

ASSEMBLY BILL

No. 168

Introduced by Assembly Member Nava

January 28, 2009

An act to amend Sections 781 and 827 of the Welfare and Institutions Code, relating to juveniles.

LEGISLATIVE COUNSEL'S DIGEST

AB 168, as introduced, Nava. Juvenile case files: sexually violent predator proceedings.

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, unless the subject of the record was found to be a ward of the court because of the commission of specified felony offenses committed when he or she was 14 years of age or older. Certain persons, including 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.

Existing sexually violent predator laws set forth procedures under which a person under the jurisdiction of the Department of Corrections and Rehabilitation may be referred for evaluation at least 6 months prior to the person's scheduled date for release from prison if the director determines that the person may be a sexually violent predator, as defined. The sexually violent predator laws provide, under certain

circumstances, that this person may be required to stand trial, be found beyond a reasonable doubt to be a sexually violent predator, and be committed for an indeterminate term to the custody of the State Department of Mental Health for appropriate treatment and confinement in a secure facility until his or her diagnosed mental disorder has so changed that he or she is not likely to engage in sexually violent criminal behavior if discharged, as specified.

This bill would authorize, in any investigation, action, or proceeding based on the sexually violent predator laws, the Department of Corrections and Rehabilitation, the State Department of Mental Health, and the attorney petitioning for commitment, or their agents, to obtain and use records that have been sealed pertaining to sustained petitions for specified sexually violent offenses that were committed when the person had attained 14 years of age or older. The bill also would authorize, in any civil commitment proceeding based on the sexually violent predator laws, the court, counsel for the parties, any jury, and any other person authorized by the court, to obtain and use the records.

Vote: majority. Appropriation: no. Fiscal committee: yes.
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 Institutions Code
2 is amended to read:
3 781. (a) In any case in which a petition has been filed with a
4 juvenile court to commence proceedings to adjudge a person a
5 ward of the court, in any case in which a person is cited to appear
6 before a probation officer or is taken before a probation officer
7 pursuant to Section 626, or in any case in which a minor is taken
8 before any officer of a law enforcement agency, the person or the
9 county probation officer may, five years or more after the
10 jurisdiction of the juvenile court has terminated as to the person,
11 or, in a case in which no petition is filed, five years or more after
12 the person was cited to appear before a probation officer or was
13 taken before a probation officer pursuant to Section 626 or was
14 taken before any officer of a law enforcement agency, or, in any
15 case, at any time after the person has reached ~~the age of~~ 18 years
16 of age, petition the court for sealing of the records, including
17 records of arrest, relating to the person's case, in the custody of
18 the juvenile court and probation officer and any other agencies,

1 including law enforcement agencies, and public officials as the
2 petitioner alleges, in his or her petition, to have custody of the
3 records. The court shall notify the district attorney of the county
4 and the county probation officer, if he or she is not the petitioner,
5 and the district attorney or probation officer or any of their deputies
6 or any other person having relevant evidence may testify at the
7 hearing on the petition. If, after hearing, the court finds that since
8 the termination of jurisdiction or action pursuant to Section 626,
9 as the case may be, he or she has not been convicted of a felony
10 or of any misdemeanor involving moral turpitude and that
11 rehabilitation has been attained to the satisfaction of the court, it
12 shall order all records, papers, and exhibits in the person's case in
13 the custody of the juvenile court sealed, including the juvenile
14 court record, minute book entries, and entries on dockets, and any
15 other records relating to the case in the custody of the other
16 agencies and officials as are named in the order. In any case in
17 which a ward of the juvenile court is subject to the registration
18 requirements set forth in Section 290 of the Penal Code, a court,
19 in ordering the sealing of the juvenile records of the person, also
20 shall provide in the order that the person is relieved from the
21 registration requirement and for the destruction of all registration
22 information in the custody of the Department of Justice and other
23 agencies and officials. Notwithstanding any other provision of
24 law, the court shall not order the person's records sealed in any
25 case in which the person has been found by the juvenile court to
26 have committed an offense listed in subdivision (b) of Section 707
27 when he or she had attained 14 years of age or older. Once the
28 court has ordered the person's records sealed, the proceedings in
29 the case shall be deemed never to have occurred, and the person
30 may properly reply accordingly to any inquiry about the events,
31 the records of which are ordered sealed. The court shall send a
32 copy of the order to each agency and official named therein,
33 directing the agency to seal its records and stating the date
34 thereafter to destroy the sealed records. Each ~~such~~ agency and
35 official shall seal the records in its custody as directed by the order,
36 shall advise the court of its compliance, and thereupon shall seal
37 the copy of the court's order for sealing of records that it, he, or
38 she received. The person who is the subject of records sealed
39 pursuant to this section may petition the superior court to permit
40 inspection of the records by persons named in the petition, and the

1 superior court may so order. Otherwise, except as provided in
2 subdivision (b), the records shall not be open to inspection.

