


GENERAL OFFICE MEMORANDUM 18-007

TO: ALL DISTRICT ATTORNEY PERSONNEL

FROM: JOHN K. SPILLANE 
Chief Deputy District Attorney

SUBJECT: SEALING JUVENILE RECORDS AMENDMENTS TO WELFARE &
INSTITUTIONS CODE (WIC) §§ 781 & 786 (SB 312 & AB 529)

DATE: JANUARY 11, 2018

Beginning January 1, 2018, a juvenile who has a sustained petition for the commission of certain WIC § 707 (b) offenses may petition to seal his or her court records. Prosecutors may access those sealed records under specified circumstances. Also, court and arrest records of minors whose petitions have been dismissed, by the prosecutor or by the court, or have not been sustained will be automatically sealed, but remain accessible for refiling within six months from the date of dismissal.

Sealing Records of WIC § 707 (b) Offenses

Under SB 312, former wards of the court who have a sustained petition for the commission of a WIC § 707 (b) offense when they were 14 years of age or older will be permitted to file petitions to have their juvenile records sealed under these circumstances:

- (1) If the person was committed to the Department of Corrections and Rehabilitation (DCR) and is now 21 years old or older and has completed his or her period of probation supervision after release from custody;
- (2) If the person was not committed to DCR and is now 18 years old or older and has completed probation related to that offense. (Amended WIC § 781 (a)(1)(D)(i).)¹

Upon receipt of the petition, the court must notify the district attorney and the probation department, and hold a hearing to consider sealing the juvenile records. The district attorney, the probation officer or any person with relevant information may testify at the hearing. If any rights of the victim may be in issue, the victim should be notified, and upon request, the victim must be heard. In cases where the § 707 (b) offense has been dismissed or reduced to a misdemeanor by the court, the sealing procedure and effect is the same as any other non-§707 (b) offense. (Amended §781 (a)(1)(E).)

Prosecutors may access, inspect, or use juvenile records sealed under this section (1) when making charging decisions and determining appropriate sentences for a subsequent felony offense, (2) to determine whether a minor should be transferred from the juvenile court to a court of criminal jurisdiction pursuant to section 707, (3) to determine an appropriate disposition of a subsequent felony case, (4) to prove a prior serious or violent felony conviction and to determine

¹ All further statutory references will be to the Welfare and Institutions Code.

the appropriate sentence pursuant to Penal Code section 667, and (5) to comply with statutory and constitutional obligations to disclose favorable or exculpatory evidence to a defendant. (Amended § 781 (a)(1)(D)(ii) & (iii).)

If the court does order the records to be sealed, deputies assigned to the Juvenile Division should comply with sealing procedures as promulgated.

Sealing of Penal Code § 290 Offenses

SB 312 modifies current law by *prohibiting* sealing of juvenile records where the juvenile has committed a §707 (b) offense when he or she is 14 years of age or older and required to register pursuant to Penal Code section 290.008. (Amended § 781 (a)(1)(F).) Thus, former wards who committed or attempted to commit any of the following offenses are not eligible to have their records sealed: rape with force, violence, or threat of great bodily harm; sodomy by force, violence, duress, menace, or threat of great bodily harm; a lewd or lascivious act as provided in Penal Code § 288 (b), oral copulation by force, violence, duress, menace, or threat of great bodily harm; an offense specified in Penal Code § 289 (c); kidnapping for purposes of sexual assault as punishable in Penal Code § 209 (b).² Records of all other offenses requiring registration under Penal Code § 290 are eligible for sealing pursuant to §781 (a)(1).

Sealing of Dismissed Cases & Arrest Records

Under AB 529, the juvenile court is required to seal all records pertaining to a juvenile who has been *alleged* to be a ward of the court and has his or her petition dismissed by the court, whether on the prosecutor's or on the court's own motion, or if the petition was not sustained after an adjudication hearing. (Amended § 786 (e).) The court can (1) direct any agency with records to seal its records, (2) specify a date by which the sealed records must be destroyed, (3) provide notice to the person and his or her counsel that it has ordered the petition dismissed and the records sealed in the case and include an advisement of the person's right to nondisclosure of the arrest and proceedings, as specified. However, a prosecutor may access these sealed records for the purpose of refileing the case upon new evidence or witness availability within six months from the date of dismissal. (Amended § 786 (g)(1)(H)(2).)

We will be developing a system with which to manage these records in the coming months.

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² Amended § 781 (a)(1)(F) states: "Notwithstanding subparagraphs (D) and (E), a record relating to an offense listed in subdivision (b) of Section 707 that was committed after attaining 14 years of age for which the person is required to register pursuant to Section 290.008 of the Penal Code shall not be sealed." Offenses requiring registration pursuant to Penal Code §290.008 are: "(1) Assault with intent to commit rape, sodomy, oral copulation, or any violation of Section 264.1, 288, or 289 under Section 220. (2) Any offense defined in paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261, Section 264.1, 266c, or 267, paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of, Section 286, Section 288 or 288.5, paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of, Section 288a, subdivision (a) of Section 289, or Section 647.6. (3) A violation of Section 207 or 209 committed with the intent to violate Section 261, 286, 288, 288a, or 289." (Pen. Code §290.008 (c).)