



## JUDICIAL COUNCIL OF CALIFORNIA

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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on: May 24–25, 2018

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Title

Juvenile Law: Sealing of and Access to  
Records

Agenda Item Type

Action Required

Effective Date

September 1, 2018

Rules, Forms, Standards, or Statutes Affected  
Adopt Cal. Rules of Court, rule 5.850; amend  
rules 5.552 and 5.840; approve forms JV-597  
and JV-598; revise forms JV-590,  
JV-595-INFO, JV-596, and JV-596-INFO

Date of Report

April 2, 2018

Recommended by

Family and Juvenile Law Advisory  
Committee

Hon. Jerilyn L. Borack, Cochair

Hon. Mark A. Juhas, Cochair

Contact

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### Executive Summary

The Family and Juvenile Law Advisory Committee recommends new and amended rules and new and revised forms to conform to recently enacted statutory provisions concerning the sealing of juvenile records. The proposal would update recently adopted rules and forms to implement sealing of records under Welfare and Institutions Code section 786<sup>1</sup> to include recent changes to that section, modify forms to reflect the authority of the court to seal records for section 707(b) offenses, and adopt a new rule and optional form for use by probation to seal records under newly enacted section 786.5.

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<sup>1</sup> All further statutory references are to the Welfare and Institutions Code, unless otherwise specified.

## Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective September 1, 2018:

1. Adopt rule 5.850 of the California Rules of Court to implement new statutory provisions providing for the sealing of juvenile records for probation diversion programs;
2. Approve *Probation Department Notice on Sealing of Records After Diversion Program* (Welf. & Inst. Code, § 786.5) (form JV-597) and *Petition to Review Denial of Sealing of Records After Diversion Program* (form JV-598) as optional forms for use in implementation of new provisions on the sealing of juvenile records for probation diversion programs;
3. Amend rule 5.552 of the California Rules of Court to include new statutory and procedural requirements for accessing juvenile case file information for research purposes;
4. Amend rule 5.840 of the California Rules of Court to incorporate recent statutory changes on the sealing of juvenile delinquency records for serious and violent offenses;
5. Revise *Order to Seal Juvenile Records—Welfare and Institutions Code Section 781* (form JV-590) to clarify that some sealed records should not be destroyed to implement recent changes to Welfare and Institutions Code section 781;
6. Revise *Dismissal and Sealing of Records—Welfare and Institutions Code Section 786* (form JV-596) to allow the court to find that the petition was dismissed before wardship as an alternative to finding that probation was satisfactorily completed consistent with recent changes in section 786.
7. Revise *How to Ask the Court to Seal Your Records* (form JV-595-INFO) and *Sealing of Records for Satisfactory Completion of Probation* (form JV-596-INFO) to include information about the expansion of section 786 and the possibility of record sealing by probation under new section 786.5, and to clarify the much narrower constraints on record sealing by request under section 781 for 707(b) offenses.

The new and amended rules are attached at pages 10–13, and the revised forms are attached at pages 14–24.

## Relevant Previous Council Action

Rule 5.552 was originally adopted effective July 1, 1992, as rule 1423 and has previously been amended numerous times, most recently effective January 1, 2018, to implement Judicial Council–sponsored legislation providing access to juvenile case files for an Indian child’s tribe. Rule 8.40 was adopted by the Judicial Council effective July 1, 2016, to implement the

provisions of Welfare and Institutions Code section 786.<sup>2</sup> The council adopted form JV-590 effective January 1, 1991, and revised the form effective January 1, 2007, to reflect the renumbered rules of court and revised the form effective July 1, 2016, to make it an optional form and incorporate recent legislative changes in sealing law. *How to Ask the Court to Seal Your Records* (form JV-595-INFO) was adopted effective July 1, 2016, to implement a legislative requirement that the council develop informational materials on how to petition the court to seal juvenile records. *Dismissal and Sealing of Records—Welfare and Institutions Code Section 786* (form JV-596) was approved, and *Sealing of Records for Satisfactory Completion of Probation* (form JV-596-INFO) was adopted effective July 1, 2016, to implement section 786. These forms were both revised effective September 1, 2017, to incorporate recent changes in the law on sealing of records.

## **Analysis/Rationale**

### **Background**

In 2013, the Legislature took action to ensure that all juveniles who come before the court or a probation officer receive information about the process to request sealing of records and required the adoption of a Judicial Council form that can be used to petition the court for sealing under Welfare and Institutions Code section 781 (Assem. Bill 1006 [Yamada]; Stats. 2013, ch. 269). In 2014, the Legislature went a step further by enacting section 786, which requires courts to seal records—without the filing of a petition—for any child 14 years of age or older who was not a serious or violent (707(b)) offender and who satisfactorily completed probation (Sen. Bill 1038 [Leno]; Stats. 2014, ch. 249). That legislation, however, spurred many questions and concerns within the juvenile justice system, and legislation has been enacted in every year since 2014 to clarify the scope and impacts of section 786.

In 2017, the Legislature enacted Assembly Bill 529 (Stone; Stats. 2017, ch. 685), which further amended section 786 to require the court to seal records for any case that it dismisses on the motion of the prosecution, on its own motion, or because the petition is not sustained after an adjudication hearing. AB 529 also enacted section 786.5, which requires the probation department to seal the records of any juvenile who successfully completes a diversion program for an arrest that does not lead to the filing of a petition with the juvenile court and to notify any agency overseeing the diversion program to seal its records. This sealing would result in the arrest being deemed not to have occurred. If the probation department determines that the diversion program was not successfully completed, section 786.5 requires that notice of that determination be provided to the individual and that the individual have an opportunity to petition the court for a review of that determination. Also enacted in 2017 was Senate Bill 312 (Skinner; Stats. 2017, ch. 679), which clarified that records for section 707(b) offenses can be sealed under section 786 if the offense was reduced to a misdemeanor and authorized courts to seal other 707(b) records—other than those for registerable sex offenses under section 290.008—under section 781, as long as access to those records is provided under specified circumstances.

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<sup>2</sup> Hereinafter, all statutory references are to the Welfare and Institutions Code unless otherwise specified.

Finally, the Legislature, in 2017, enacted Senate Bill 462 (Atkins; Stats. 2017, ch. 462), which presents specific standards for accessing juvenile case files for data collection and research purposes, with specific confidentiality protections required.

#### **Rule and forms proposals to implement amendments to section 786**

Because section 786 has been expanded to require the court to seal records when it dismisses a petition without finding the child a ward of the delinquency court, amendments and revisions to the rule and forms to implement section 786 are proposed, as follows, to reflect this expansion. Section 786 was also amended to clarify that a 707(b) offense that has been reduced to a misdemeanor is eligible for sealing, and changes have been made to the rule to reflect that clarification.

***Amended rule 5.840.*** This rule describes the procedures for the court to seal records under section 786. Now that the court must seal records if it dismisses a case before wardship in the same manner that it currently seals records for satisfactory completion of probation, the rule must incorporate this expansion of the statute.

***Revised form JV-596.*** To assist courts in implementing the new requirements of section 786, the council approved optional sealing order form JV-596, *Dismissal and Sealing of Records—Welfare and Institutions Code Section 786*, effective July 1, 2016. For this form to be used to seal records under newly enacted section 786(e), it needs to be revised to allow the court to find that the petition was dismissed before wardship as an alternative to finding that probation was satisfactorily completed.

#### **Rules and forms proposals for sealing by probation for diversion cases**

Newly enacted section 786.5 requires the probation department to seal records for diversion cases when the diversion program has been satisfactorily completed and to provide notice that it has sealed the records or, if it has not, the reason for not doing so. It also provides the right to petition the court for review of a determination that records should not be sealed. A new rule and new optional forms, described immediately below, are proposed to implement this new statute.

***New rule to implement probation diversion sealing.*** Rule 5.850 implements newly enacted section 786.5. The rule specifies the time frame within which probation must notify the child about whether his or her records have been sealed. It also specifies that if probation does not seal the records because it does not find satisfactory completion of the program, it must provide the child with a statement of its reasons and a form for the child to complete to ask the court to review that determination if desired. These procedures include a requirement that the probation department file with the court any such request for review, that the court appoint counsel for any child seeking such review at or before the hearing consistent with the requirement in section 634, and that the court appoint counsel for any child alleged to be a 601 or 602 unless the right to appointed counsel has been knowingly waived by the child.

***New forms to provide notice of sealing and to request court review.*** The two optional forms for implementation of probation diversion sealing are proposed so all probation departments will have a tool for compliance with the new sealing requirements of section 786.5 and the new option for the diversion participant—whose records are not sealed—to petition the court for review of the determination that he or she did not satisfactorily complete the program. The optional form petition for review of nonsatisfactory completion includes simple instructions, and provides a means for probation departments to comply with the requirements in new rule 5.850 that they provide a form to seek review when they give notice of nonsealing.

