

AMENDED IN SENATE APRIL 29, 1998

SENATE BILL

No. 1387

Introduced by Senator Karnette

January 7, 1998

An act to amend Section 781 of, ~~and to add Section 827.2 to,~~ the Welfare and Institutions Code, relating to minors.

LEGISLATIVE COUNSEL'S DIGEST

SB 1387, as amended, Karnette. Juvenile law.

Existing law provides for sentencing enhancements on the basis of prior felony convictions, which are defined to include certain offenses adjudicated before the juvenile court.

However, existing law generally provides for the confidentiality of juvenile records, reports, and related information. Those records may be sealed and eventually destroyed, as specified. Certain law enforcement personnel who are actively participating in criminal or juvenile proceedings involving a minor may inspect those records and reports concerning that minor, but those persons may not disseminate the records or reports, or related information, without the prior approval of the presiding judge of the juvenile court, except as specified.

This bill would prohibit the ~~sealing or~~ destruction of records of a juvenile who was 16 years of age or older at the time he or she committed one of various, specified offenses, ~~and provide that these records shall be available to all law enforcement personnel, prosecutorial agencies, and attorneys for a person who is the subject of those records.~~ *The bill would also provide that in criminal cases involving specified*

enhancements the prosecution shall be entitled to inspect, copy, and introduce into evidence, for the purpose of proving the enhancement any juvenile records of the person named in a criminal complaint or information where the person was found to have committed one of various, specified offenses when he or she was 16 years of age or older. These records would otherwise remain confidential, except as specified.

~~This bill would also authorize the defendant or the prosecuting attorney in a criminal action in which the defendant is alleged to have a prior felony conviction, as specified, to obtain and make public the information described above, and to introduce the information in a criminal proceeding for the purposes of determining whether the defendant has a prior conviction of a felony, without the prior approval of the presiding judge of the juvenile court. The bill would also authorize the prosecuting attorney to use the records, reports, or information to bring a charge of a prior conviction of a felony against the defendant, without the prior approval of the presiding judge of the juvenile court.~~

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 781 of the Welfare and
 2 Institutions Code is amended to read:
 3 781. (a) Where a petition has been filed with a
 4 juvenile court to commence proceedings to adjudge a
 5 person a ward of the court, a person is cited to appear
 6 before a probation officer or is taken before a probation
 7 officer pursuant to Section 626, or a minor is taken before
 8 any officer of a law enforcement agency, the person or
 9 the county probation officer may petition the court for
 10 sealing of the records. The petition to seal the records
 11 may be filed five years or more after the jurisdiction of the
 12 juvenile court has terminated over the person or, if no
 13 juvenile court petition was filed, five years or more after
 14 the person was cited to appear before a probation officer
 15 or was taken before a probation officer pursuant to
 16 Section 626 or was taken before any officer of a law



1 enforcement agency, or at any time after the person has
2 reached the age of 18 years. The petition to seal the
3 records shall include a statement disclosing whether
4 there is any pending civil litigation relating to the
5 criminal act that caused the records to be created. As used
6 in this section, “records” include records of arrest, records
7 relating to the person’s case, and records in the custody
8 of the juvenile court, probation officer and any other
9 agencies, including law enforcement agencies, and public
10 officials that the petitioner alleges, in his or her petition,
11 to have custody of the records. The court shall notify the
12 district attorney of the county and the county probation
13 officer, if he or she is not the petitioner, and the district
14 attorney or probation officer or any of their deputies or
15 any other person having relevant evidence may testify at
16 the hearing on the petition. If, after a hearing, the court
17 finds that since the termination of jurisdiction or action
18 pursuant to Section 626, as the case may be, he or she has
19 not been convicted of a felony or of any misdemeanor
20 involving moral turpitude, that rehabilitation has been
21 attained to the satisfaction of the court, and that the
22 petition indicates that there is no currently pending civil
23 litigation directly relating to, or arising from, the criminal
24 act that caused the records to be created, it shall order all
25 records, papers, and exhibits in the person’s case in the
26 custody of the juvenile court sealed, including the
27 juvenile court record, minute book entries, and entries on
28 dockets, and other records relating to the case in the
29 custody of the other agencies and officials as are named
30 in the order. If a ward of the juvenile court is subject to
31 the registration requirements set forth in Section 290 of
32 the Penal Code, a court, in ordering the sealing of the
33 juvenile records of the person, also shall provide in the
34 order that the person is relieved from the registration
35 requirement and for the destruction of all registration
36 information in the custody of the Department of Justice
37 and other agencies and officials. Notwithstanding any
38 other provision of law, the court shall not order the
39 person’s records sealed in any case in which the person
40 has been found by the juvenile court to have committed



