

JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT

SPR19-26

Title	Action Requested
Juvenile Law: Sealing of Records	Review and submit comments by June 10, 2019
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Cal. Rules of Court, rule 5.840; revise form JV-596-INFO	January 1, 2020
Proposed by	Contact
Family and Juvenile Law Advisory Committee	Tracy Kenny, 916-263-2838 tracy.kenny@jud.ca.gov
Hon. Jerilyn L. Borack, Cochair	
Hon. Mark A. Juhas, Cochair	

Executive Summary and Origin

The Family and Juvenile Law Advisory Committee proposes amending one rule of court and revising one information form so that they conform to recently enacted statutory provisions concerning the sealing of juvenile records. The proposal would update the recently adopted rule and form, which implement sealing of records for cases sealed under Welfare and Institutions Code section 786 to include changes to that section that went into effect on January 1, 2019.

Background

In 2014, the Legislature enacted Welfare and Institutions Code section 786¹ to require the sealing and dismissal of specified juvenile petitions when a child has satisfactorily completed probation. In that legislation and a number of subsequent bills, the Legislature has sought to provide access to those records for a variety of purposes. In 2018, Assembly Bill 2952 (Stone; Stats. 2018, ch. 1002) enacted an additional provision allowing access to the record by a prosecuting attorney when the attorney has reason to believe that the record may contain favorable or exculpatory information that must be disclosed to a defendant in a criminal case. These changes require that the court notify the person whose records have been sealed that the prosecutor's request is being considered so that the person may have an opportunity to respond to the request. It further requires the court to review the records and make a specific order with regard to access that protects the confidentiality of the person whose records are being accessed.

¹ Hereinafter, all statutory references are to the Welfare and Institutions Code unless otherwise indicated.

The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.

In 2017, the Court of Appeal heard a dispute regarding the potential conflict between section 786 and Penal Code section 29820. That latter statute prohibits juveniles with sustained petitions for specified offenses, including firearms and domestic violence offenses, from owning or possessing a firearm before age 30. The court in *In re Joshua R.* (2017) 7 Cal. App. 5th 864, found that the statutory provisions could be reconciled absent legislative clarification by preserving the information needed to enforce the firearms prohibition at the Department of Justice while destroying the rest of the records. In 2018, the Legislature stepped in to clarify its intent by enacting Senate Bill 1281 (Stern; Stats. 2018, ch. 793), which provides that sealed records under section 786 for offenders subject to the firearms prohibition must be maintained beyond the offender's 30th birthday and destroyed on the date the offender attains age 33.

The Proposal

The committee proposes amending rule 5.840 of the California Rules of Court and revising form JV-596-INFO to conform to and implement the changes in section 786 enacted by AB 2952 and SB 1281.

Rule 5.840 amended to clarify dates for destruction

Rule 5.840 describes the procedures for sealing and dismissing petitions under section 786. Subdivision (d) of the rule currently states the parameters for the court to use when setting a destruction date for the records being sealed. This subdivision would be amended to include the new requirement that records that contain a sustained petition that is subject to Penal Code section 29820 should not be destroyed until the subject of the order attains the age of 33.

Form JV-596-INFO updated to include new provisions allowing access to sealed records

Sealing of Records for Satisfactory Completion of Probation (form JV-596-INFO) is an information form provided to all juveniles at the end of their cases when their records have been sealed under section 786. This form includes a bulleted list of all the occasions in which a sealed record may be accessed without requiring that the records be unsealed. The committee proposes adding two bullets to that list to explain that records may be accessed to enforce a firearms prohibition or to allow a prosecutor to comply with *Brady* obligations.

Alternatives Considered

The committee considered changing only the rule and leaving the information form incomplete, but determined that it would be misleading to include some of the bases for access to 786 records while remaining silent on others.

Implementation Requirements, Costs, and Operational Impacts

Courts may incur additional costs in ensuring that they set the appropriate destruction dates for records that must be maintained to enforce the firearms restrictions. Printing costs may be incurred by courts to provide form JV-596-INFO as required by law. Some courts may incur programming charges if electronic systems are used for the court orders. In addition, because the informational forms are available in other languages, there will be costs to translate the revised

forms. All of these impacts are a result of legislative changes and are necessary to make the rule and form legally accurate.

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?
- Should the committee draft and circulate for comment a proposal in a future cycle to provide procedures for courts to comply with the notice requirements for the subject of an order whose records are sought to be disclosed by the prosecutor to comply with *Brady* obligations? If so, what specific requirements should be included?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so please quantify.
- What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?
- Would four months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Attachments and Links

1. Cal. Rules of Court, rule 5.840, at page 4
2. Form JV-596-INFO, at pages 5–6
3. Link A: Assembly Bill 2952:
http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB2952
4. Link B: Senate Bill 1281:
http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB1281

Rule 5.840 of the California Rules of Court would be amended, effective January 1, 2020, to read:

1 **Rule 5.840. Dismissal of petition and sealing of records (§ 786)**

2

3 (a)–(c) * * *

4

5 **(d) Destruction of records**

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7 The court must specify in its order the date by which all sealed records must be destroyed,
8 consistent with the following provisions:

9

10 (1) If the record to be sealed contains a sustained petition that makes the subject of the
11 order ineligible to own or possess a firearm until attaining 30 years of age under
12 Penal Code section 29820, the court must order the records destroyed on the date that
13 the subject attains 33 years of age.