### **Form changes to implement amendments to section 781 allowing for sealing of 707(b) offenses**

Before the enactment of SB 312, records for offenses committed by individuals aged 14 or older listed in section 707(b) were ineligible for sealing under section 781. Now those records can be sealed under specific circumstances as long as they are not sealed for 707(b) sex offenses that require registration under Penal Code section 290.008. However, access to these records is allowed in future proceedings for a variety of reasons, and the prohibition on the destruction of the court's records of these offenses remains. In addition to updating various information forms, as discussed below, this proposal would revise optional *Order to Seal Juvenile Records—Welfare and Institutions Code Section 781* (form JV-590) to allow the court to specify that the court records will not be destroyed under section 781(d) as an alternative to setting a destruction date. In addition, because the court may be sealing only selected offense records, the form will include a new table modeled on one used on a Superior Court of Los Angeles County form that will allow the court to grant and deny sealing orders on the same form to clarify for law enforcement and other agencies which offense records should be sealed.

### **Record sealing information form revisions<sup>3</sup>**

The Judicial Council has two sealing-specific informational forms that describe the law concerning record sealing for different audiences and contexts, each of which is proposed to be updated to reflect the changes in sealing law discussed above. Form JV-596-INFO is to be given at the termination of the case to wards whose records are sealed under section 786, and form JV-595-INFO is for those wards whose cases are not dismissed under section 786 and who need information about petitioning the court for the sealing of records under section 781. Both of these forms need to be revised to include information about the expansion of section 786 and the possibility of record sealing by probation under new section 786.5, and to clarify the much narrower constraints on record sealing by request under section 781 for 707(b) offenses. Because record sealing under section 786.5 is narrower than under section 786, the committee is recommending that the information about diversion sealing be placed primarily on the JV-595-INFO with the JV-596-INFO remaining focused on cases in which records have been sealed under section 786.

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<sup>3</sup> Revisions to form JV-060 to reflect record sealing changes are included in another Judicial Council report for this meeting titled: *Juvenile Law: Information for Parents*.

### **Amendments to rule 5.552 to implement section 827.12 access for data collection and research**

Rule 5.552 presents the procedures for accessing juvenile case files and provides that any access that is unauthorized under section 827 or 828 requires that a petition be filed with the juvenile court. Newly enacted section 827.12 allows law enforcement, probation, the court, the Department of Justice, and other state and local agencies with custody of a juvenile delinquency case file to access those records for data collection or reporting requirements imposed under the terms of a grant or as required by state or federal law, provided that personally identifying information is not released. In addition, it gives provisions for a chief probation officer to make a request of the juvenile court that access and data be provided from juvenile delinquency case files and related juvenile records in the possession of the probation department for the purpose of data sharing or research, provided that the court finds that the methodology to protect confidentiality is sound and that any personally identifying information that is accessed is not further released. To ensure that rule 5.552 is not in conflict with section 827.12, it needs to be amended to incorporate cross-references to the statute and to include the required findings that the court must make before authorizing the release of information from confidential files.

### **Comments**

This proposal circulated for comment as part of the winter 2018 invitation-to-comment cycle, from December 15, 2017, to February 9, 2018, to the standard mailing list for family and juvenile law proposals. Included on the list were appellate presiding justices, appellate court administrators, trial court presiding judges, trial court executive officers, judges, court administrators and clerks, attorneys, social workers, probation officers, and other juvenile law professionals. Nine organizations and the Joint Rules Subcommittee of the Trial Court Presiding Judges and Court Executives Advisory Committees provided comment: one agreed with the proposal, seven agreed with the proposal if modified, and two did not indicate a position but provided comments. In addition to the comments discussed below, the committee adopted numerous technical and clarifying changes suggested by various commentators. A chart with the full text of the comments received and the committee's responses is attached at pages 25–61.

***Guidance and forms for probation implementation of diversion sealing useful.*** The proposal circulated for comment by the committee included an optional form and rule guidance for implementation of new section 786.5 by probation departments that are authorized to seal diversion program records for those who satisfactorily complete such programs in lieu of having a petition filed in court. The committee sought specific comment on whether it was optimal to provide some structure for that process in the rules of court and whether probation departments would benefit from having an optional form available to fulfill their statutory obligations. While one commentator was ambivalent about the value of these tools, the remainder opined that clear guidance and optional forms would assist probation in carrying out its duties under section 786.5. The committee did take a closer look at the text of the rule and worked to clarify the timelines and expectations in rule 5.850 for probation in a manner that would not be burdensome or unworkable.

***Probation filing of petition for court review of nonsealing of diversion cases is most workable approach.*** The committee sought specific comment on whether rule 5.850 should direct that probation be responsible for filing a petition to the court from a child seeking review of a decision by probation that the diversion program was not satisfactorily completed. Most commentators were clear that probation should do so only if the child were seeking to have the decision reviewed, and some felt that the option should be available for the child to file the petition directly or for a child's attorney to file the petition directly. Because it would be very logistically challenging for an unrepresented child to file a petition directly in a delinquency court—since these courts are not typically set up to accept filings from the public—the committee drafted the rule to provide that petitions be submitted by the child to probation for filing with the court. This practice is consistent with the practice for the filing of petitions to seal delinquency records under section 781, which are also required to be filed by the probation department. Because very few probationers in diversion programs will have appointed counsel, as they have not yet been subject to court proceedings, the committee also felt it would be clearer and less confusing to craft the rule around the practice that would impact the vast majority of petitioners and ensure that instructions on how to seek review of a denial of sealing could be simple and straightforward for all petitioners to follow.

***Appointment of counsel is required under existing statutory requirements.*** New section 786.5, which requires the court to hear any requests for a review of a probation determination that a child has not satisfactorily completed probation, does not provide express guidance on whether counsel for a child should be appointed to represent his or her interests at the hearing. The committee sought specific comment on this issue and received a wide range of responses, with some commentators urging that counsel be appointed as a rule and others suggesting that the court have discretion to appoint counsel if needed and/or based on the ability of the petitioner to afford counsel. The committee reviewed the statute on appointment of counsel in delinquency cases, section 634, which provides that the court may appoint counsel in any case when the child cannot afford it, and must appoint counsel regardless of ability to pay in any case in which it is alleged that the child is described by section 601 or 602.

Because the probation diversion programs whose satisfactory completion is at issue in these hearings are taking place because the child is alleged to come under the description of section 601 or 602 and the diversion program is agreed to by the child in lieu of filing a petition, the committee concluded that the mandatory appointment requirements would come into play once the child came before the court to challenge the probation department's determination on sealing. As a result, the committee drafted the rule to require appointment of counsel at or before the hearing in all cases.

***Information regarding probation diversion sealing should be placed on general sealing information form.*** Courts and probation agencies are statutorily required to provide information on record sealing to all juvenile probationers at the termination of their cases. Because section 786 provides that records for some probationers are sealed as a matter of law by the court at the end of their cases if they satisfactorily complete probation (or immediately if their case is

dismissed prior to the court imposing a disposition), there are two different information forms that can be used to fulfill this duty: one is specifically for those whose records have been sealed, and one is for the remainder who will need to petition the court at a later date to seal juvenile case records. As circulated for comment, the proposal added the information about record sealing in diversion cases primarily to the form to be given to those whose cases are sealed under section 786 because in a somewhat similar manner, records are sealed by probation without a petition. However, a number of commentators pointed out that sealing under section 786.5 is not as broad in scope (it does not, for example, include any arrest records) and it does not result in dismissal because there is no court case to dismiss.

In addition, it was noted that some of these diversion participants may wish to seek sealing of the additional records under section 781 at a later date. Given these distinctions and the need to provide information about petition sealing under section 781 to these youth, the committee opted to relocate the information about probation diversion sealing to the information form that is not specific to section 786 (JV-595-INFO) and leave the JV-596-INFO focused solely on explaining sealing under section 786. Form JV-596-INFO also includes a reference to form JV-595-INFO for those who may have multiple cases and need to seek additional sealing by petition.

***Provisions for counsel for children to object to release of case file information for human subjects—research need clear timelines.*** In modifying rule 5.552 to allow for release of case file information pursuant to newly enacted section 827.12, which provides that information can be released with court approval for research purposes, the committee sought to provide some protection for the privacy interests of the subjects of the files in the event the research would involve human subjects—interactions. To accomplish this end, the rule was drafted to require that notice of such a request for information release be provided to the office of the public defender in the county and to allow that office to respond to such a request with any concerns or objections. The Chief Probation Officers of California, who sponsored the legislation that enacted section 827.12, submitted a comment asking that the committee work with probation to identify a timeline and procedure for such notice and objection in the rule to ensure that it would not lead to undue delay in those unusual cases in which human subjects—research is contemplated. The committee modified the rule accordingly to set time frames for objections to be filed and a hearing on the matter to be set.

