procedures for youth under age 18 who had petitions filed in juvenile court or had contact with the juvenile justice system. Juvenile court records can be sealed automatically under Welfare and Institutions Code sections 786 and 786.5 or by the long-standing discretionary process of petitioning the juvenile court to seal juvenile court records under section 781.

This toolkit is only intended to provide information, not legal advice. It is the responsibility of the reader to check prevailing statutes as legislation is constantly changing around sealing juvenile records.

About the Pacific Juvenile Defender Center

The Pacific Juvenile Defender Center (PJDC) provides support to juvenile trial lawyers, appellate counsel, law school clinical programs, and nonprofit law centers to ensure quality representation for children throughout California. Our mission is to promote justice for all youth by ensuring excellence in juvenile defense and advocating for systemic reforms.

We believe that children in the juvenile justice system must be treated with dignity, respect, and fairness; that youth must have timely access to competent, properly resourced, and specially trained counsel; and youth are fully capable of transformational character changes and true rehabilitation — irrespective of the bad decisions they might have made during adolescence. At PJDC, we believe that no youth should be prosecuted as an adult; youth advocates must play an important role in transforming the juvenile justice system; and juvenile defense is a highly-specialized area of the law and indigent defense organizations should cultivate and promote the role of the juvenile defender.

What records can be sealed?

“records of arrest, relating to the person’s case, in the custody of the juvenile court and probation officer and any other agencies, including law enforcement agencies, entities, and public officials as the petitioner alleges, in his or her petition, to have custody of the records.” (§ 781, subd. (a)(1)(A).)

“...or the Department of Justice.” (§ 786, subd. (a).)

How does one respond to employers, educational institutions, or other persons or entities regarding the arrest and proceedings in the case of sealed records?

Once records are sealed, the proceedings in the case shall be deemed not to have occurred, and the person who was the subject of the record sealing shall reply accordingly to an inquiry by employers, educational institutions or other persons or entities regarding the arrest and proceedings in the case. (§§ 781, subd. (a)(1)(A) & 786, subd. (b).)

***NOTE:** *California employers are specifically prohibited from making any inquiry into an applicant's sealed juvenile records, and subject to very limited exceptions, are prohibited from using even non-sealed juvenile records in making employment decisions. (See Lab. Code, § 432.7, subds. (a)(2), (e) & (f).)*

¹ All future statutory references are to the Welfare and Institutions Code, unless otherwise indicated.

Automatic sealing of records under section 786

1. Was the offense listed under section 707, subdivision (b)?

NO: Your client is eligible for automatic sealing under section 786 if the court finds satisfactory completion of any of the following:

- Informal probation pursuant to section 654.2 (§ 786, subd. (a).)
- Non-wardship probation under section 725 (*Ibid.*)
- A term of probation for any offense not listed in section 707(b) (§ 786, subds. (a) & (d).)
- A case is dismissed without an adjudication (§ 786, subd. (e).)
- An acquittal after a hearing (*Ibid.*)

"Satisfactory" is defined as:

- No new findings of wardship or convictions for any felony and/or any misdemeanor involving moral turpitude; **and**
- Substantial compliance with reasonable orders of supervision or probation that are "within his or her capacity to perform." (§ 786, subd. (c)(1).)

Upon a finding of satisfactory completion of probation, a court is required to seal. (See *In re A.V.* (2017) 11 Cal.App.5th 697, 710-711.)

YES: Your client may still be eligible for automatic sealing if the original offense is reduced to a misdemeanor, reduced to a non-707(b) offense, or dismissed. (§ 786, subd. (d).) This may require a two-step process:

1. Request that the charges be reduced under Penal Code Section 17, subdivision (b) or dismissed under section 782, dismissal in the interest of justice, (see *In re David T.* (2017) 13 Cal.App.5th 866); **and then**
2. Request that the records be sealed under section 786.

