

GENERAL OFFICE MEMORANDUM 20-148

TO: ALL DISTRICT ATTORNEY PERSONNEL

FROM:  JOSEPH P. ESPOSITO  
Chief Deputy District Attorney

SUBJECT: NEW JUVENILE LAWS

DATE: NOVEMBER 6, 2020

**Assembly Bill 901: Juveniles (Truancy and Informal Probation)**

Assembly Bill 901 (AB 901) amended Government Code (GC) §§ 48263, 48267, 48268, and 48269 and Welfare and Institutions Code (WIC) §§ 236, 601, 601.3, 653.5, and 654. It also added WIC § 651.5.

WIC § 601(b) defines truancy and what steps may be taken to correct a truant minor's behavior. WIC § 654 governs the informal probation process for minors who are not yet wards of the delinquency court but whose behavior is becoming increasingly troublesome. Effective **January 1, 2021**, AB 901 amends the truancy and informal probation statutes as follows:

- WIC § 236 mandates that services offered to minors or minors' parents/guardians by the Probation Department (Probation) when the minors are not on probation shall be voluntary and shall not include probation conditions or consequences as a result of not engaging in or completing those programs or services.
- WIC § 601(b) can no longer be used to bring a minor within the jurisdiction of the juvenile court for habitually refusing to obey the reasonable and proper orders or directions of school authorities.
- WIC § 601(d) requires that before issuing a notice to appear in juvenile court, a peace officer must refer a minor who habitually refuses to obey the reasonable and proper orders of the minor's parents, or has four or more trancies within one school year, to a community-based resource, Probation, a health agency, a local educational agency, or other governmental entities that may provide services.
- WIC § 601.3(f) now requires the Office and Probation to determine whether another public agency, a community-based organization, Probation, or the Office is best able to operate a truancy mediation program in the county.
- WIC § 653.5 allows minors to receive more than one grant of informal probation.
- WIC § 654 no longer authorizes a probation officer to provide informal probationary services to a minor whom the probation officer determines may eventually come within the jurisdiction of the juvenile court. A probation officer must determine that a minor is within the jurisdiction of the juvenile court, or would come within the jurisdiction of the court if a petition were filed, before such services can be provided.

- WIC § 654(a) eliminates the mandate that a probation officer file a petition or request that a petition be filed by the prosecuting attorney if the probation officer determines that a minor has not participated in the agreed upon WIC § 654 programs within 60 days of agreeing to do so, and instead gives the probation officer the discretion to do those things.
- WIC § 654(c) no longer requires, but encourages, parents or guardians of a minor subject to a program of supervision to participate with the minor in counseling or education programs, including, but not limited to, parent education and parenting programs operated by community colleges, school districts, or other appropriate agencies designated by the court.

**Assembly Bill 2321 Juvenile Court Records: Access (Using Sealed Records For T & U Visa Applications)**

Assembly Bill 2321 amended WIC §§ 781 and 786 to allow sealed juvenile records to be used “for the limited purpose of processing a request of a victim or victim’s family member to certify victim helpfulness” for U Visa and T Visa purposes effective **January 1, 2021**. Please see SD 20-05 for additional details. WIC §§ 781 and 786 are amended as follows:

- WIC § 781(a)(1)(D)(iii)(II) and WIC § 786(g)(1)(M) authorize records in a qualifying offense sealed under these sections to be used by a judge or prosecutor for the limited purpose of helping a victim or victim’s family member complete the U or T Visa application process by certifying the victim’s helpfulness.
- WIC § 781(a)(1)(D)(iii)(II) and WIC § 786(g)(1)(M) both mandate that “[t]he information obtained pursuant to this subparagraph shall not be disseminated to other agencies or individuals, except as necessary to certify victim helpfulness ..., and under no circumstances shall it be used to support the imposition of penalties, detention, or other sanctions upon an individual.”

**Assembly Bill 2425: Juvenile Police Records (Sealing of Juvenile Diversion Records)**

Assembly Bill 2425 (AB 2425) amends WIC §§ 786.5, 827, and 828. It adds WIC § 827.95. WIC § 786.5 defines the process for sealing the juvenile arrest records of minors who successfully complete a *pre-filing* diversion program administered by Probation or the Office. WIC § 827 defines the petition process to obtain juvenile court files from the juvenile court. Newly enacted WIC § 827.95 governs the confidentiality and sealing of juvenile *pre-arrest* diversion records. Effective **January 1, 2021**, AB 2425 changes the juvenile confidentiality and sealing statutes as follows:

**Sealing Juvenile Pre-Filing Diversion Records**

- WIC § 786.5(a) requires Probation to seal the arrest records for a minor who was granted diversion by the Office.
- WIC § 786.5(b) requires Probation to notify the arresting Law Enforcement Agency (LEA) to seal its records upon the minor’s successful completion of diversion. The LEA must notify Probation when its records are sealed. Probation must notify the minor of the sealing or, if the minor did not successfully complete diversion, the lack of sealing of the

minor's records. Probation must also notify the minor of his right to petition the court to seal his/her records.

- WIC § 786(d) requires the entity providing the diversion services to seal its records within 60 days of receiving Probation's notice to seal its records.
- WIC § 786(f)(2) allows a prosecutor to access juvenile records sealed under this section "in order to meet a statutory or constitutional obligation to disclose favorable or exculpatory evidence to a defendant in a criminal case in which the prosecuting attorney has reason to believe that access to the record is necessary to meet the disclosure obligation."