### **Alternatives considered**

The committee considered not proposing a form for probation to comply with section 786.5, allowing each county to develop a solution to meet its own needs, but concluded that, as an optional form, the proposed form would not interfere with local efforts to implement the section. The committee also considered limiting the rule of court on section 786.5 to the court review process but determined that the process was intertwined with the notice requirements for probation under the statute and thus drafted the rule to include general procedures for probation to follow consistent with the statute. The committee considered allowing petitioners seeking review of a denial of diversion sealing to file directly with the court but deemed that unnecessarily difficult for the young people involved, and there was some support on the



committee for probation having at least 60 days to file the review petition to assist those jurisdictions with limited resources. However, the committee concluded that 30 days should be sufficient given that the petition would already be completed. Finally, the committee considered making appointment of counsel discretionary with the court or contingent on inability to pay but determined that under section 634, appointment would be mandatory.

### **Policy implications**

One commentator noted that because of additional record sealing in diversion cases, other agencies would have less case information available to assess the needs of a young person who might be involved in both the child welfare and juvenile justice systems. The committee notes this concern but cannot address it since the statute does not make an exception to allow access to diversion case files for this purpose.

### **Fiscal and Operational Impacts**

Printing costs may be incurred to replace any existing stock of the mandatory sealing information forms. Some courts may incur programming charges if electronic case management systems are used for the court orders, and they opt to use the optional revised order forms. In addition, all of the sealing law changes will result in more cases being eligible for sealing under sections 781 and 786, and thus will create additional court workload as will the option to seek review under section 786.5, which will bring cases into the court that otherwise would not have required a court file or intervention (although this influx may be partially offset by filing of fewer 781 petitions for diversion cases overall). All of these impacts are a result of the legislative changes and are necessary to make the rules and forms legally accurate. In addition, because the informational forms are available in other languages, there will be costs to translate the revised forms. Finally, courts have pointed out the need for staff time and resources to be dedicated to training and the development of procedures to implement the new rules, forms, and statutory requirements.

### **Attachments and Links**

1. Cal. Rules of Court, rules 5.552, 5.840, and 5.850, at pages 10–13
2. Judicial Council forms JV-590, JV-595-INFO, JV-596, JV-596-INFO, JV-597, and JV-598, at pages 14–24
3. Chart of comments, at pages 25–61
4. Assembly Bill 529,  
[http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201720180AB529](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB529)
5. Senate Bill 312,  
[http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201720180SB312](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB312)
6. Senate Bill 462  
[http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201720180SB462](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB462)

Rule 5.850 of the California Rules of Court is adopted and rules 5.552 and 5.840 are amended, effective September 1, 2018, to read:

**Rule 5.552. Confidentiality of records (§§ 827, 827.12, 828)**

**(a) \* \* \***

**(b) Petition**

Juvenile case files may ~~only~~ be obtained or inspected only in accordance with sections 827, 827.12, and 828. They may not be obtained or inspected by civil or criminal subpoena. With the exception of those persons permitted to inspect juvenile case files without court authorization under sections 827 and 828, and the specific requirements for accessing juvenile case files provided in section 827.12(a)(1), every person or agency seeking to inspect or obtain juvenile case files must petition the court for authorization using *Request for Disclosure of Juvenile Case File* (form 7-570). A chief probation officer seeking juvenile court authorization to access and provide data from case files in the possession of the probation department under section 827.12(a)(2) must comply with the requirements of subdivision (e) of this rule.

(1)–(2) \* \* \*

**(c)–(d) \* \* \***

**(e) Release of case file information for research (§ 827.12(a)(2))**

The court may authorize a chief probation officer to access and provide data contained in juvenile delinquency case files and related juvenile records in the possession of the probation department for the purpose of data sharing or conducting or facilitating research on juvenile justice populations, practices, policies, or trends if the court finds the following:

(1) The research, evaluation, or study includes a sound method for the appropriate protection of the confidentiality of an individual whose juvenile delinquency case file is accessed for this purpose. In considering whether a method is sound, the court must have information on:

(A) The names and qualifications of any nonprobation personnel who will have access to personally identifying information as defined in Civil Code section 1798.79.8(b);

(B) Procedures to mask personally identifying information that is shared electronically; and

(C) Data security protocols to ensure that access to the information is limited to those people authorized by the court.

(2) No further release, dissemination, or publication of personally identifying information by the probation department or a program evaluator, researcher, or research organization that is retained by the probation department will take place for research or evaluation purposes.

(3) The disclosure requirements of section 10850 are met if any dependency information in a delinquency file may be disclosed.

(4) A date for destruction of records containing personally identifying information in the possession of nonprobation department personnel has been set to prevent inappropriate disclosure of the records.

If the information is being released for human subject research as defined in 45 Code of Federal Regulations part 46, the probation department must provide notice to the office of the public defender 30 days before the court authorizes the release of the information so that the office has an opportunity to file an objection to the release with the court. If such an objection is filed within the 30 day period the court must set a hearing on the objection within 30 days of the filing of the objection to consider the objection and make a determination on whether and how release of information should be accomplished. Upon receiving authorization, but prior to the release of information, the probation department must enter into a formal agreement with the entity or entities conducting the research that specifies what may and may not be done with the information disclosed.

**(ef) Reports of law enforcement agencies (§ 828)**

**(fg) Other applicable statutes**

#### **Rule 5.840. Dismissal of petition and sealing of records (§ 786)**

**(a) \* \* \***

**(b) Dismissal of petition**

If the court finds that a minor subject to this rule has satisfactorily completed his or her informal or formal probation supervision, the court must order the petition dismissed. The court must not dismiss a petition if it was sustained based on the commission of an offense listed in subdivision (b) of section 707 when the minor was 14 or older unless the finding on that offense has been dismissed or was

reduced to a misdemeanor or an offense not listed in subdivision (b) of section 707. The court may also dismiss prior petitions filed or sustained against the minor if they appear to the satisfaction of the court to meet the sealing and dismissal criteria in section 786. An unfulfilled order, condition, or restitution or an unpaid restitution fee must not be deemed to constitute unsatisfactory completion of probation supervision. The court may not extend the period of supervision or probation solely for the purpose of deferring or delaying eligibility for dismissal and sealing under section 786.

**(c) Sealing of records**

For any petition dismissed by the court under section 786, including any petition dismissed before adjudication, the court must also order sealed all records in the custody of the court, law enforcement agencies, the probation department, and the Department of Justice pertaining to those dismissed petition(s) using form JV-596, *Dismissal and Sealing of Records—Welfare and Institutions Code Section 786*, or a similar form. The court may also seal records pertaining to these cases in the custody of other public agencies upon a request by an individual who is eligible to have records sealed under section 786, if the court determines that sealing the additional record(s) will promote the successful reentry and rehabilitation of the individual. The prosecuting attorney, probation officer, and court must have access to these records as specifically provided in section 786. Access to the records for research purposes must be provided as required in section 787.

**(d)–(f) \* \* \***

**Rule 5.850 Sealing of records by probation in diversion cases (§ 786.5)**

**(a) Applicability**

This rule states the procedures to seal the records of persons who are subject to section 786.5.

**(b) Sealing of records**

Upon satisfactory completion of a program of diversion or supervision under a referral by the probation officer or the prosecutor in lieu of filing a petition to adjudge the person a ward of the juvenile court, including, but not limited to a program of informal supervision under section 654, the probation department must seal the arrest and other records in its custody relating to the arrest or referral and participation in the program. The probation department must also notify the public or private agency operating the diversion program to which the person has been

1 referred to seal any records in its custody relating to the arrest or referral and  
2 participation in the program, and the operator of the program must do so promptly.

3  
4 **(c) Notice to participant**

5  
6 Within 60 days of the satisfactory completion of a program subject to this rule, the  
7 probation department must notify the person in writing that his or her records have  
8 been sealed. If the probation department determines that the program has not been  
9 completed satisfactorily, it must notify the person in writing of the reason or  
10 reasons for not sealing the record and provide the person with a copy of the  
11 *Petition to Review Denial of Sealing of Records After Diversion Program* (form  
12 JV-598) or similar local form to allow the person to seek court review of the  
13 probation department's determination within 60 days of making that  
14 determination.