***NOTE:** *If this is not possible, you may still be able to petition the court under section 781 for a more limited sealing of the records.*

2. When can a sealed record be accessed, inspected, utilized?

- By the prosecutor, the probation department, or the court for the limited purpose of determining whether the minor is eligible and suitable for deferred entry of judgment (§ 790 et seq.) or is ineligible for a program of informal supervision under section 654.3. (§ 786, subd. (g)(1)(A).)
- By the court, for the limited purpose of verifying the prior jurisdictional status of a ward who is petitioning the court to resume dependency jurisdiction. (§ 786, subd. (g)(1)(B).)
- If a new felony petition has been filed, by the probation department for the limited purpose of identifying the minor's previous court-ordered programs or placements and solely to determine the minor's eligibility and suitability for remedial programs or services.
 - Information obtained under these circumstances shall not be disseminated to other agencies or persons except as needed to implement a referral to a program or services.
 - It shall not be used to support the imposition of a penalty, detention, or sanction.

(§ 786, subd. (g)(1)(C).)

By the prosecutor to meet a statutory or constitutional obligation to disclose favorable or exculpatory evidence to a defendant in a criminal case in which the prosecutor has reason to believe that access is necessary to meet the disclosure obligation. (*Brady v. Maryland* (1963) 373 U.S. 83.)

- The prosecutor must request and submit their rationale for believing that access to the information is necessary to meet the disclosure obligation.
- The juvenile court shall notify the person having the sealed record including the attorney of record.
- That person shall be afforded the opportunity to respond in writing or by appearance prior to the court's determination.
- The court shall approve the prosecutor's request to the extent the court has, upon review of the relevant records, found that the sealed record is necessary for the prosecutor to comply with a disclosure obligation.
- The court shall state on the record appropriate limits on the access, inspection, and use of the sealed record in order to protect the confidentiality of the person whose sealed record is accessed.

(§ 786, subd. (g)(1)(K).)

When a record has been sealed by the court based on a dismissal on its own motion, or by motion of the prosecutor, the prosecutor has up to six months from the date of the dismissal to petition the court for access to the sealed record for the limited purpose of refiling the dismissed petition where there are new circumstances, including but not limited to, new evidence and witness availability.

(§ 786, subd. (g)(2).)

***NOTE:** This is a partial list of when a sealed record can be accessed, inspected or utilized per section 786. Please see subdivision (g) of section 786 for the complete list of exceptions.

3. Does your client have an unpaid order of restitution?

YES: Unpaid restitution may not prevent the record from being sealed, but the court may still enforce the unpaid order pursuant to section 730.6. Sealing the record does not eliminate the obligation to pay the restitution order. (§§ 781, subd. (g)(1) & 786, subd. (h)(1).)

- Probation cannot be extended for the sole purpose of deferring or delaying record sealing. (§ 786, subd. (c)(1).)
- Local victim collection programs may access sealed records for the purpose of enforcing a civil judgment or restitution order. (§§ 781, subd. (g) & 786, subd. (h).)

NO: The record may be sealed.

Sealing records under section 786.5:

Did your client satisfactorily complete a program of diversion or supervision referred by probation or the prosecutor in lieu of the filing of a petition to adjudge juvenile a ward of the juvenile court?

YES: Section 786.5 grants your client automatic record sealing upon "satisfactory completion" of pre-filing diversion, including:

- A period of informal supervision pursuant to section 654; or any other program of pre-filing diversion (e.g. restorative justice, youth court, etc.).

- Upon satisfactory completion of diversion or a program of supervision, both probation and any other agency responsible for administering the program are required to seal records of your client’s arrest and records of referral and/or participation in the program.

(§ 786.5, subd. (a).)

NO: If probation decided your client did not satisfactorily complete the program, your client has the right to petition the court for an independent evaluation of whether completion was satisfactory or not. (§ 786.5, subd. (d).)

- “Satisfactory completion” is defined as “substantial compliance by the participant with the reasonable terms of program participation that are within the capacity of the participant to perform.” (§ 786.5, subd. (c).)

