

JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT

SPR20-23

Title	Action Requested
Juvenile Law: Access to Sealed Records	Review and submit comments by June 9, 2020
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Adopt Cal. Rules of Court, rule 5.860; revise forms JV-595 and JV-595-INFO; approve forms JV-592, JV-593, and JV-594	January 1, 2021
Proposed by	Contact
Family and Juvenile Law Advisory Committee Hon. Jerilyn L. Borack, Cochair Hon. Mark Juhas, Cochair	Tracy Kenny, 916-263-2838 tracy.kenny@jud.ca.gov

Executive Summary and Origin

The Family and Juvenile Law Advisory Committee proposes adopting one new rule of court, revising two existing forms, and approving three new optional forms to assist courts with the implementation of recently enacted statutory provisions concerning the sealing of juvenile records and access to those records by prosecuting attorneys. The proposal would ensure that all forms accurately reflect the current state of the law on fees for sealing petitions, and would create procedures and forms for courts to consider requests for access to sealed records under recently enacted laws concerning prosecutorial duties to disclose favorable information to defendants.

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 several 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

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

This proposal has not been approved by the Judicial Council and is not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. It is circulated for comment purposes only.

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. In 2019 the Judicial Council updated its information forms to reflect this change, and a question on the invitation to comment regarding the need for rules and forms to implement this requirement. The majority of commenters suggested that rules and forms would be of value to the courts in carrying out this duty.

In 2019, the Legislature amended other statutes on the sealing of juvenile records to allow prosecuting attorneys to request that the juvenile courts provide access to sealed records to fulfill their duties to provide favorable or exculpatory information to a criminal defendant. These provisions are modeled on a recent change to section 781 enacted by Senate Bill 312 (Skinner; Stats. 2017, ch. 679), and like that provision, do not require any notice to the person whose records are being accessed. However, the provision in section 781 is notably narrower than the others in that it only applies to files concerning 707(b) offenses adjudicated for those 14 years of age or older.

In 2015, the Legislature enacted legislation providing that fees for the investigation relating to sealing or a fee to file the petition could only be charged to nonindigent petitioners who were 26 years of age or older. Legislation² enacted last year eliminates the authority to charge fees for sealing to any petitioners.

The Proposal

The committee proposes adoption of a new rule of court and approval of three new optional forms to implement the provisions for prosecuting attorneys to request access to sealed files. In addition, the committee proposes revising existing forms to reflect statutory changes that provide that no fees can be charged for sealing.

Rule and forms to implement provisions on prosecutor access to sealed records

In order to provide procedural guidance and a mechanism to comply with specific notice and opportunity-to-respond requirements in some cases in which the prosecutor is seeking access to sealed records for the purpose of providing favorable or exculpatory information to a defendant, the committee is proposing that a new rule of court be adopted as well as three new optional forms described in detail below.

Rule 5.860

This proposed rule of court would set forth the requirements for the filing of a request by a prosecuting attorney, as well as very specific filing timelines for cases in which records sealed under section 786 are sought, as those requests must be provided to the person whose records are being sought and that person must have an opportunity to provide a written and/or in-person response to the court. When the records are requested from those files, the rule would require the

² AB 1537 (Daly; Stats. 2019, ch. 582)

requester to file a notice and response form along with the request so that the court can provide the required notice, and it would provide the person receiving notice with 15 days to submit a response to the court. It would require the court to set a hearing if an appearance is requested and notify the person whose records were sealed of the hearing date. In all cases except those in which an appearance has been requested, the rule would require the court to make an order on the request within 21 court days of the filing of the request. If a hearing is requested, an order would be required within five court days of the hearing.

Optional forms to implement requirements of rule 5.860

The committee is proposing that the council approve three new optional forms to implement the statutory requirements for prosecuting attorneys to make these requests, and that notice and an opportunity to respond be provided in appropriate cases. *Prosecutor Request for Access to Sealed Juvenile Case File* (form JV-592) would provide a form petition for the prosecuting attorney to request access from the juvenile court to sealed juvenile case files. It allows the prosecutor to specify which code section the file was sealed under and to set forth the reasons why access is needed. *Notice of Prosecutor Request for Access to Sealed Juvenile Case File* (form JV-593) could be used to notify a person whose records have been sealed under section 786 and their attorney of record that access is being sought and that there is a right to provide a response to the request to the court in writing and/or in person. *Response to Prosecutor Request for Access to Sealed Juvenile Case File* (form JV-594) would allow a person who has received notice of the request for access to file a written response for the court's consideration and/or to request an appearance before the court.