15  
16 **(d) Review of unsatisfactory completion of program by the juvenile court**

17  
18 A person who receives notice from the probation department that he or she has not  
19 satisfactorily completed the program and that his or her records have not been  
20 sealed may seek review of that determination by the court by submitting a petition  
21 to the probation department on the *Petition to Review Denial of Sealing of Records*  
22 *After Diversion Program* (form JV-598) or similar local form, and the probation  
23 department must file that petition with the court for a hearing to review whether he  
24 or she has met the satisfactory completion requirement and is eligible for record  
25 sealing by the probation department. The petition must be provided to the probation  
26 department within 60 days of the date the notice from the probation department was  
27 sent, and must include a copy of that notice. The probation department must file the  
28 petition with the juvenile court in the county that issued the notice within 30 days of  
29 receiving it. The clerk of the court must set the matter for hearing and notify the  
30 petitioner and the probation department of the date, time, and location of the  
31 hearing. The court must appoint counsel to represent the child before or at the  
32 hearing unless the court finds that the child has made an intelligent waiver of the  
33 right to counsel under section 634 or is already represented. If the court finds after  
34 the hearing that the petitioner is eligible for sealing of the records under section  
35 786.5, it must order the probation department to promptly comply with the sealing  
36 and notice requirements of this rule.

ATTORNEY OR PARTY WITHOUT ATTORNEY: _____ STATE BAR NO: _____ NAME: _____ FIRM NAME: _____ STREET ADDRESS: _____ CITY: _____ STATE: _____ ZIP CODE: _____ TELEPHONE NO.: _____ FAX NO.: _____ E-MAIL ADDRESS: _____ ATTORNEY FOR (name): _____	<b>FOR COURT USE ONLY</b>  <b>DRAFT</b>  <b>NOT APPROVED BY THE JUDICIAL COUNCIL</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____	
CASE NAME: _____	
<b>ORDER TO SEAL JUVENILE RECORDS— WELFARE AND INSTITUTIONS CODE SECTION 781</b>	CASE NUMBER: _____

1. Name of the petitioner (*specify aliases*): \_\_\_\_\_ Date of birth: \_\_\_\_\_
2. a. Date of hearing: \_\_\_\_\_ Dept.: \_\_\_\_\_ Room: \_\_\_\_\_  
 b. Judicial officer (*name*): \_\_\_\_\_
3. ☐ The court has read and considered the petition and the report of the probation officer.

#### THE COURT ORDERS

4. a. ☐ The petition for sealing of petitioner's juvenile records in the custody of this court and the courts, agencies, and officials named below is granted or denied as specified below:

Petition/Case Number	Incident Number	Offense Date	Arresting Agency	Violations	Disposition (Sealing or Denial)

- ☐ See attachment (5) for additional orders.
- b. The destruction or retention of all sealed records according to Welfare and Institutions Code section 781(d).  
 c. ☐ Date court records must be destroyed: \_\_\_\_\_ ☐ Court records must be retained.  
 d. Date all other records must be destroyed: \_\_\_\_\_
5. ☐ Petitioner is relieved from the registration requirements under Penal Code section 290, and the registration information in the custody of the Department of Justice and other agencies and officials listed above shall be destroyed.
6. The clerk will send a certified copy of this order to the clerk in each county in which a record is ordered sealed and a copy to each agency and official listed above.

Date: \_\_\_\_\_

\_\_\_\_\_  
JUDICIAL OFFICER OF THE SUPERIOR COURT

#### CLERK'S CERTIFICATE

[SEAL]

I certify that the foregoing is a true and correct copy of the original on file in my office.

Date: \_\_\_\_\_

Clerk, by \_\_\_\_\_, Deputy

**JV-595-INFO****How to Ask the Court to Seal Your Records**

If you were arrested or subject to a court proceeding or had contact with the juvenile justice system when you were under 18, there may be records kept by courts, police, schools, or other public agencies about what you did. If the court makes those records **private** (sealed), it could be easier for you to:

- Find a job.
- Get a driver's license.
- Get a loan.
- Rent an apartment.
- Go to college.

**If the court sealed your records when probation was terminated, you do not need to ask for them to be sealed.**

There are now three ways that records may be sealed in California. As of January 1, 2015, courts are required to seal records in certain cases when the court finds that probation (formal, or informal) is satisfactorily completed or if your case was otherwise dismissed after the petition was filed. If the court sealed all of your records at the end of your case, you should have received a copy of the sealing order, and you do not need to ask the court to seal the records in that sealing order.

For more information about when the court seals your records at the completion of probation, see form **JV-596-INFO**.

**If probation sealed your diversion records for satisfactory completion, you may wish to ask the court to seal any remaining records of your behavior.**

As of January 1, 2018, if you participate in a diversion program or other supervision program instead of going to court, and the probation department determines that you satisfactorily completed that program, the probation department will seal your probation department records and the records for any program you were required to complete. If the probation department determines that you did not satisfactorily complete the program, it will not seal those records, but will give you a form to tell you why and a form that you can use to tell the court why you think you did satisfactorily complete the program. If the court agrees with you, it will order your probation and program records sealed. Because probation did not seal any arrest records at this time, you may want to ask the court to seal any other records relating to this conduct when you are eligible to ask for record sealing as explained on this form.

If you have more than one juvenile case or contact and/or are unsure if your records were sealed by the court,

ask your attorney or probation officer or the juvenile court clerk in the county where you had a case or contact.

**Who qualifies to ask the court to seal their juvenile records?**

If the court has not already sealed your records, you can ask the court to make that order, if:

- You are at least **18** or it has been at least five years since your case was closed; and
- You have been rehabilitated to the satisfaction of the court.

**What if you owe restitution or fines?**

The court may seal your records even if you have not paid your full restitution order to the victim.

The court will not consider outstanding fines and court ordered fees when deciding whether to seal your records, but you are still required to pay the restitution, fines, and fees, and your records can be looked at to enforce those orders.

**When do you *not* qualify to seal your records?**

- If you were convicted as an adult of an offense involving moral turpitude, such as:
  - A sex or serious drug crime;
  - Murder or other violent crime; or
  - Forgery, welfare fraud, or other crime of dishonesty.
- If, when you were 14 or older, the court found that you committed a sex offense listed in Welfare and Institutions Code section 707(b) for which you must register under Penal Code section 290.008 because you were paroled from the Department of Juvenile facilities.

If you are unsure if you qualify, ask your attorney.

**Who can see your sealed records?**

- DMV can see your vehicle and traffic records and share them with insurance companies.
- The court may see your records if you are a witness or involved in a defamation case.
- If you apply for benefits as a nonminor dependent, the court may see your records.
- A prosecuting attorney may see your records that were sealed for an offense listed under Welfare and Institutions Code section 707(b) in a later proceeding for the reasons listed in section 781(d).



- If your sealed record was for a 707(b) offense when you were 14 or older, the prosecutor, probation, and the court may unseal your records if you are charged with a later felony.
- You can request the court to unseal your records if you want to have access to them or allow someone else to see them.

### **Can employers see your records if they are not sealed?**

Juvenile records are not allowed to be disclosed to most employers, and employers are not allowed to ask about or consider your juvenile history in most cases. There are exceptions to this rule if you are applying to be a peace officer or to work in health settings. Also, federal employers may still have access to your juvenile history. You should seek legal advice if you have questions of what an employer can ask about you.

### **How do you ask to have your records sealed?**

- ① You must fill out a court form. Form JV-595, *Request to Seal Juvenile Records*, at [www.courts.ca.gov/forms.htm](http://www.courts.ca.gov/forms.htm), can be used, or your court may have a local form.
- ② When you file your petition, the probation department will compile a list of every law enforcement agency, entity, or person the probation department knows has a record of your case, as well as a list of any prior contacts with law enforcement or probation, and attach it to your petition.
- ③ If you think there are agencies that might have records on you that were never sent to probation, you need to name those agencies, or the court will not know to seal those records.  
  
If you are not sure what contacts you might have had with law enforcement, you can get your criminal history record from the Department of Justice. See <http://oag.ca.gov/fingerprints/security> for more information.
- ④ Take your completed form to the probation department where you were on probation. (If you were not on probation, take your form to any county probation office where you have a juvenile record.) Note: A small number of counties require you to take your form to the court. More information on each county's specific requirements is available at [www.courts.ca.gov/28120.htm](http://www.courts.ca.gov/28120.htm).
- ⑤ If you are 26 years of age or older, you may have to pay a fee. If you cannot afford the fee, ask the probation department or the court about a fee waiver.
- ⑥ Probation will review your form and submit it to the court within 90 days, or 180 days if you have records in two or more counties.