14

15 (2) If the record does not contain a sustained petition that results in firearms prohibitions
16 for the subject as described in paragraph (1), the date for destruction of the records
17 must be set consistent with this paragraph. For court records, this date may be no
18 earlier than the date the subject of the order attains age 21 and no later than the end
19 of the time frame ~~set forth~~ stated in section 781(d). For all other records, the date
20 may be no earlier than the date the subject of the order attains age 18, and no later
21 than the time frame ~~set forth~~ stated in section 781(d), unless that time frame expires
22 ~~prior to~~ before the date the subject attains 18 years of age.

23

24 (e)–(f) * * *

In many cases, the court will seal your juvenile records if you satisfactorily complete probation (formal or informal supervision).

If your case is terminated by the juvenile court after January 1, 2015, because you satisfactorily completed your probation (formal or informal), or if your case was otherwise dismissed after the petition was filed, in many cases, the court will have dismissed the petition(s) and sealed your records. If the court sealed your records for this reason, you should have received a copy of the sealing order with this form.

If the court finds you have not satisfactorily completed your probation, it will not dismiss your case and will not seal your records at termination. If you want to have your records sealed in this situation, you will need to ask the court to seal your records at a later date (**see form JV-595-INFO** for information about asking the court to seal your records).

The court will not seal your records at the end of your case if you were found to have committed an offense listed in Welfare and Institutions Code section 707(b) (a violent offense such as murder, rape, or kidnapping, and some offenses involving drugs or weapons) when you were 14 or older unless it was not dismissed or reduced to a misdemeanor or a lesser offense not listed in 707(b), but unless you were found to have committed one or more of certain sex offenses, you can ask the court to seal your records at age 18 (or age 21 if you were committed to the Division of Juvenile Facilities).

How will the court decide if probation is satisfactorily completed?

If you have done what you were ordered to do while on probation and have not been found to have committed any further crimes (felonies or misdemeanor crimes involving moral turpitude, such as a sex crime or a crime involving dishonesty), the court will find that your probation was satisfactorily completed even if you still owe restitution, court ordered fees, and fines, **BUT...**

Restitution and court fines and fees must still be paid.

Even if your records are sealed, you must still pay your restitution and court-ordered fees and fines. Your sealed records can be looked at to enforce those orders.

Which records will be sealed?

The court will order your court, probation, Department of Justice, and law enforcement agency records sealed for the case the court is closing and earlier cases, if the court determines you are eligible. If you or your attorney ask the court, it can also seal records of other agencies (such as the District Attorney's office) if it finds that doing so would help you to be rehabilitated.

If you have more than one juvenile case and are unsure which records were sealed, ask your attorney or probation officer.

Who can see your sealed records?

- If your records were sealed by the court at termination, the prosecutor and others can look at your record to determine if you are eligible to participate in a deferred entry of judgment or informal supervision program.
- If you apply for benefits as a nonminor dependent, the court may see your records.
- If a new petition is filed against you for a felony offense, probation can look at what programs you were in but cannot use that information to keep you in juvenile hall or to punish you.
- If the juvenile court finds you have committed a felony, your sealed records can be viewed to decide what disposition (sentence) the court should order.
- If you are arrested for a new offense and the prosecuting attorney asks the court to transfer you to adult court, your record can be reviewed to decide if transfer is appropriate.
- If you are in foster care, the child welfare agency can look at your records to determine where you should live and what services you need.
- If your case was dismissed before you became a ward, the prosecutor can look at your records for six months after the dismissal in order to refile the dismissed petition based on new information or evidence.
- If you are not allowed to have a gun because of your offense, the Department of Justice can look at your records to make sure you do not buy or own a gun.
- If a prosecutor thinks something in your record would be helpful to someone who is charged with a crime in another case, the prosecutor can ask the court to provide that information. If this request is made, the court will let you know. You and your lawyer may object.



- If you want to see your records or allow someone else to see them, you can ask the court to unseal them.

NOTE: Even if someone looks at your records in one of these situations, your records will stay sealed and you do not need to ask the court to seal them again.

Do you have to report the offenses in the sealed records on job, school, or other applications?

No. Once your records are sealed, the law treats those offenses as if they did not occur and you do not need to report them. **However**, the military and some federal agencies may not recognize sealing of records and may be aware of your juvenile justice history, even if your records are sealed. If you want to enlist in the military or apply for a job that asks you to provide information about your juvenile records, seek legal advice about this issue.

Can employers see your records if they are not sealed?

Juvenile records are not allowed to be disclosed to most employers, and employers are not allowed to ask about or consider your juvenile history in most cases. There are exceptions to this rule if you are applying to be a peace officer or to work in health settings. Also, federal employers may still have access to your juvenile history. You should seek legal advice if you have questions of what an employer can ask about you.