Non-automatic sealing of records under section 781:

1. In order to be eligible for sealing under section 781:

- Your client is at least 18 years old; **or** at least five years have passed since your client’s juvenile probation was terminated; **or** if there was never a formal petition filed, at least five years have passed since being cited to appear before a probation officer/law enforcement agency; **and**
- Your client has not been convicted of a felony or a misdemeanor involving “moral turpitude” since the termination of their probation; **and**
- Your client has attained “rehabilitation” to the satisfaction of the court.
 - A finding of rehabilitation is based upon a showing that the “criminal behavior is in the past and will not be repeated,” and should be made based upon the “totality of the circumstances” presented. (*In re J.W.* (2015) 236 Cal.App.4th 663, 671-672.)

(§ 781, subd. (a)(1)(A).)

2. To seal 707(b) offenses that were not dismissed or reduced, your client must:

- Be at least 21 years old (if the 707(b) offense resulted in a commitment to Division of Juvenile Justice (DJJ)) or at least 18 years old (if the 707(b) offense did not result in a commitment to DJJ); **and**
- Have completed any period of supervision associated with the 707(b) finding and/or the DJJ commitment.

(§ 781, subd. (a)(1)(D)(i).)

***NOTE:** *This is a more limited version of sealing, and the record may still be used:*

- by the prosecutor in making charging (including whether to transfer to adult court) or sentencing decisions (§ 781, subd, (a)(1)(D)(ii)(I)-(III));
- by the prosecutor and/or an adult criminal court as a juvenile strike (§ 781, subd, (a)(1)(D)(ii)(IV)); **or**
- by the prosecutor for the purpose of fulfilling *Brady* obligations - if approved by the court, it must state the limits on access, inspection and utilization of the information in the sealed information (§ 781(a)(1)(D)(iii)).

3. Does your client have a registration requirement (sex offender) pursuant to Penal Code section 290.008?

- For a non-707(b) offense – the court must also provide in the sealing order that the person is relieved from the registration requirement and for the destruction of all registration information in the custody of the Department of Justice and other agencies and officials. (§ 781, subd. (a)(1)(C).)
- For a 707(b) offense committed after reaching age 14 requiring registration pursuant to Penal Code section 290.008 – the record shall not be sealed. (§ 781, subd. (a)(1)(F).)

4. Does your client have a conviction for an offense in criminal court pursuant to section 707.1?

YES: The juvenile court records for that offense shall not be sealed. (§ 781, subd. (f).)

5. What about records of Vehicle Code violations?

- Generally the sealing of records pursuant to section 781, subdivision (a) does not apply to Department of Motor Vehicles (DMV) records for any adjudicated violations under the Vehicle Code. (§ 781, subd. (c)(1).)
- If a court orders an agency to seal a record containing a record of conviction for a Vehicle Code violation, the DMV must be notified by the court and the DMV must acknowledge receipt of the notice. (*Ibid.*)
- DMV must allow access to its records to the subject of the record and insurers. (§ 781, subd. (c)(2).)
- Does not prohibit the court from ordering other agencies to seal records that may have records of convictions for Vehicle Code violations. (§ 781, subd. (c)(3).)

6. When shall the court order destruction of a person's juvenile court record?

Section 601 cases: Five years after the date sealed. (§ 781, subd. (d).)

Section 602 cases sealed pursuant to section 781: When the person who is the subject of the record reaches 38 years of age.

- Any other agency in possession of sealed records may destroy its records five years after the record was ordered sealed.
- For section 707(b) cases where the person was 14 years or older at the time of the offense, the record shall NOT be destroyed.

(§ 781, subd. (d).)

Section 602 cases sealed pursuant to section 786: If a record contains a sustained petition rendering the person ineligible to own or possess a firearm until 30 years of age pursuant to Penal Code section 29820, then the date the sealed records shall be destroyed is the date upon which the person turns 33 years of age (§ 786, subd. (a).).

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