- ⑦ The court will review your petition. The court may decide right away to seal your juvenile records, or the court may order a hearing. If there is a hearing, you will receive a notice in the mail with the date, time, and location of the hearing. If the notice says your hearing is "unopposed" (meaning there is no disagreement with your request), you may choose not to go.
- ⑧ If you qualify to have your juvenile records sealed, the court will make an order to seal the eligible records listed on your petition.  
**Important! The court can seal only records it knows about. Make sure you list *all* records from *all* counties where you have any records. The court will tell you if it does not seal records from another court that were listed on your petition, and you will need to file a petition in that county to seal those records.**
- ⑨ If the court grants your request, it will order each agency, entity, or person on your list to seal your records. The court will also order the records destroyed by a certain date. If the sealed records are for a 707(b) offense committed when you were 14 or older, the court will not order those records destroyed.
- ⑩ The court will provide you with a copy of its order. Be sure to keep it in a safe place.

### **What about sex offender registration? (Penal Code, § 290)**

If the court seals a record that required you to register as a sex offender, the order will say you do **not** have to continue to register.

### **If your records are sealed, do you have to report the offenses in the sealed records on job, school, or other applications?**

**No.** Once your records are sealed, the law treats those offenses as if they did not occur and you do not need to report them. **However**, the military and some federal agencies may not recognize sealing of records and may be aware of your juvenile justice history, even if your records are sealed. If you want to enlist in the military or apply for a job requiring you to provide information about your juvenile records, seek legal advice about this issue.

### **Questions?**

If you are not sure if you qualify to seal your records or if you have other questions, talk to a lawyer. The court is not allowed to give you legal advice. More information about sealing your records can be found at [www.courts.ca.gov/28120.htm](http://www.courts.ca.gov/28120.htm).



ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):		<b>FOR COURT USE ONLY</b>  <b>DRAFT</b>  <b>NOT APPROVED BY THE JUDICIAL COUNCIL</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:		
CASE NAME:		
<b>DISMISSAL AND SEALING OF RECORDS— WELFARE AND INSTITUTIONS CODE SECTION 786</b>		CASE NUMBER:

1. Name of subject child: \_\_\_\_\_ Date of birth: \_\_\_\_\_
  2. a. Date of hearing: \_\_\_\_\_ Dept.: \_\_\_\_\_ Room: \_\_\_\_\_  
 b. Judicial officer (name): \_\_\_\_\_
  3. The court has read and considered the report of the probation officer and any other evidence presented or information provided.
- THE COURT MAKES THE FOLLOWING FINDINGS AND ORDERS:**
4. ☐ The child has satisfactorily completed a program of informal supervision, probation under section 725, or a term of probation, **or** ☐ **the petition was dismissed before wardship.**
  5. The petition(s) filed on (date(s)): \_\_\_\_\_ is/are dismissed.
  6. The child's juvenile records related to the arrest(s) on (date(s)): \_\_\_\_\_  
 regarding an alleged violation of (specify offense(s)): \_\_\_\_\_  
 in the custody of this court and of the courts, agencies, and officials listed below are ordered sealed:  
☐ Probation Dept. (specify county): \_\_\_\_\_  
☐ California Dept. of Justice  
☐ Law enforcement agency (specify all): \_\_\_\_\_  
☐ Law enforcement case number(s): \_\_\_\_\_
  7. ☐ The court finds that sealing the following additional public agency records will promote the successful reentry and rehabilitation of the child and orders sealed the records in their custody relating to petitions and arrests listed in items 5 and 6 sealed:  
☐ District Attorney (specify county): \_\_\_\_\_  
☐ School: \_\_\_\_\_  
☐ Department of Motor Vehicles: \_\_\_\_\_  
☐ Other (specify): \_\_\_\_\_  
  
☐ Attachment. Number of pages attached: \_\_\_\_\_

CHILD'S NAME:	CASE NUMBER:
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8. All records pertaining to the dismissed petition are to be destroyed on the dates stated in this item, and the arrest is deemed never to have occurred except that the prosecuting attorney, probation officer, child welfare agency, court, and the subject of the order may access these records for the specific purposes stated in Welfare and Institutions Code section 786.

- a. Date court records must be destroyed:
- b. Date all other records must be destroyed:

9. The clerk shall send a certified copy of this order to the clerk in each county in which a record is ordered sealed and one copy each to the child, the child's attorney, and the agencies and officials listed in items 6 and 7.

Date:

\_\_\_\_\_  
JUDICIAL OFFICER OF THE SUPERIOR COURT

**CLERK'S CERTIFICATE**

[SEAL]

I certify that the foregoing is a true and correct copy of the original on file in my office.

Date:

Clerk, by \_\_\_\_\_, Deputy

**JV-596-INFO****Sealing of Records for Satisfactory Completion of Probation****In many cases, the court will seal your juvenile records if you satisfactorily complete probation (formal or informal supervision).**

If your case is terminated by the juvenile court after January 1, 2015, because you satisfactorily completed your probation (formal or informal), **or if your case was otherwise dismissed after the petition was filed**, in many cases, the court will have dismissed the petition(s) and sealed your records. If the court sealed your records for this reason, you should have received a copy of the sealing order with this form.

If the court finds you have not satisfactorily completed your probation, it will not dismiss your case and will not seal your records at termination. If you want to have your records sealed in this situation, you will need to ask the court to seal your records at a later date (**see form JV-595-INFO** for information about asking the court to seal your records).

The court will not seal your records at the end of your case if you were found to have committed an offense listed in Welfare and Institutions Code section 707(b) (a violent offense such as murder, rape, or kidnapping, and some offenses involving drugs or weapons) when you were 14 or older unless it was not dismissed or reduced to a misdemeanor or a lesser offense not listed in 707(b), but unless you were found to have committed one or more of certain sex offenses, you can ask the court to seal your records at age 18 (or age 21 if you were committed to the Division of Juvenile Facilities).

**How will the court decide if probation is satisfactorily completed?**

If you have done what you were ordered to do while on probation and have not been found to have committed any further crimes (felonies or misdemeanor crimes involving moral turpitude, such as a sex crime or a crime involving dishonesty), the court will find that your probation was satisfactorily completed even if you still owe restitution, court ordered fees, and fines, **BUT...**

**Restitution and court fines and fees must still be paid.**

Even if your records are sealed, you must still pay your restitution and court-ordered fees and fines. Your sealed records can be looked at to enforce those orders.

**Which records will be sealed?**

The court will order your court, probation, Department of Justice, and law enforcement agency records sealed for the case the court is closing and earlier cases, if the court determines you are eligible. If you or your attorney ask the court, it can also seal records of other agencies (such as the District Attorney's office) if it finds that doing so would help you to be rehabilitated.

If you have more than one juvenile case and are unsure which records were sealed, ask your attorney or probation officer.

**Who can see your sealed records?**

- If your records were sealed by the court at termination, the prosecutor and others can look at your record to determine if you are eligible to participate in a deferred entry of judgment or informal supervision program.
- If you apply for benefits as a nonminor dependent, the court may see your records.
- If a new petition is filed against you for a felony offense, probation can look at what programs you were in but cannot use that information to keep you in juvenile hall or to punish you.
- If the juvenile court finds you have committed a felony, your sealed records can be viewed to decide what disposition (sentence) the court should order.
- If you are arrested for a new offense and the prosecuting attorney asks the court to transfer you to adult court, your record can be reviewed to decide if transfer is appropriate.
- If you are in foster care, the child welfare agency can look at your records to determine where you should live and what services you need.
- **If your case was dismissed before you became a ward, the prosecutor can look at your records for six months after the dismissal in order to refile the dismissed petition based on new information or evidence.**
- If you want to see your records or allow someone else to see them, you can ask the court to unseal them.

NOTE: Even if someone looks at your records in one of these situations, your records will stay sealed and you do not need to ask the court to seal them again.

**Do you have to report the offenses in the sealed records on job, school, or other applications?**

**No.** Once your records are sealed, the law treats those offenses as if they did not occur and you do not need to report them. **However**, the military and some federal agencies may not recognize sealing of records and may be aware of your juvenile justice history, even if your records are sealed. If you want to enlist in the military or apply for a job that asks you to provide information about your juvenile records, seek legal advice about this issue.

**Can employers see your records if they are not sealed?**

Juvenile records are not allowed to be disclosed to most employers, and employers are not allowed to ask about or consider your juvenile history in most cases. There are exceptions to this rule if you are applying to be a peace officer or to work in health settings. Also, federal employers may still have access to your juvenile history. You should seek legal advice if you have questions of what an employer can ask about you.