Revisions for existing forms to reflect recent statutory changes

The elimination of any authority for courts or probation departments to charge fees for record sealing requests or investigations requires changes to two forms that previously referenced those fees. Form JV-595 (*Request to Seal Juvenile Records*), item 4, and form JV-595-INFO (*How to Ask the Court to Seal Your Records*), item 5 in the instructions on page 2, would be revised to eliminate any reference to fees. In addition, form JV-595-INFO would be revised to reflect that a prosecuting attorney may access sealed records if they contain information favorable to a criminal defendant in another case.

Alternatives Considered

The committee considered implementing the recently enacted provisions on access to sealed juvenile records by prosecuting attorneys via a rule of court alone but opted to develop optional forms in order to assist with the notice and response requirements in section 786 that would be onerous for courts to implement without new forms.

Fiscal and Operational Impacts

Printing costs may be incurred by courts to provide the revised mandatory information forms. 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 forms legally accurate. The approval of optional forms should make it easier for courts to comply with their existing statutory duties.

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?
- Are the optional forms useful for complying with the notice and response provisions in section 786?
- Will the approach in this proposal of having a standalone rule and process for *Brady* access to sealed records improve the administration of these requests, or should this process be incorporated into the procedures for seeking access to juvenile records under section 827 and rule 5.552?
- Should the rule and or form address the narrow application of the statutory provision in section 781 to 707(b) offenses adjudicated for those 14 or over, or should it apply in any case in which a prosecutor might seek access to comply with *Brady* obligations?

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 4 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 5.860, at pages 5–6
2. Forms JV-592, JV-593, JV-594, JV-595, and JV-595-INFO, at pages 7–14
3. Link A: AB 2952,
http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB2952
4. Link B: AB 1537,
http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB1537
5. Link C: SB 312,
http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB312

Rule 5.860 of the California Rules of Court would be adopted, effective January 1, 2021, to read:

1 **Rule 5.860. Prosecuting Attorney Request to Access Sealed Juvenile Case Files**

2
3 **(a) Applicability**

4
5 This rule applies when a prosecuting attorney is seeking to access, inspect, or
6 utilize a record that has been sealed by the court under Penal Code section 851.7 or
7 sections 781, 786, or 793 and the attorney has reason to believe that access to the
8 record is necessary to meet the attorney’s statutory or constitutional obligation to
9 disclose favorable or exculpatory evidence to a defendant in a criminal case.

10
11 **(b) Contents of the request**

12
13 Any request filed with the juvenile court under this rule must include the
14 prosecutor’s rationale for believing that access to the information in the record may
15 be necessary to meet the disclosure obligation and the date by which the records are
16 needed. The date must allow for sufficient time to meet reasonable given the notice
17 and hearing requirements of this rule. Form JV-592, *Prosecutor Request for Access*
18 to Sealed Juvenile Case File, may be used for this purpose.

19
20 **(c) Notice and opportunity to respond for persons with records sealed under**
21 **section 786**

22
23 **(1) Notice requirements when records were sealed under section 786**

24
25 **(A) When the request concerns a file sealed under section 786, the request**
26 **must include a form for the court to notify the person whose records are**
27 **to be accessed as well as that person’s attorney of record, and a form**
28 **for those individuals to respond in writing or to request an appearance**
29 **before the juvenile court. Forms JV-593, *Notice of Prosecutor Request***
30 **for Access to Sealed Juvenile Case File, and JV-594, *Response to***
31 **Prosecutor Request for Access to Sealed Juvenile Case File, may be**
32 **used for this purpose.**

33
34 **(B) The juvenile court must notify the person with the sealed record and**
35 **that person’s attorney of record using the documents prepared by the**
36 **prosecuting attorney within two court days of the request being filed.**

37
38 **(2) Requirements if a response is filed**

39
40 **(A) If a written response is filed no more than 15 days after the date the**
41 **notice was issued and no appearance has been requested, the clerk of**

1 the court must provide that response to the juvenile court for its
2 consideration as it reviews the prosecuting attorney's request.

3
4 (B) If a response is filed no more than 15 days after the date the notice was
5 issued and an appearance is requested, the clerk of the court must set a
6 hearing and provide notice of the hearing to the person with the sealed
7 record, the attorney of record for that person, and the prosecuting
8 attorney who filed the request.