3 (b) (1) In any action or proceeding based upon defamation, a
4 court, upon a showing of good cause, may order any records sealed
5 under this section to be opened and admitted into evidence. The
6 records shall be confidential and shall be available for inspection
7 only by the court, jury, parties, counsel for the parties, and any
8 other person who is authorized by the court to inspect them. Upon
9 the judgment in the action or proceeding becoming final, the court
10 shall order the records sealed.

11 (2) *In any investigation, action, or proceeding based on the*
12 *sexually violent predator laws (Article 4 (commencing with Section*
13 *6600) of Chapter 2 of Part 2 of Division 6), the Department of*
14 *Corrections and Rehabilitation, the State Department of Mental*
15 *Health, and the attorney petitioning for commitment, or their*
16 *agents, may obtain and use records specified in paragraph (3)*
17 *that have been sealed pursuant to this section, provided that the*
18 *subject of the investigation, action or proceeding has been*
19 *convicted of a sexually violent offense, as defined in subdivision*
20 *(b) of Section 6600 and in Section 6600.1. In any civil commitment*
21 *proceeding based on the sexually violent predator laws, the court,*
22 *counsel for the parties, any jury, and any other person authorized*
23 *by the court, may obtain and use these records.*

24 (3) *The records subject to paragraph (2) are limited to those*
25 *pertaining to sustained petitions for a violation of an offense*
26 *described in subdivision (b) of Section 6600 on January 1, 2009.*

27 (c) (1) Subdivision (a) does not apply to Department of Motor
28 ~~Vehicle~~ Vehicles records of any convictions for offenses under the
29 Vehicle Code or any local ordinance relating to the operation,
30 stopping and standing, or parking of a vehicle where the record of
31 any such conviction would be a public record under Section 1808
32 of the Vehicle Code. However, if a court orders a case record
33 containing any such conviction to be sealed under this section, and
34 if the Department of Motor Vehicles maintains a public record of
35 such a conviction, the court shall notify the Department of Motor
36 Vehicles of the sealing and the department shall advise the court
37 of its receipt of the notice.

38 Notwithstanding any other ~~provision~~ provision of law, subsequent to the
39 notification, the Department of Motor Vehicles shall allow access
40 to its record of convictions only to the subject of the record and

1 to insurers ~~which~~ *that* have been granted requestor code numbers
2 by the department. Any insurer to which ~~such~~ a record of
3 conviction is disclosed, when ~~such a~~ *that* conviction record has
4 otherwise been sealed under this section, shall be given notice of
5 the sealing when the record is disclosed to the insurer. The insurer
6 may use the information contained in the record for purposes of
7 determining eligibility for insurance and insurance rates for the
8 subject of the record, and the information shall not be used for any
9 other purpose nor shall it be disclosed by an insurer to any person
10 or party not having access to the record.

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

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

17 (d) Unless for good cause the court determines that the juvenile
18 court record shall be retained, the court shall order the destruction
19 of a person's juvenile court records that are sealed pursuant to this
20 section as follows: ~~five~~

21 (1) *Five* years after the record was ordered sealed, if the person
22 who is the subject of the record was alleged or adjudged to be a
23 person described by Section 601; ~~or when.~~

24 (2) *When* the person who is the subject of the record reaches
25 ~~the age of 38 years of age~~ if the person was alleged or adjudged
26 to be a person described by Section 602, except that if the subject
27 of the record was found to be a person described in Section 602
28 because of the commission of an offense listed in *paragraph (2)*
29 *of subdivision (b); or an offense listed in subdivision (b) of Section*
30 *707, when he or she was 14 years of age or older, the record shall*
31 *not be destroyed. Any other agency in possession of sealed records*
32 *may destroy its records five years after the record was ordered*
33 *sealed.*

34 (3) *Any other agency in possession of sealed records may*
35 *destroy its records five years after the record was ordered sealed.*

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

SEC. 2. Section 827 of the Welfare and Institutions Code is amended to read:

827. (a) (1) Except as provided in Section 828, a case file may be inspected only by the following:

(A) Court personnel.

(B) (i) The district attorney, a city attorney, or city prosecutor authorized to prosecute criminal or juvenile cases under state law.