<b>PROBATION DEPARTMENT NOTICE ON SEALING OF RECORDS AFTER DIVERSION PROGRAM (WELF. &amp; INST. CODE § 786.5)</b>	Probation Dept., County of:
CHILD'S NAME:	<b>DRAFT    NOT APPROVED BY THE JUDICIAL COUNCIL</b>

1. Name of subject child: \_\_\_\_\_ Date of birth: \_\_\_\_\_
2. a. Date of completion of diversion program: \_\_\_\_\_ or date diversion program was not satisfactorily completed: \_\_\_\_\_
- b. ☐ Probation officer (*name*): \_\_\_\_\_

**3. RECORDS ARE SEALED**

- ☐ The subject child has successfully completed a program of diversion or supervision after referral by the probation officer or prosecutor in lieu of the filing of a petition to adjudge the child a ward of the juvenile court. All records relating to the arrest or referral and participation in the program for an alleged violation of (*specify offense(s)*): \_\_\_\_\_ (*date of offense*): \_\_\_\_\_ in the department's custody have been sealed, and the arrest is deemed never to have occurred except that a probation department responsible for the supervision of a person may access this record for the purpose of complying with section 654.3(e).

The probation department hereby notifies the following public or private agencies operating the diversion program to which the child was referred that it must promptly seal any records relating to the juvenile's arrest or referral or participation in the program in its custody:

(*Specify agency*): \_\_\_\_\_

(*Specify agency*): \_\_\_\_\_

**4. PROGRAM COMPLETION IS UNSATISFACTORY—RECORDS ARE NOT SEALED**

- ☐ The probation department has determined that sealing is inappropriate because the program was not satisfactorily completed for the reasons stated below and has not sealed the child's records. A copy of form JV-598, *Petition to Review Denial of Sealing of Records After Diversion Program*, has been provided to the child to allow the child to seek juvenile court review of this determination.

CHILD'S NAME:	Probation Dept., County of:
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5. The probation department must send a copy of this order to the child, the child's attorney, and the agencies and officials listed in item 3 within 60 days of the completion of the program.

Date:  \_\_\_\_\_  
PROBATION OFFICER

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NUMBER: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):		<b>FOR COURT USE ONLY</b>  <b>DRAFT</b>  <b>NOT APPROVED BY THE JUDICIAL COUNCIL</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:		
CHILD'S NAME:		
<b>PETITION TO REVIEW DENIAL OF SEALING OF RECORDS AFTER DIVERSION PROGRAM</b>		CASE NUMBER:  Date: Time: Department:

### INSTRUCTIONS

- Use this form if you received a notice from a probation officer saying that you did not satisfactorily complete your diversion program and you want the court to review this determination so that your records can be sealed. You must give this form to probation with in 60 days of receiving the notice of unsatisfactory completion if you want a court review.
- How to fill out the form:
  - Put your name and contact information in the box at the top of the form and in item 1 below.
  - Put the address of the juvenile court in the county where you were on probation for the offense.
  - In item 2, put the reasons why you think that you did satisfactorily complete your diversion program.
  - Check the box in item 5 if you need an interpreter, and specify the language.
  - Attach the notice from probation telling you that you did not satisfactorily complete your diversion program.
  - Give the completed form to probation to file with the court.

For information about record sealing, go to [www.courts.ca.gov/28120.htm](http://www.courts.ca.gov/28120.htm).

#### 1. MY INFORMATION

My name is:

I was born on (date):

#### 2. WHY COMPLETION OF DIVERSION SHOULD BE DETERMINED BY THE COURT TO BE SATISFACTORY

For the reasons stated below, I believe that I satisfactorily complied with the reasonable terms of program participation that were within my capacity to perform.

CHILD'S NAME:	CASE NUMBER:
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**3. ATTACHMENT OF PROBATION NOTICE**

I have attached a copy of the notice from the probation department determining that I did not complete my program satisfactorily (form JV-597 or similar local form) to this form.

**4. REQUEST FOR INTERPRETER**

☐ If there is a hearing, I will need a *(language)* interpreter.

Date:



SIGNATURE of PETITIONER

**INSTRUCTIONS—AFTER YOU COMPLETE THIS FORM**

**Give this form and the attached copy of the notice from probation to the probation officer or department that gave you the notice. The probation department will file it with the court within 30 days and tell you when and where to come to court for your hearing. If you do not have an attorney, the court will appoint one for you before or at the hearing.**



**W18-06**

**Juvenile Law: Sealing of and Access to Records** (Adopt Cal. Rules of Court, rule 5.850; amend rules 5.552 and 5.840; approve forms JV-597 and JV-598; revise forms JC-590, JV-595-INFO, JV-596, and JV-596-INFO)

All comments are verbatim unless indicated by an asterisk (\*).

	Commentator	Position	Comment	Committee Response
1.	Craig Burch, Chief Probation Officer, County of Napa	NI	<p>General comments/Questions:</p> <p>1. WIC 786.5 reads “upon satisfactory completion of a program of diversion or supervision to which a juvenile is referred by the probation officer or the prosecutor in lieu of the filing of a petition to adjudge the juvenile a ward of the juvenile court, including a program of informal supervision pursuant to Section 654, the probation department shall seal the arrest and other records in its custody relating to the juvenile’s arrest or referral and participation in the diversion or supervision program.” This code clearly applies to 654 cases. What about subsequent petitions for a fairly minor offense (e.g. petty theft) wherein the DPO gives an informal sanction? What about truancy cases wherein we place them on a 90 day contract and then successfully terminate? What about cases handled through citation diversion pursuant to WIC 256? And a scenario that happens quite frequently is petitions that we receive and dismiss due to a variety of reasons or petitions that we close out after referring them out but not placing them on a contract?</p> <p>2. Specific to having diversion or other informally handled cases sealed, is there a limit? A youth only has one bite at 654.2 but this seems to make other informally handled cases to be unlimited. Also, under what circumstances are we allowed to unseal and view the information?</p>	<p>A plain reading of section 786.5 appears to limit to situations in which the program or referral is in lieu of filing a petition, meaning that no petition has yet been filed, it should apply to situations outside section 654, but only if the supervision is “in lieu of the filing of a petition.” The draft rule of court uses the statutory language for clarity and breadth.</p> <p>Section 786.5(e) specifically allows access to the case file for compliance with WIC 654.3 which does not allow participation in multiple 654 programs, thus sealing should not result in additional opportunities to participate in pre-petition diversion or other informal supervision.</p>

**W18-06**

**Juvenile Law: Sealing of and Access to Records** (Adopt Cal. Rules of Court, rule 5.850; amend rules 5.552 and 5.840; approve forms JV-597 and JV-598; revise forms JC-590, JV-595-INFO, JV-596, and JV-596-INFO)

All comments are verbatim unless indicated by an asterisk (\*).

	Commentator	Position	Comment	Committee Response
			<p>3. Firearm restrictions are often placed on our youth when disposition is made. The court is routinely sealing cases but allowing the firearm restriction to stand. Our county counsel has advised us to seal everything and leave it to the court to notify DOJ. Has anybody received different guidance?</p> <p>4. Most of our youth have submitted DNA at time of arrest. We approached our DA, PD, and CC. Case law supports the DNA remaining in the database. Has anybody received different guidance?</p> <p>5. Straight diversion cases are often referred to several different programs (e.g. volunteer community service, drug education, anger management, etc.). Some of these referrals are done because it is clearly needed but not necessarily a requirement for satisfactory completion. Do we have to direct referral agencies to seal their records when no case information was provided?</p> <p>Judicial Council Questions:</p> <p>1) Does the proposal appropriately address the stated purpose?</p> <p>Please note our concerns regarding Section 786.5 W&amp;IC as indicated below:</p> <ul style="list-style-type: none"> <li>It is not clear whether the legislators</li> </ul>	<p><i>In re Joshua R.</i>, 7 Cal.App.5th 864 (2017) held that the court should maintain the order not to possess firearms until the subject of the order was 30. Legislation has been introduced in the current session (see <a href="#">SB 1281</a>) that would expressly provide that records pertaining to firearms restrictions be maintained until age 33.</p> <p>Penal Code section 299 does not provide that if records are subsequently sealed that the DNA must be expunged.</p> <p>Section 786.5 applies to records for any program that the child has been referred to as part of the program thus any agency that served the child as part of the diversion should be directed to seal its files.</p> <p>The commentator correctly notes that WIC 786.5 does not address records of the arrest in the</p>

**W18-06**

**Juvenile Law: Sealing of and Access to Records** (Adopt Cal. Rules of Court, rule 5.850; amend rules 5.552 and 5.840; approve forms JV-597 and JV-598; revise forms JC-590, JV-595-INFO, JV-596, and JV-596-INFO)