9
10 **(d) Juvenile court review and order**

11
12 The court must review the case file and records that have been referenced by the
13 prosecuting attorney's request as well as any response provided as set forth in
14 subdivision (c)(2). The court must approve the request if it determines that access
15 to a specific sealed record or portion of a sealed record is necessary to enable the
16 prosecuting attorney to comply with the disclosure obligation. If the court approves
17 the request, it must state on the record appropriate limits on the access, inspection,
18 and utilization of the sealed record information in order to protect the
19 confidentiality of the person whose sealed record is at issue. The court must make
20 its order within 21 court days of when the request is filed, unless an appearance has
21 been requested under subdivision (c)(2), in which case the court must act within
22 five court days of the date set for the appearance.

Clerk stamps date here when form is filed.

DRAFT
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the Judicial Council

Fill in court name and street address:

Superior Court of California, County of

Case Number:

1 Petitioner (*name*): _____

is a prosecuting attorney requesting access to information in the sealed juvenile court file of:

Child's Name: _____

Case Name: _____

2 Petitioner has reason to believe that access is necessary to meet the constitutional obligation to disclose favorable or exculpatory evidence to a:

defendant (*name*): _____

in a criminal case (*case number*): _____

3 The file was sealed by the court pursuant to:

a. Penal Code section 851.7

b. Welfare and Institutions Code section 781

c. Welfare and Institutions Code section 793; or

d. Welfare and Institutions Code section 786, and I am filing a *Notice of Prosecutor Request for Access to Sealed Juvenile Case File* (form JV-593) with this petition to be served on the subject of the file and their attorney of record.

4 The records I need access to are:

Continued on Attachment 4

5 The reasons that I need access to those records are:

Continued on Attachment 5

Date Needed By: _____

Date: _____


Signature

Notice of Prosecutor Request for Access to Sealed Juvenile Case File

Clerk stamps date here when form is filed.

DATE: _____
TO: _____
Child's name: _____
Address: _____
Attorney of record: _____
Address: _____

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the Judicial Council

Fill in court name and street address:

Superior Court of California, County of

Case Number:

1 A prosecuting attorney (*name*): _____ is requesting access to the sealed juvenile file in case number: _____ concerning (*child's name*): _____
because the attorney has reason to believe that there is information in the case file that may be necessary to disclose to a criminal defendant because it is evidence that may be favorable or exculpatory to that person.

2 The information that the prosecuting attorney wants to access and the reasons why the attorney believes access may be necessary are described in the attached *Prosecutor Request for Access to Sealed Juvenile Case File* (form JV-592).

3 You have the right (but are not required) to respond to the court before the judge decides if the prosecutor should get access to your file. You can respond in writing by completing the *Response to Prosecutor Request for Access to Sealed Juvenile Case File* (form JV-594) that came with this notice, and mailing it back to the court.

4 You also have a right to ask the juvenile court for a hearing where you can appear to provide information to the court before it makes its decision. Check the box on item 3 on form JV-594 if you want the court to set a hearing.

5 You must return form JV-594 to the court listed at the address above within **15** days of the date at the top of this form. If you do not act within that time frame, the court will make its determination on the request without your input.

**Response to Prosecutor Request
for Access to Sealed Juvenile Case
File**

Clerk stamps date here when form is filed.

This form can be used to give the juvenile court your response when you receive notice that a prosecuting attorney wants to access your sealed records because they may contain information that would be helpful to the criminal defense of another person who was charged with a crime. You do not have to respond, but if you want to respond you must return this form to the court within 15 days of the date stamped on the *Notice of Prosecutor Request for Access to Sealed Juvenile Case File* (form JV-593) that came with this form.

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the Judicial Council**

① My name: _____

② Case Number (from form JV-593): _____

③ I understand that a prosecuting attorney is requesting access to my sealed juvenile court records in the action connected to the case number above, and I want the court to consider the following when it determines if the request should be approved:

Fill in court name and street address:

Superior Court of California, County of

Court fills in case number when form is filed.

Case Number:

④ I want to come to court to respond to the prosecuting attorney's request. The court can notify me of the date and time for my appearance at:

Name: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____

⑤ I have no written response to the request, and I do not wish to appear in court.

Date: _____

Type or print your name

 _____
Sign your name

Probation stamps date here when form is received.