(ii) *In any investigation, action, or proceeding based on the sexually violent predator laws (Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6), if authorized by paragraphs (2) and (3) of subdivision (b) of Section 781, the Department of Corrections and Rehabilitation, the Department of Mental Health, the attorney petitioning for commitment, or their agents.*

(C) The minor who is the subject of the proceeding.

(D) The minor's parents or guardian.

(E) The attorneys for the parties, judges, referees, other hearing officers, probation officers, and law enforcement officers who are actively participating in criminal or juvenile proceedings involving the minor.

(F) The county counsel, city attorney, or any other attorney representing the petitioning agency in a dependency action.

(G) The superintendent or designee of the school district where the minor is enrolled or attending school.

(H) Members of the child protective agencies as defined in Section 11165.9 of the Penal Code.

(I) The State Department of Social Services, to carry out its duties pursuant to Division 9 (commencing with Section 10000), and Part 5 (commencing with Section 7900) of Division 12, of the Family Code to oversee and monitor county child welfare agencies, children in foster care or receiving foster care assistance, and out-of-state placements, Section 10850.4, and paragraph (2).

(J) Authorized legal staff or special investigators who are peace officers who are employed by, or who are authorized representatives of, the State Department of Social Services, as necessary to the performance of their duties to inspect, license, and investigate community care facilities, and to ensure that the standards of care and services provided in those facilities are adequate and appropriate and to ascertain compliance with the rules and regulations to which the facilities are subject. The

1 confidential information shall remain confidential except for
2 purposes of inspection, licensing, or investigation pursuant to
3 Chapter 3 (commencing with Section 1500) and Chapter 3.4
4 (commencing with Section 1596.70) of Division 2 of the Health
5 and Safety Code, or a criminal, civil, or administrative proceeding
6 in relation thereto. The confidential information may be used by
7 the State Department of Social Services in a criminal, civil, or
8 administrative proceeding. The confidential information shall be
9 available only to the judge or hearing officer and to the parties to
10 the case. Names that are confidential shall be listed in attachments
11 separate to the general pleadings. The confidential information
12 shall be sealed after the conclusion of the criminal, civil, or
13 administrative hearings, and may not subsequently be released
14 except in accordance with this subdivision. If the confidential
15 information does not result in a criminal, civil, or administrative
16 proceeding, it shall be sealed after the State Department of Social
17 Services decides that no further action will be taken in the matter
18 of suspected licensing violations. Except as otherwise provided in
19 this subdivision, confidential information in the possession of the
20 State Department of Social Services may not contain the name of
21 the minor.

22 (K) Members of children's multidisciplinary teams, persons, or
23 agencies providing treatment or supervision of the minor.

24 (L) A judge, commissioner, or other hearing officer assigned
25 to a family law case with issues concerning custody or visitation,
26 or both, involving the minor, and the following persons, if actively
27 participating in the family law case: a family court mediator
28 assigned to a case involving the minor pursuant to Article 1
29 (commencing with Section 3160) of Chapter 11 of Part 2 of
30 Division 8 of the Family Code, a court-appointed evaluator or a
31 person conducting a court-connected child custody evaluation,
32 investigation, or assessment pursuant to Section 3111 or 3118 of
33 the Family Code, and counsel appointed for the minor in the family
34 law case pursuant to Section 3150 of the Family Code. Prior to
35 allowing counsel appointed for the minor in the family law case
36 to inspect the file, the court clerk may require counsel to provide
37 a certified copy of the court order appointing him or her as the
38 minor's counsel.

39 (M) A court-appointed investigator who is actively participating
40 in a guardianship case involving a minor pursuant to Part 2

1 (commencing with Section 1500) of Division 4 of the Probate
2 Code and acting within the scope of his or her duties in that case.

3 (N) A local child support agency for the purpose of establishing
4 paternity and establishing and enforcing child support orders.

5 (O) Juvenile justice commissions as established under Section
6 225. The confidentiality provisions of Section 10850 shall apply
7 to a juvenile justice commission and its members.

8 (P) Any other person who may be designated by court order of
9 the judge of the juvenile court upon filing a petition.

10 (2) (A) Notwithstanding any other law and subject to
11 subparagraph (A) of paragraph (3), juvenile case files, except those
12 relating to matters within the jurisdiction of the court pursuant to
13 Section 601 or 602, that pertain to a deceased child who was within
14 the jurisdiction of the juvenile court pursuant to Section 300, shall
15 be released to the public pursuant to an order by the juvenile court
16 after a petition has been filed and interested parties have been
17 afforded an opportunity to file an objection. Any information
18 relating to another child or which could identify another child,
19 except for information about the deceased, shall be redacted from
20 the juvenile case file prior to release, unless a specific order is
21 made by the juvenile court to the contrary. Except as provided in
22 this paragraph, the presiding judge of the juvenile court may issue
23 an order prohibiting or limiting access to the juvenile case file, or
24 any portion thereof, of a deceased child only upon a showing by
25 a preponderance of evidence that release of the juvenile case file
26 or any portion thereof is detrimental to the safety, protection, or
27 physical or emotional well-being of another child who is directly
28 or indirectly connected to the juvenile case that is the subject of
29 the petition.

