

Assembly Bill No. 744

Passed the Assembly May 24, 1999

Chief Clerk of the Assembly

Passed the Senate July 15, 1999

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 1999, at _____ o'clock ____M.

Private Secretary of the Governor



CHAPTER _____

An act to add and repeal Section 781.5 of the Welfare and Institutions Code, relating to juvenile court records.

LEGISLATIVE COUNSEL'S DIGEST

AB 744, McClintock. Juvenile court records: sealing and destruction.

Existing law authorizes a minor, who has been the subject of a petition to adjudge him or her a ward of the court or has been cited to appear or taken before a probation or law enforcement officer, to petition the court for the sealing of his or her records, which petition may be filed 5 years after the jurisdiction of the juvenile court terminated; if no juvenile court petition was filed, 5 years after the minor was cited or taken before a probation or law enforcement officer; or after the minor reaches the age of 18 years. Under existing law, the petition to seal the records may be granted, after a hearing, if the court makes specified findings.

This bill would add new provisions regarding the sealing of juvenile court records that would be applicable in those cases where a minor is detained, arrested, or cited but no accusatory pleading or petition is filed, or in those cases where an accusatory pleading or petition is filed but is not sustained. The bill would, in those cases, require the law enforcement agency and probation officer to seal a minor's records, as specified, upon a determination by them, in specified circumstances, or by the court, following a specified hearing or motion, that the minor is factually innocent, as specified. The bill would also require, in certain cases, the issuance of a written declaration to the minor regarding his or her factual innocence, as specified, and would specify procedures and timeframes to be followed by law enforcement and other agencies with respect to the sealing and destruction of juvenile court records. Because this bill would impose new duties on court personnel and law enforcement and



other local agencies, it would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

The California Constitution requires that any statute that would cause relevant evidence to be excluded in any criminal proceeding or in any trial or hearing of a juvenile for a criminal offense must be approved by a $\frac{2}{3}$ vote of the Legislature.

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

SECTION 1. Section 781.5 is added to the Welfare and Institutions Code, to read:

781.5. (a) Notwithstanding Section 781, in any case where a minor has been cited to appear before a probation officer, has been taken before a probation officer pursuant to Section 626, or has been taken before any officer of a law enforcement agency, and no accusatory pleading or petition to adjudge the minor a ward of the court has been filed, the minor may request in writing that the law enforcement agency and probation officer having jurisdiction over the offense destroy their records of the arrest or citation. A copy of the request shall be served upon the district attorney of the county having jurisdiction over the offense. The law enforcement agency and probation officer having jurisdiction over the offense, upon a determination that the minor is factually innocent, shall, with the concurrence of the district attorney, seal their records



with respect to the minor and the request for relief under this section for three years from the date of the arrest or citation and thereafter destroy the records and the request. A determination of factual innocence shall not be made pursuant to this subdivision unless the law enforcement agency and probation officer, with the concurrence of the district attorney, determine that no reasonable cause exists to believe that the minor committed the offense for which the arrest was made or the citation was issued. The law enforcement agency and probation officer having jurisdiction over the offense shall notify the Department of Justice, and any other law enforcement agency or probation officer that arrested or cited the minor or participated in the arrest or citing of the minor for an offense for which the minor has been found factually innocent under this subdivision, of the sealing of the minor's records and the reason therefor. The Department of Justice and any law enforcement agency or probation officer so notified shall forthwith seal its records of the arrest or citation and the notice of sealing for three years from the date of the arrest or citation, and thereafter destroy those records and the notice of sealing. The law enforcement agency and probation officer having jurisdiction over the offense and the Department of Justice shall request the destruction of any records of the arrest or citation that they have given to any local, state, or federal agency or to any other person or entity. Each agency, person, or entity within the State of California receiving that request shall destroy its records of the arrest or citation and that request, unless otherwise provided in this section.

(b) If, after receipt by the law enforcement agency, probation officer, and the district attorney of a request for relief under subdivision (a), the law enforcement agency, probation officer, and district attorney do not respond to the request by accepting or denying the request within 60 days after the running of the statute of limitations for the offense for which the minor was cited or arrested or within 60 days after receipt of the petition in cases where the statute of limitations has previously lapsed, then the



request shall be deemed to be denied. In any case where the request of a minor to the law enforcement agency and probation officer to have a record destroyed is denied, petition may be made to the juvenile court that would have had jurisdiction over the matter. A copy of the petition shall be served on the district attorney of the county having jurisdiction over the offense at least 10 days prior to the hearing thereon. The district attorney may present evidence to the court at the hearing. Notwithstanding any other provision of law, any judicial determination of factual innocence made pursuant to this subdivision may be heard and determined upon declarations, affidavits, police reports, or any other evidence submitted by the parties that is material, relevant, and reliable. A finding of factual innocence and an order for the sealing and destruction of records pursuant to this subdivision or subdivision (d) shall not be made unless the court finds that no reasonable cause exists to believe that the minor committed the offense for which the arrest was made or the citation was issued. In any court hearing to determine the factual innocence of a minor, the initial burden of proof shall rest with the minor to show that no reasonable cause exists to believe that the minor committed the offense for which the arrest was made or the citation was issued. If the court finds that this showing of no reasonable cause has been made by the minor, then the burden of proof shall shift to the respondent to show that a reasonable cause exists to believe that the minor committed the offense for which the arrest was made or the citation was issued.