**DRAFT
Not approved by
the Judicial Council**

This form can be used to petition the juvenile court to seal your juvenile records. More information about sealing is available on form JV-595-INFO, *How to Ask the Court to Seal Your Records*.

Submit this form to the probation department in the last county where you were on juvenile probation or, if you were not on probation, in any county where you had contact with law enforcement or probation that did not result in a court case. Once the probation department receives the completed form, it will have 90 days to file a record-sealing petition with the court for you, or 180 days if you include agencies outside of this county.

- ① My information:
 - a. Name: _____
 - b. AKA (*nickname or other family name*): _____
 - c. Address: _____
 - d. City, state, zip: _____
 - e. Area code and telephone number: _____
 - f. Date of birth: _____
 - g. Email address: _____

Fill in court name and street address:

Superior Court of California, County of

Fill in your name:

Name:

Fill in case number, if known:

Case Number:

- ② I had a case(s) that went to court.
Case file number(s) (*if known*): _____
The date probation was terminated (*if known*): _____
- I don't remember my case number and/or date.
- See attached. (*If you need more space, you may attach a separate page.*)

- ③ I had contact with law enforcement but did not go to court.
- Date(s) I had contact with law enforcement: _____
- Name(s) of law enforcement or other agency(ies): _____
- See attached. (*If you need more space, you may attach a separate page.*)

④ I understand that the probation department is responsible for requesting the juvenile court to seal the records of only those agencies in its records and those listed on page 2 of this form. I understand that after I file this document the probation department will have 90 days to conduct an investigation and file a record-sealing petition for me with the juvenile court. I also understand that some records may not be eligible for sealing. I am aware that form JV-595-INFO, *How to Ask the Court to Seal Your Records*, provides more information on this process.



Your name: _____

Case Number: _____

Note: When you file this form with the probation department, it will research your case history and attach a list of contacts and addresses of all agencies that it knows have records of the case(s) and contacts(s) you listed on page 1. If you have had contacts with law enforcement or another agency with a record of your offense and that entity may not have been reported to the probation department, please list it below, or that record may not be sealed. If your case was transferred from one county to another, your records in both counties will be sealed. If you have a probation record in more than one county and that record was not transferred, you may ask the court to seal that record as well. If the court does not seal that record, it will inform you that you need to file this form in that county. Contacts not included on this form may not be sealed. The court may seal only those records listed on the petition.

5 Include all contacts (with addresses) you had, before your 18th birthday, with the agencies below that might not be part of your probation records:

- Court: _____
- Probation Department: _____
- Sheriff's Department: _____
- Police Department: _____
- California Highway Patrol: _____
- Department of Motor Vehicles: _____
- Law Enforcement: _____
- School(s): _____
- Homeland Security: _____
- Other: _____
- See attached. *(If you need more space, you may attach a separate page or pages listing the contacts.)*

I declare that the information on this form is true and correct to the best of my knowledge.

Date: _____

Type or print your name

 _____
Sign your name

If you were arrested or subject to a court proceeding or had contact with the juvenile justice system when you were under 18, there may be records kept by courts, police, schools, or other public agencies about what you did. If the court makes those records **private** (sealed), it could be easier for you to:

- Find a job.
- Get a driver's license.
- Get a loan.
- Rent an apartment.
- Go to college.

If the court sealed your records when probation was terminated, you do not need to ask for them to be sealed.

There are now three ways that records may be sealed in California. As of January 1, 2015, courts are required to seal records in certain cases when the court finds that probation (formal, or informal) is satisfactorily completed or if your case was otherwise dismissed after the petition was filed. If the court sealed all of your records at the end of your case, you should have received a copy of the sealing order, and you do not need to ask the court to seal the records in that sealing order.

For more information about when the court seals your records at the completion of probation, see form **JV-596-INFO**.

If probation sealed your diversion records for satisfactory completion, you may wish to ask the court to seal any remaining records of your behavior.

As of January 1, 2018, if you participate in a diversion program or other supervision program instead of going to court, and the probation department determines that you satisfactorily completed that program, the probation department will seal your probation department records and the records for any program you were required to complete. If the probation department determines that you did not satisfactorily complete the program, it will not seal those records, but will give you a form to tell you why and a form that you can use to tell the court why you think you did satisfactorily complete the program. If the court agrees with you, it will order your probation and program records sealed. Because probation did not seal any arrest records at this time, you may want to ask the court to seal any other records relating to this conduct when you are eligible to ask for record sealing as explained on this form.