1 an offense listed in subdivision (b) of, paragraph (2) of
2 subdivision (d) of, or subdivision (e) of, Section 707 until
3 at least six years have elapsed since commission of the
4 offense listed in those provisions. The court shall not order
5 the records sealed in any case unless the petition indicates
6 that there is no pending civil litigation directly relating to,
7 or arising from, the criminal act that caused the records
8 to be created. However, once the civil case is closed, the
9 records may be sealed. Once the court has ordered the
10 person's records sealed, the proceedings in the case shall
11 be deemed never to have occurred, and the person may
12 properly reply accordingly to any inquiry about the
13 events, the records of which are ordered sealed. The
14 court shall send a copy of the order to each agency and
15 official named therein, directing the agency to seal its
16 records and stating the date thereafter to destroy the
17 sealed records. Each agency and official shall seal the
18 records in its custody as directed by the order, shall advise
19 the court of its compliance, and thereupon shall seal the
20 copy of the court's order for sealing of records that it, he,
21 or she received. The person who is the subject of records
22 sealed pursuant to this section may petition the superior
23 court to permit inspection of the records by persons
24 named in the petition, and the superior court may so
25 order. Otherwise, except as provided in subdivision (b),
26 the records shall not be open to inspection.

27 (b) In any action or proceeding based upon
28 defamation, a court, upon a showing of good cause, may
29 order any records sealed under this section to be opened
30 and admitted into evidence. The records shall be
31 confidential and shall be available for inspection only by
32 the court, jury, parties, counsel for the parties, and any
33 other person who is authorized by the court to inspect
34 them. Upon the judgment in the action or proceeding
35 becoming final, the court shall order the records sealed.

36 (c) (1) Subdivision (a) does not apply to Department
37 of Motor Vehicle records of any convictions for offenses
38 under the Vehicle Code or any local ordinance relating
39 to the operation, stopping and standing, or parking of a
40 vehicle where the record of ~~any such~~ that conviction



1 would be a public record under Section 1808 of the
2 Vehicle Code. However, if a court orders a case record
3 containing ~~any such~~ *that* conviction to be sealed under
4 this section, and if the Department of Motor Vehicles
5 maintains a public record of ~~such a~~ *the* conviction, the
6 court shall notify the Department of Motor Vehicles of
7 the sealing and the department shall advise the court of
8 its receipt of the notice.

9 Notwithstanding any other provision of law,
10 subsequent to the notification, the Department of Motor
11 Vehicles shall allow access to its record of convictions only
12 to the subject of the record and to insurers which have
13 been granted requester code numbers by the
14 department. Any insurer to which a record of conviction
15 is disclosed, when that conviction record has otherwise
16 been sealed under this section, shall be given notice of the
17 sealing when the record is disclosed to the insurer. The
18 insurer may use the information contained in the record
19 for purposes of determining eligibility for insurance and
20 insurance rates for the subject of the record, and the
21 information shall not be used for any other purpose nor
22 shall it be disclosed by an insurer to any person or party
23 not having access to the record.

24 (2) This subdivision shall not be construed as
25 preventing the sealing of any record which is maintained
26 by any agency or party other than the Department of
27 Motor Vehicles.

28 (3) This subdivision shall not be construed as affecting
29 the procedures or authority of the Department of Motor
30 Vehicles for purging department records.