30 (B) This paragraph represents a presumption in favor of the
31 release of documents when a child is deceased unless the statutory
32 reasons for confidentiality are shown to exist.

33 (C) If a child whose records are sought has died, and documents
34 are sought pursuant to this paragraph, no weighing or balancing
35 of the interests of those other than a child is permitted.

36 (D) A petition filed under this paragraph shall be served on
37 interested parties by the petitioner, if the petitioner is in possession
38 of their identity and address, and on the custodian of records. Upon
39 receiving a petition, the custodian of records shall serve a copy of
40 the request upon all interested parties that have not been served

1 by the petitioner or on the interested parties served by the petitioner
2 if the custodian of records possesses information, such as a more
3 recent address, indicating that the service by the petitioner may
4 have been ineffective.

5 (E) The custodian of records shall serve the petition within 10
6 calendar days of receipt. If any interested party, including the
7 custodian of records, objects to the petition, the party shall file and
8 serve the objection on the petitioning party no later than 15
9 calendar days of service of the petition.

10 (F) The petitioning party shall have 10 calendar days to file any
11 reply. The juvenile court shall set the matter for hearing no more
12 than 60 calendar days from the date the petition is served on the
13 custodian of records. The court shall render its decision within 30
14 days of the hearing. The matter shall be decided solely upon the
15 basis of the petition and supporting exhibits and declarations, if
16 any, the objection and any supporting exhibits or declarations, if
17 any, and the reply and any supporting declarations or exhibits
18 thereto, and argument at hearing. The court may solely upon its
19 own motion order the appearance of witnesses. If no objection is
20 filed to the petition, the court shall review the petition and issue
21 its decision within 10 calendar days of the final day for filing the
22 objection. Any order of the court shall be immediately reviewable
23 by petition to the appellate court for the issuance of an
24 extraordinary writ.

25 (3) Access to juvenile case files pertaining to matters within the
26 jurisdiction of the juvenile court pursuant to Section 300 shall be
27 limited as follows:

28 (A) If a juvenile case file, or any portion thereof, is privileged
29 or confidential pursuant to any other state law or federal law or
30 regulation, the requirements of that state law or federal law or
31 regulation prohibiting or limiting release of the juvenile case file
32 or any portions thereof shall prevail. Unless a person is listed in
33 subparagraphs (A) to (O), inclusive, of paragraph (1) and is entitled
34 to access under the other state law or federal law or regulation
35 without a court order, all those seeking access, pursuant to other
36 authorization, to portions of, or information relating to the contents
37 of, juvenile case files protected under another state law or federal
38 law or regulation, shall petition the juvenile court. The juvenile
39 court may only release the portion of, or information relating to
40 the contents of, juvenile case files protected by another state law

1 or federal law or regulation if disclosure is not detrimental to the
2 safety, protection, or physical or emotional well-being of a child
3 who is directly or indirectly connected to the juvenile case that is
4 the subject of the petition. This paragraph shall not be construed
5 to limit the ability of the juvenile court to carry out its duties in
6 conducting juvenile court proceedings.

7 (B) Prior to the release of the juvenile case file or any portion
8 thereof, the court shall afford due process, including a notice of
9 and an opportunity to file an objection to the release of the record
10 or report to all interested parties.

11 (4) A juvenile case file, any portion thereof, and information
12 relating to the content of the juvenile case file, may not be
13 disseminated by the receiving agencies to any persons or agencies,
14 other than those persons or agencies authorized to receive
15 documents pursuant to this section. Further, a juvenile case file,
16 any portion thereof, and information relating to the content of the
17 juvenile case file, may not be made as an attachment to any other
18 documents without the prior approval of the presiding judge of the
19 juvenile court, unless it is used in connection with and in the course
20 of a criminal investigation or a proceeding brought to declare a
21 person a dependent child or ward of the juvenile court.

22 (5) Individuals listed in subparagraphs (A), (B), (C), (D), (E),
23 (F), (H), and (I) of paragraph (1) may also receive copies of the
24 case file. In these circumstances, the requirements of paragraph
25 (4) shall continue to apply to the information received.