#### Maintaining Confidentiality and Sealing Juvenile Pre-Arrest Diversion Records

- WIC § 827.95(a)(1)(A)-(C) mandate that a LEA may not release any juvenile police records if the minor who is the subject of the record (1) has been diverted by the LEA and is currently participating in or has satisfactorily completed a diversion program; (2) the minor was counseled and released by the LEA and never referred to Probation or the Office; or (3) under state law the minor does not fall within the jurisdiction of the juvenile delinquency court.
- WIC § 827.95(b)(1)(A)-(C) mandates that the LEA shall seal its records (1) within 30 days of the diversion service provider's notice that the minor satisfactorily completed the diversion program, or (2) within 60 days if the minor was never referred to Probation or any District Attorney, or (3) immediately if the minor does not fall under the juvenile delinquency court under state law.
- WIC § 827.95(b)(1)(D) provides that upon sealing under this section, the offense giving rise to the police record shall be deemed to not have occurred and the individual may respond accordingly to any inquiry, application, or process in which disclosure of this information is requested or sought.
- WIC § 827.95 (b)(6)(a) provides that any police record sealed under this section "may be accessed, inspected, or utilized by the prosecuting attorney in order to meet a statutory or constitutional obligation to disclose favorable or exculpatory evidence to a defendant in a criminal case in which the prosecuting attorney has reason to believe that access to the record is necessary to meet the disclosure obligation."

#### Senate Bill 203: Juvenile Custodial Interrogation (Waiver of *Miranda*)

WIC § 625.6 requires a minor 15 years of age or younger to consult with an attorney before the minor may validly waive his *Miranda* rights. Effective **January 1, 2021**, Senate Bill 203 amended WIC § 625.6 as follows:

- WIC § 625.6(a) requires that any minor **17 years of age or younger** must consult with an attorney before the minor may validly waive his/her *Miranda* rights.
- WIC § 625.6(b) requires the court to consider any willful violation of this section in determining the credibility of the officer under Evidence Code § 780.

## **Senate Bill 823: Juvenile Justice Realignment & Office of Youth & Community Restoration**

Senate Bill 823 (SB 823) repealed and replaced GC §§ 12803, 12838, and 12838.1, Penal Code (PC) § 830.5, and WIC §§ 208.5, 607, 730, 731, 1703, 1710, 1711, 1712, 1714, 1731.5, 1752.2, and 1762. It added PC §§ 2816 and 13015 and WIC §§ 733.1, 736.5, 1955.2, 1990, 1991, 1995, 2200, 2201, and 2250. It also amended WIC §§ 207.1, 207.2, 209, 210.2, 707.1, and 912. Lastly, it repealed GC §§ 12820 through 12836, PC § 830.53, and WIC § 207.6. Effective *immediately*, SB 823 instituted changes to the juvenile justice system as follows:

### **Restructuring of the Juvenile Justice System**

- WIC § 2200 creates the Office of Youth and Community Restoration within the California Health and Human Services Agency to oversee the juvenile justice system as of **July 1, 2021**.
- WIC § 733.1 prohibits wards of the juvenile court, except those facing transfer to adult court, from being committed to the Division of Juvenile Justice (DJJ) as of **July 1, 2021** contingent on state government funding local facilities to replace DJJ.
- WIC § 736.5 transfers the responsibility of all youth adjudged a ward of the court to county governments and prohibits wards of the juvenile court, except those facing transfer to adult court, from being committed to DJJ as of **July 1, 2021**.
- WIC § 912 raises the annual amount (from \$24,000 to \$125,000) a county must pay the state for any ward of the court committed to DJJ on or after **July 1, 2021**.
- WIC §§ 1990, 1991, and 1995 establish the state Juvenile Justice Realignment Block Grant to provide money to county governments for the custody, care, and supervision of youth who would have been committed to DJJ prior to its closure.
- WIC § 2250 establishes the state Regional Youth Programs and Facilitates Grant Program to provide money to county governments for the enhancement of local facilities and infrastructure to house youth who would have been committed to DJJ prior to its closure.

### **Minors Who May Be Housed in an Adult Custody Facility Pending Adjudication/Trial**

- WIC § 208.5 states that any person whose case “originated” in juvenile court, which includes minors whose cases are staying in juvenile court and those minors whose cases are being transferred to adult court, may continue to be housed in a juvenile custody facility until they are 25 years old or their case is resolved. Once a minor has reached 19 years of age, he can be transferred to an adult custody facility upon Probation’s motion and a court hearing at which the judge must consider the law’s enumerated transfer factors and then issue a written ruling.
- WIC § 1955.2 indicates that a minor who is transferred to adult court and convicted before turning 18 years of age shall remain in a juvenile facility until the minor reaches 18 years of age, at which time, he/she may be transferred to state prison.

### **Senate Bill 1126 Juvenile Court Records (Using Sealed Competency Records)**

Senate Bill 1126 amended WIC § 786 to allow competency records sealed under this section to be used in future competency matters effective **January 1, 2021**. WIC § 786 is amended as follows:

- WIC § 786(g)(1)(L) authorizes prosecutors in a new petition filed against a minor in which the issue of the minor’s competency is raised to access, inspect, and utilize prior sealed competency evaluations, remediation reports, court findings, orders on the issue of competency, and “any other evidence submitted to the court for consideration in determining the minor’s competency, including, but not limited to, school records, and other test results.”
- WIC § 786(g)(1)(L) mandates that “[t]he information obtained pursuant to this subparagraph shall not be disseminated to any other person or agency except as necessary to evaluate the minor’s competency or provide remediation services, and shall not be used to support the imposition of penalties, detention, or other sanctions on the minor.”

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