31 (d) Unless for good cause the court determines that
32 the juvenile court record shall be retained, the court shall
33 order the destruction of a person's juvenile court records
34 that are sealed pursuant to this section as follows: five
35 years after the record was ordered sealed, if the person
36 who is the subject of the record was alleged or adjudged
37 to be a person described by Section 601; or when the
38 person who is the subject of the record reaches the age of
39 38 if the person was alleged or adjudged to be a person
40 described by Section 602. Any other agency in possession



1 of sealed records may destroy its records five years after
2 the record was ordered sealed.

3 (e) This section shall not permit the sealing of a
4 person's juvenile court records for an offense where the
5 person is convicted of that offense in a criminal court
6 pursuant to the provisions of Section 707.1. This
7 subdivision is declaratory of existing law.

8 (f) Notwithstanding any other provision of law, the
9 records of a juvenile who was 16 years of age or older at
10 the time that he or she committed any criminal offense
11 listed in subdivision (b) of Section 707 ~~or any other~~
12 ~~offense which may be alleged as a sentencing~~
13 ~~enhancement under Section 1170.12 of the Penal Code,~~
14 ~~shall not be sealed or destroyed. These records shall be~~
15 ~~available for inspection and use by all law enforcement~~
16 ~~personnel, prosecutorial agencies, and attorneys for a~~
17 ~~person who is the subject of those records.~~

18 SEC. 2. Section 827.2 is added to the Welfare and
19 Institutions Code, to read:

20 827.2. (a) ~~Notwithstanding Section 827 or any other~~
21 ~~provision of law, in a criminal action in which the~~
22 ~~defendant is alleged to have a prior conviction of a felony~~
23 ~~as defined in paragraph (3) of subdivision (d) of Section~~
24 ~~667 of, or paragraph (3) of subdivision (b) of Section~~
25 ~~1170.12 of, the Penal Code, the records and reports~~
26 ~~described in Section 827 concerning that defendant, or~~
27 ~~any information relating to those records and reports,~~
28 ~~shall be made available and may be used, without the~~
29 ~~prior approval of the presiding judge of the juvenile~~
30 ~~court, as follows:~~

31 (1) ~~The defendant or the prosecuting attorney in a~~
32 ~~criminal action may copy and make public the records,~~
33 ~~reports, or information.~~

34 (2) ~~The defendant or the prosecuting attorney in a~~
35 ~~criminal action may, for the purpose of determining~~
36 ~~whether the defendant has a prior conviction of a felony~~
37 ~~as defined in this section, introduce in any criminal~~
38 ~~proceeding the records, reports, or information.~~

39 (3) ~~The prosecuting attorney may use the records,~~
40 ~~reports, or information to bring a charge of a prior~~



1 ~~conviction of a felony specified in this subdivision against~~
2 ~~the defendant.~~

3 ~~(b) Any report, record, or information described in~~
4 ~~subdivision (a) shall not be used for any purpose that is~~
5 ~~not authorized by this section, and shall not be~~
6 ~~disseminated to any person, agency, or other entity,~~
7 ~~except as authorized by this section or by any other~~
8 ~~provision of law. shall not be destroyed.~~

9 *(g) Notwithstanding any other provision of law, in any*
10 *criminal prosecution in which an enhancement is alleged*
11 *pursuant to Section 667.5 or 1170.12 of the Penal Code, the*
12 *prosecution shall be entitled to inspect, copy, and*
13 *introduce into evidence for the purpose of proving the*
14 *alleged enhancement, any juvenile records of the person*
15 *named in the criminal complaint or information where*
16 *the person was found to have committed, when they were*
17 *16 years of age or older, an offense set forth in subdivision*
18 *(b) of Section 707. Except as provided herein, these*
19 *records shall be confidential and available for inspection*
20 *and copying only by the court, jury, parties, counsel for*
21 *the parties, and any other person authorized by the court.*
22 *In the case of an acquittal or if the enhancement*
23 *allegations under Section 667.5 or 1170.12 of the Penal*
24 *Code are stricken, the court shall order the records*
25 *resealed.*