(c) If the court finds the minor to be factually innocent of the charges for which the arrest was made or the citation was issued, then the court shall order the law enforcement agency and probation officer having jurisdiction over the offense, the Department of Justice, and any law enforcement agency or probation officer that arrested or cited the minor or participated in the arrest or citation of the minor for an offense for which the minor has been found factually innocent under this section, to seal their records relating to the minor and the court



order to seal and destroy those records, for three years from the date of the arrest or citation and thereafter to destroy those records and the court order to seal and destroy those records. The court shall also order the law enforcement agency and probation officer having jurisdiction over the offense and the Department of Justice to request the destruction of any records of the arrest that they have given to any local, state, or federal agency, person or entity. Each state or local agency, person or entity within the State of California receiving that request shall destroy its records of the arrest or citation and the request to destroy those records, unless otherwise provided in this section. The court shall give to the minor a copy of any court order concerning the destruction of the arrest or citation records.

(d) Notwithstanding Section 781, in any case where a minor has been arrested or a citation has been issued, and an accusatory pleading or petition to adjudge the minor a ward of the court has been filed, but not sustained, the minor may, at any time after dismissal of the proceeding, request in writing from the court that dismissed the proceeding a finding that the minor is factually innocent of the charges for which the arrest was made or the citation was issued. A copy of the request shall be served on the district attorney of the county in which the accusatory pleading or petition was filed at least 10 days prior to the hearing on the minor's factual innocence. The district attorney may present evidence to the court at the hearing. The hearing shall be conducted as provided in subdivision (b). If the court finds the petitioner to be factually innocent of the charges for which the arrest was made or the citation was issued, then the court shall grant the relief as provided in subdivision (c).

(e) Notwithstanding Section 781, in any case where a minor has been arrested or cited and an accusatory pleading or petition to adjudge the minor a ward of the court has been filed, but not sustained, and it appears to the judge presiding at the proceeding that the minor was factually innocent of the offense, the court, upon the written or oral motion of any party in the case or on the



court's own motion, may grant the relief provided in subdivision (c). If the district attorney objects to the court granting that relief, the district attorney may request a hearing as to the minor's factual innocence . This hearing shall be conducted as provided in subdivision (b).

(f) In any case where a minor who has been arrested or cited is granted relief pursuant to this section, the law enforcement agency and probation officer having jurisdiction over the offense or the court shall issue a written declaration to the minor stating that it is the determination of the law enforcement agency and probation officer having jurisdiction over the offense or the court that the minor is factually innocent of the charges for which the minor was arrested or cited and that the minor is thereby exonerated. Thereafter, the arrest or citation shall be deemed not to have occurred and the minor may answer accordingly any question relating to its occurrence.

(g) The Department of Justice shall furnish forms to be utilized by minors requesting the destruction of their arrest or citation records and for the written declaration that a minor was found factually innocent under this section.

(h) Documentation of arrest or citation records that are destroyed pursuant to this section that are contained in investigative police reports shall bear the notation "Exonerated" whenever reference is made to the minor. The minor shall be notified in writing by the law enforcement agency and probation officer having jurisdiction over the offense of the sealing and destruction of the arrest and citation records pursuant to this section.

(i) Any finding that a minor is factually innocent pursuant to this section shall not be admissible as evidence in any action.

(j) Destruction of records of arrest or citation pursuant to this section shall be accomplished by permanent obliteration of all entries or notations upon those records pertaining to the arrest or citation, and the record shall be prepared again so that it appears that the arrest or



citation never occurred. However, where the only entries on the record pertain to the arrest or citation and the record can be destroyed without necessarily effecting the destruction of other records, then the document constituting the record shall be physically destroyed.

(k) No records shall be destroyed pursuant to this section if the minor or another individual arrested or cited for the same offense has filed a civil action against the peace officers, law enforcement agency, or probation officer that made the arrest, issued the citation, or commenced the proceedings and if the agency or officer that is the custodian of those records has received a certified copy of the complaint in the civil action, until the civil action has been resolved. Any records sealed pursuant to this section by the court in the civil action, upon a showing of good cause, may be opened and submitted into evidence. The records shall be confidential and shall be available for inspection only by the court, jury, parties, counsel for the parties, and any other person authorized by the court. Immediately following the final resolution of the civil action, records subject to this section shall be sealed and destroyed pursuant to this section.

(l) Any relief that is available to a minor under this section for an arrest or citation shall also be available for a minor who is taken into temporary custody and then released pursuant to Sections 625 and 626.

(m) This section shall not apply to any offense that is classified as an infraction.

(n) (1) This section shall be repealed on the effective date of a final judgment based on a claim under the California or United States Constitution holding that evidence that is relevant, reliable, and material may not be considered for purposes of a judicial determination of factual innocence under this section. For purposes of this subdivision, a judgment by the appellate division of a superior court is a final judgment if it is published and if it is not reviewed on appeal by a court of appeal. A judgment of a court of appeal is a final judgment if it is



published and if it is not reviewed by the California Supreme Court.

(2) Any decision referred to in this subdivision shall be stayed pending appeal.

(3) If not otherwise appealed by a party to the action, any decision referred to in this subdivision that is a judgment by the appellate division of the superior court, shall be appealed by the Attorney General.

SEC. 2. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.



Approved _____, 1999

Governor

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