26 (b) (1) While the Legislature reaffirms its belief that juvenile
27 court records, in general, should be confidential, it is the intent of
28 the Legislature in enacting this subdivision to provide for a limited
29 exception to juvenile court record confidentiality to promote more
30 effective communication among juvenile courts, family courts,
31 law enforcement agencies, and schools to ensure the rehabilitation
32 of juvenile criminal offenders as well as to lessen the potential for
33 drug use, violence, other forms of delinquency, and child abuse.

34 (2) Notwithstanding subdivision (a), written notice that a minor
35 enrolled in a public school, kindergarten to grade 12, inclusive,
36 has been found by a court of competent jurisdiction to have
37 committed any felony or any misdemeanor involving curfew,
38 gambling, alcohol, drugs, tobacco products, carrying of weapons,
39 a sex offense listed in Section 290 of the Penal Code, assault or
40 battery, larceny, vandalism, or graffiti shall be provided by the

1 court, within seven days, to the superintendent of the school district
2 of attendance. Written notice shall include only the offense found
3 to have been committed by the minor and the disposition of the
4 minor's case. This notice shall be expeditiously transmitted by the
5 district superintendent to the principal at the school of attendance.
6 The principal shall expeditiously disseminate the information to
7 those counselors directly supervising or reporting on the behavior
8 or progress of the minor. In addition, the principal shall disseminate
9 the information to any teacher or administrator directly supervising
10 or reporting on the behavior or progress of the minor whom the
11 principal believes needs the information to work with the pupil in
12 an appropriate fashion, to avoid being needlessly vulnerable or to
13 protect other persons from needless vulnerability.

14 Any information received by a teacher, counselor, or
15 administrator under this subdivision shall be received in confidence
16 for the limited purpose of rehabilitating the minor and protecting
17 students and staff, and shall not be further disseminated by the
18 teacher, counselor, or administrator, except insofar as
19 communication with the juvenile, his or her parents or guardians,
20 law enforcement personnel, and the juvenile's probation officer
21 is necessary to effectuate the juvenile's rehabilitation or to protect
22 students and staff.

23 An intentional violation of the confidentiality provisions of this
24 paragraph is a misdemeanor punishable by a fine not to exceed
25 five hundred dollars (\$500).

26 (3) If a minor is removed from public school as a result of the
27 court's finding described in ~~subdivision (b)~~ *paragraph (2)*, the
28 superintendent shall maintain the information in a confidential file
29 and shall defer transmittal of the information received from the
30 court until the minor is returned to public school. If the minor is
31 returned to a school district other than the one from which the
32 minor came, the parole or probation officer having jurisdiction
33 over the minor shall so notify the superintendent of the last district
34 of attendance, who shall transmit the notice received from the court
35 to the superintendent of the new district of attendance.

36 (c) Each probation report filed with the court concerning a minor
37 whose record is subject to dissemination pursuant to subdivision
38 (b) shall include on the face sheet the school at which the minor
39 is currently enrolled. The county superintendent shall provide the
40 court with a listing of all of the schools within each school district,

1 within the county, along with the name and mailing address of
2 each district superintendent.

3 (d) Each notice sent by the court pursuant to subdivision (b)
4 shall be stamped with the instruction: “Unlawful Dissemination
5 Of This Information Is A Misdemeanor.” Any information received
6 from the court shall be kept in a separate confidential file at the
7 school of attendance and shall be transferred to the minor’s
8 subsequent schools of attendance and maintained until the minor
9 graduates from high school, is released from juvenile court
10 jurisdiction, or reaches ~~the age of~~ 18 years *of age*, whichever occurs
11 first. After that time the confidential record shall be destroyed. At
12 any time after the date by which a record required to be destroyed
13 by this section should have been destroyed, the minor or his or her
14 parent or guardian shall have the right to make a written request
15 to the principal of the school that the minor’s school records be
16 reviewed to ensure that the record has been destroyed. Upon
17 completion of any requested review and no later than 30 days after
18 the request for the review was received, the principal or his or her
19 designee shall respond in writing to the written request and either
20 shall confirm that the record has been destroyed or, if the record
21 has not been destroyed, shall explain why destruction has not yet
22 occurred.

23 Except as provided in paragraph (2) of subdivision (b), no
24 liability shall attach to any person who transmits or fails to transmit
25 any notice or information required under subdivision (b).

26 (e) For purposes of this section, a “juvenile case file” means a
27 petition filed in any juvenile court proceeding, reports of the
28 probation officer, and all other documents filed in that case or
29 made available to the probation officer in making his or her report,
30 or to the judge, referee, or other hearing officer, and thereafter
31 retained by the probation officer, judge, referee, or other hearing
32 officer.