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	Commentator	Position	Comment	Committee Response
			<p>intended to seal any and all records created by the arresting agencies or DOJ as well, since a read of Section 786.5(a) W&amp;IC, as written currently, only mandates the probation departments to seal the related records in their possession and in the possession of a public or private agency operating a diversion program to which the youth was referred to. So, what about the J132s created by another law enforcement agency? How about the DOJ records? Are they going to be sealed under Section 786.5 W&amp;IC? Or do we follow Section 781 W&amp;IC to seal those particular records? However, the forms created by the Judicial Counsel (i.e. JV-597) read as if the above agencies are included in the sealing of these records. So, this concept appears to be vague.</p> <ul style="list-style-type: none"> <li>Is the code retroactive? If so, how far back? If so, who has the burden to locate these youth (the unsuccessful ones so they can petition the court)? And if it is probation's burden to locate these youth, would sending a letter to the last known address suffice?</li> <li>In case the court determines the PO erred in their assessment of the youth's unsuccessful performance on the diversion/informal program, would the bench order the records sealed pursuant to Section 786.5 W&amp;IC or 781 W&amp;IC?</li> </ul>	<p>custody of an agency other than probation or an agency that is participating in serving the child for diversion. To clarify, the committee has removed references to diversion sealing from the JV-596-INFO and added them to the JV-595-INFO with an instruction that further sealing under section 781 may be desirable.</p> <p>Nothing in the statute indicates that is should be applied retroactively.</p> <p>The court would be making its order pursuant to section 786.5 unless a section 781 petition was filed at the same time and the petitioner was eligible for sealing pursuant to section 781 because that section requires the petitioner to be 18 or for 5 years to have elapsed since the end of the case.</p>

**W18-06**

**Juvenile Law: Sealing of and Access to Records** (Adopt Cal. Rules of Court, rule 5.850; amend rules 5.552 and 5.840; approve forms JV-597 and JV-598; revise forms JC-590, JV-595-INFO, JV-596, and JV-596-INFO)

All comments are verbatim unless indicated by an asterisk (\*).

	Commentator	Position	Comment	Committee Response
			<p>2) Is it helpful to probation departments to approve optional form JV-597 for their use, or would it be preferable to rely on local probation notice forms?</p> <ul style="list-style-type: none"> <li>The forms are helpful. Thank you. The only issue is that the code has a narrower scope than the form.</li> <li>Orange County would prefer using the proposed form JV-597. It includes the language required and would be accompanied by form JV-598 Petition to Review Denial of Diversion Program Sealing of Records. In the event the youth would like to petition the court to review a denial for sealing (when the youth does not satisfactorily complete diversion), we could simply send the court the JV-597 which explains why it was denied. Additionally, the judicial council is great about updating forms when the law changes. In consideration of the changes that we have experienced every year for the past four years, that would be very helpful.</li> </ul> <p>3) Should proposed new rule 5.850 to implement section 786.5 cover the probation notice requirements or focus only on court procedures to review a determination that a diversion program was not satisfactorily completed?</p> <ul style="list-style-type: none"> <li>Riverside County: On one hand, if we</li> </ul>	<p>The committee has revised the information forms to clarify this point.</p> <p>The committee agrees and will make these forms available as optional forms.</p> <p>The committee determined that most</p>

**W18-06**

**Juvenile Law: Sealing of and Access to Records** (Adopt Cal. Rules of Court, rule 5.850; amend rules 5.552 and 5.840; approve forms JV-597 and JV-598; revise forms JC-590, JV-595-INFO, JV-596, and JV-596-INFO)

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	Commentator	Position	Comment	Committee Response
			<p>have specific guidelines to follow though, it would make things easier. On the other hand, a specific set of guidelines might not work for all departments. So, for the latter reason, perhaps, the new rule 5.850 should only cover the court procedure, allowing flexibility for probation procedure.</p> <ul style="list-style-type: none"> <li>Orange County: It would be much cleaner to include probation notification requirements.</li> </ul> <p>4) Is it preferable to require the probation department to file a request for review of denial of sealing under section 786.5, or should that burden be on the child?</p> <ul style="list-style-type: none"> <li>Riverside County: Looking at the best interest of the child, probation should follow through and be the one to file the request for review of denial of sealing. Even though it might generate more work for the departments, it would be a great assistance for the child.</li> <li>A hybrid would be great. It is recommended the youth be required to notify the DPO that they would like a review of the denial to seal. Subsequently, the DPO would be required to submit the appropriate paperwork to the court. The juvenile justice system is very confusing and putting the responsibility solely on the youth seems to defeat the purpose of these opportunities</li> </ul>	<p>commentators were in favor of rules spelling out the basic responsibilities of probation in the rule and has maintained and clarified those provisions in rule 5.850.</p> <p>The committee agrees and has maintained and clarified those provisions.</p> <p>The committee notes that probation agencies appear to concur that the burden to file the request for review appropriately falls on the probation agency upon request by the child.</p> <p>The committee has adopted this approach – the child must request the review, and probation then files the petition for review.</p>

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**Juvenile Law: Sealing of and Access to Records** (Adopt Cal. Rules of Court, rule 5.850; amend rules 5.552 and 5.840; approve forms JV-597 and JV-598; revise forms JC-590, JV-595-INFO, JV-596, and JV-596-INFO)

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	Commentator	Position	Comment	Committee Response
			<p>5) Is it necessary to appoint counsel for a child who seeks to challenge the denial of sealing under section 786.5, or should appointment be at the discretion of the court?</p> <p>The appointment be at the discretion of the court.</p>	<p>The committee has concluded that a child who is seeking to make an argument at a hearing that probation has erroneously determined that a child has not satisfactorily completed a diversion program is entitled to appointed counsel under section 634 which requires the court to appoint counsel whenever a child appears at a hearing without counsel and there is an allegation that a child may be described by section 601 or 602. Because the diversion programs whose satisfactory completion is at issue in the review hearings are agreed to in lieu of the filing of a 601 or 602 petition, it would appear that such allegations are at stake. As a result the committee has clarified rule 5.850 and form JV-598 to require the court to make such an appointment unless the child has intelligently waived that right or is already represented by counsel.</p>
2.	Jody Green, Division Director, Juvenile Services Superior Court of California, County of Santa Cruz	AM	<p>Overall the suggested rules and edits to existing documents as well as the introduction of new language and forms are helpful to what is becoming a rather complicated area due to the numerous laws changes over the past several years. My only comments pertain to the suggested language in the INFO docs. The language highlighted in yellow suggests the recipient will have also received a copy of their sealing order. In informal and diversion cases, counties may opt to utilize something other than an actual order so this could be confusing.</p>	<p>The committee notes that WIC 786.5 requires that the person be notified in writing, but does not specifically require that it be the order, but the rule as proposed does require the use of the order as is the case for other types of sealing. For clarity and consistency the committee is opting to require that an order be provided to its subject, but if courts want to provide other information as well they are free to do so.</p>

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			<p>This could be a result of my own misunderstanding, but I'm wondering why language on Diversion sealing would be included on the 596 INFO doc (see grey shading below). I've trained my brain to believe 596 INFO form is used for court cases only – specifically where a 786 sealing has occurred. We would use 595 INFO for diversion cases or in addition to 596 INFO when records existed beyond what was sealed in a 786 sealing.</p> <p>Also, it appears 786.5 only covers sealing of records in the possession of the probation agency and any diversion programs a youth was referred to. I do not believe it covers records in the custody of law enforcement agencies. Therefore the blue highlight below is a bit misleading. Maybe adding a line about the possibility of records existing elsewhere including law enforcement agencies would be helpful.</p> <p><b>JV – 595 INFO</b> There are now two ways that records may be sealed in California. As of January 1, 2015, courts or probation departments are required to seal records in certain cases when the court or probation department finds that probation (formal, informal, or diversion) is satisfactorily completed or if your case was otherwise dismissed after the petition was filed. If the court or probation sealed all of your records at the end of your case, you should have received a</p>	<p>The committee agrees with this comment and has revised the two information forms to only include diversion sealing on the JV-595-INFO form which is given to all probationers whose records are not sealed under WIC 786.</p> <p>The commentator correctly notes that WIC 786.5 does not address records of the arrest in the custody of an agency other than probation or an agency that is participating in serving the child for diversion. The forms have been revised to reflect this fact and to alert those whose records are sealed that they may wish to file a 781 petition to seal other records at a later date.</p> <p>As noted above the committee has concluded that a copy of the order should be provided in all</p>

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			<p>copy of the sealing order, and you do not need to ask the court to seal the records in that sealing order.</p> <p><b>JV-596-INFO</b>            If your case is terminated by the juvenile court after January 1, 2015, because you satisfactorily completed your probation (formal, informal, or diversion), or if your case was otherwise dismissed after the petition was filed, in many cases, the court or probation will have dismissed the petition(s) and sealed your records. If the court or probation sealed your records for this reason, you should have received a copy of the sealing order with this form.            If the court or probation finds you have not satisfactorily completed your probation, it will not dismiss your case and will not seal your records at termination. If you want to have your records sealed in this situation, you will need to ask the court to seal your records at a later date (see form JV-595-INFO for information about asking the court to seal your records). The court will not seal your records at the end of your case if you were found to have committed an offense listed in Welfare and Institutions Code section 707(b) (a violent offenses such as murder, rape, or kidnapping, and also some offenses involving drugs or weapons) when you were 14 or older and it was not dismissed or reduced to a misdemeanor or a lesser offense not listed in</p>	<p>sealing cases. In addition the committee has clarified what is sealed in diversion cases and that additional sealing may be required to be complete.</p> <p>The committee has removed the information about diversion sealing from the JV-596-INFO and added it to the JV-595-INFO for clarity.</p> <p>As noted above the committee has concluded that a copy of the order should be provided in all sealing cases consistent with the current and proposed rules of court.</p>