If you have more than one juvenile case or contact and/or are unsure if your records were sealed by the court, ask your attorney or probation officer or the juvenile court clerk in the county where you had a case or contact.

Who qualifies to ask the court to seal their juvenile records?

If the court has not already sealed your records, you can ask the court to make that order, if:

- You are at least **18** or it has been at least five years since your case was closed; and
- You have been rehabilitated to the satisfaction of the court.

What if you owe restitution or fines?

The court may seal your records even if you have not paid your full restitution order to the victim.

The court will not consider outstanding fines and court ordered fees when deciding whether to seal your records, but you are still required to pay the restitution, fines, and fees, and your records can be looked at to enforce those orders.

When do you *not* qualify to seal your records?

- If you were convicted as an adult of an offense involving moral turpitude, such as:
 - A sex or serious drug crime;
 - Murder or other violent crime; or
 - Forgery, welfare fraud, or other crime of dishonesty.
- If, when you were 14 or older, the court found that you committed a sex offense listed in Welfare and Institutions Code section 707(b) for which you must register under Penal Code section 290.008 because you were paroled from the Department of Juvenile facilities.

If you are unsure if you qualify, ask your attorney.

Who can see your sealed records?

- DMV can see your vehicle and traffic records and share them with insurance companies.
- The court may see your records if you are a witness or involved in a defamation case.
- If you apply for benefits as a nonminor dependent, the court may see your records.
- A prosecuting attorney may see your records that were sealed for an offense listed under Welfare and Institutions Code section 707(b) in a later proceeding for the reasons listed in section 781(d).



- If your sealed record was for a 707(b) offense when you were 14 or older, the prosecutor, probation, and the court may unseal your records if you are charged with a later felony.
- You can request the court to unseal your records if you want to have access to them or allow someone else to see them.
- If a prosecutor thinks something in your record would be helpful to the defense of someone who is charged with a crime in another case, the prosecutor can ask the court to provide that information.
- If you want to see your records or allow someone else to see them, you can ask the court to unseal them.

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.

How do you ask to have your records sealed?

- ① You must fill out a court form. Form JV-595, *Request to Seal Juvenile Records*, at www.courts.ca.gov/forms.htm, can be used, or your court may have a local form.
- ② When you file your petition, the probation department will compile a list of every law enforcement agency, entity, or person the probation department knows has a record of your case, as well as a list of any prior contacts with law enforcement or probation, and attach it to your petition.
- ③ If you think there are agencies that might have records on you that were never sent to probation, you need to name those agencies, or the court will not know to seal those records.
If you are not sure what contacts you might have had with law enforcement, you can get your criminal history record from the Department of Justice. See <http://oag.ca.gov/fingerprints/security> for more information.

- ④ Take your completed form to the probation department where you were on probation. (If you were not on probation, take your form to any county probation office where you have a juvenile record.) Note: A small number of counties require you to take your form to the court. More information on each county’s specific requirements is available at www.courts.ca.gov/28120.htm.
- ⑤ Probation will review your form and submit it to the court within 90 days, or 180 days if you have records in two or more counties.
- ⑥ The court will review your petition. The court may decide right away to seal your juvenile records, or the court may order a hearing. If there is a hearing, you will receive a notice in the mail with the date, time, and location of the hearing. If the notice says your hearing is “unopposed” (meaning there is no disagreement with your request), you may choose not to go.
- ⑦ If you qualify to have your juvenile records sealed, the court will make an order to seal the eligible records listed on your petition.
Important! The court can seal only records it knows about. Make sure you list all records from all counties where you have any records. The court will tell you if it does not seal records from another court that were listed on your petition, and you will need to file a petition in that county to seal those records.
- ⑧ If the court grants your request, it will order each agency, entity, or person on your list to seal your records. The court will also order the records destroyed by a certain date. If the sealed records are for a 707(b) offense committed when you were 14 or older, the court will not order those records destroyed.
- ⑨ The court will provide you with a copy of its order. Be sure to keep it in a safe place.

What about sex offender registration? (Penal Code, § 290)

If the court seals a record that required you to register as a sex offender, the order will say you do **not** have to continue to register.



If your records are sealed, 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 requiring you to provide information about your juvenile records, seek legal advice about this issue.

Questions?

If you are not sure if you qualify to seal your records or if you have other questions, talk to a lawyer. The court is not allowed to give you legal advice. More information about sealing your records can be found at

www.courts.ca.gov/28120.htm.