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Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

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			<p>Federal Regulations part 46. Further, it proposes a process by which the office of the public defender has the opportunity to respond prior to the court making their decision as to whether to approve the research.</p> <p>We would suggest that you consider the order in which that paragraph reads to:</p> <p>“If the information is being released for human subject research, as defined in 45 Code of Federal Regulations part 46, the probation department shall provide notice to the office of the public defender who shall have the opportunity to respond to the court on the proposed human subject research. Upon receiving authorization from the court, but prior to the release of any information, the probation department shall enter into a formal agreement with the entity or entities conducting the research or evaluation that specifies what may and may not be done with the information disclosed.”</p> <p>Further, while we do not propose a specific timeline in this letter, as we believe that should be further discussed among the advisory committee and impacted stakeholders prior to the adoption of the amendments, we would suggest that paragraph (3) provide additional clarification on the timeline in which notice to, and a response from, the office of the public defender shall occur.</p> <p>Again, CPOC appreciates the work of the Family and Juvenile Law Advisory Committee to adopt language in subsection (e) that aligns</p>	<p>The committee has determined that a timeline is appropriate and proposes that the public defender have 30 days to respond to the research proposal and the court another 30 days to hold a hearing to determine how to proceed in light of any objection by counsel.</p>

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			with the spirit and statutory language of SB 462. We ask for your consideration of our comments and suggestions relative to paragraph (3) on the processes surrounding human subject research including further clarification on timelines and the manner in which the office of the public defender shall respond to the court. We believe these changes will add needed clarity for the parties involved in such a request.	
4.	Trial Court Presiding Judges and Court Executive Officers Advisory Committees Joint Rules Subcommittee	NI	<p>The JRS notes the following impact to court operations:</p> <ul style="list-style-type: none"> <li>•Impact on existing automated systems (e.g., case management system, accounting system, technology infrastructure or security equipment, Jury Plus/ACS, etc.) – The JRS estimates that modifications to case management systems will be needed and this will require some staff time. Costs would not be significant.</li> <li>•Results in additional training, which requires the commitment of staff time and court resources.</li> </ul> <p>Request for Specific Comments:</p> <p>1. Should proposed new rule 5.850 to implement section 786.5 cover the probation notice requirements or focus only on court procedures to review a determination that a diversion program was not satisfactorily completed? The notice requirement should be included and made clear.</p> <p>2. Is it preferable to require the probation department to file a request for review of denial</p>	<p>The committee has noted these impacts in its report to the Judicial Council but notes that they largely flow from the change in law.</p> <p>The committee agrees and has sought to clarify rule 5.850.</p> <p>The committee has determined that logistically it would be challenging for the child to file a</p>

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			<p>of sealing under section 786.5, or should that burden be on the child? The burden should be on the child to avoid any potential delays.</p> <p>3. Is it necessary to appoint counsel for a child who seeks to challenge the denial of sealing under section 786.5, or should appointment be at the discretion of the court? Appointment of counsel should be at the discretion of the court. It may not be necessary in the majority of cases.</p> <p>Suggested Modifications: The JRS recommends adding the following table which provides a section to list multiple violations and the court can indicate which are ordered sealed and which are denied. This table should be added to Item 4 of Form JV-590 and to Item 5 of Form JV-596. “Petitioner requests that an order be made sealing all records, papers, exhibits in petitioner’s case in the custody of the juvenile court, including the juvenile court record, case management/automated entries, and other records relating to the case in the custody of all</p>	<p>petition in juvenile court and has opted to leave the requirement on probation after the child has completed a request for review.</p> <p>As explained in the response to comment 1, on page 30, the committee has concluded that appointment of counsel is mandatory under section 634.</p> <p>The committee has added this table to Form JV-590 as requested by Los Angeles Superior Court but has left JV-596 unchanged because the court has discretion on the scope of sealing that needs to be distinguished by agency rather than arrest. The committee also added one additional column to allow inclusion of a petition number or other court case identification number.</p>

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		<p>agencies and officials named herein.”</p> <table><thead><tr><th>INCIDENT NO.</th><th>DATE</th><th>ARRESTING AGENCY</th><th>VIOLATION(S)</th><th>DISPOSITION</th></tr></thead><tbody><tr><td>1</td><td></td><td></td><td></td><td></td></tr><tr><td>2</td><td></td><td></td><td></td><td></td></tr><tr><td>3</td><td></td><td></td><td></td><td></td></tr><tr><td>4</td><td></td><td></td><td></td><td></td></tr><tr><td>5</td><td></td><td></td><td></td><td></td></tr><tr><td>6</td><td></td><td></td><td></td><td></td></tr><tr><td>7</td><td></td><td></td><td></td><td></td></tr><tr><td>8</td><td></td><td></td><td></td><td></td></tr><tr><td>9</td><td></td><td></td><td></td><td></td></tr><tr><td>10</td><td></td><td></td><td></td><td></td></tr><tr><td>11</td><td></td><td></td><td></td><td></td></tr><tr><td>12</td><td></td><td></td><td></td><td></td></tr></tbody></table> <p>The JRS also recommends the following changes:</p> <ul style="list-style-type: none"><li>•Page 7 (B), page 8 (2), (5)- delete “ly” after the word “personal”</li><li>•Page 8, line 42- should read “An unfulfilled order or condition of restitution...” Rationale: The way the punctuation is in the sentence now makes it appear that the court must dismiss the case even though there is an unfulfilled order of any kind. The statute refers only to currently owing restitution or fines, not other orders of probation.</li><li>•JV-590 form- section 5 b. is confusing. There is no box next to the sentence “The destruction of all records....” So that it appears to be an automatic order. However, there is a box on the right side of the next line that “Or court records must be retained...” To correct this conflicting order, there should be a box next to b. that can</li></ul>	INCIDENT NO.	DATE	ARRESTING AGENCY	VIOLATION(S)	DISPOSITION	1					2					3					4					5					6					7					8					9					10					11					12					<p>Because the statute upon which the rule is based uses the term “personally identifying information” the committee has opted to retain the statutory language for consistency.</p> <p>The committee has adopted this clarifying change to correct an error in the rule.</p> <p>The committee concurs that clarification is required and has amended the sentence to provide for the destruction or retention of records as</p>
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			<p>be checked. Then there should be c. with a box followed by “Court records must be retained...” That should be followed by d. and e., each with a box in front of them to be checked- “date court records must be destroyed...” and “Date all other records must be destroyed.”</p> <p>•JV-595-INFO- Page 1, left side, last line of first paragraph- “If you make those records...” should be changed to “If the court makes those records...”</p> <p>•JV-595-INFO- page 2- the paragraphs keep changing from “petition” in (2) to “application” in (7) and (8). I believe it is a “petition” and all the paragraphs should match.</p> <p>•JV-598- In the first line of the instructions, the word “complete” needs to be inserted between “satisfactorily” and “your.”</p> <p>•JV-598- In paragraph 2. “Why completion of probation...” should be “Why completion of diversion...”, since this form is a petition to review the denial of diversion.</p> <p>•JV-598 – page 2- The instructions should have “and you request and qualify for one” inserted between “attorney” and “the court....” Rationale: We are recommending that the appointment not be automatic and left to the discretion of the court. Petitioners coming in may no longer be minors and may not be</p>	<p>provided by section 781(d) and then retained the check boxes and dates.</p> <p>The committee has adopted this clarifying change.</p> <p>The committee has adopted this suggestion and used petition throughout.</p> <p>The committee has made this change to add the missing term.</p> <p>As explained in the response to comment 1, on page 30, the committee has concluded that appointment of counsel is mandatory under section 634.</p>

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			indigent.	
5.	Los Angeles County Department of Children and Family Services Ruben Borja, Children's Services Administrator		Sealed records under WIC 786 may also be viewed by child welfare agencies for limited purposes (WIC 786 (f)(1)(H)). The JV-595-Info sheet does not reference this. This is referenced in the JV-596 info sheet. I would argue that WIC 786 applies to both types of sealing records and should be included in the JV-595 info sheet.	The committee does not see section 786 access rules as applying to section 781 sealing orders because section 781 sealing typically happens after the subject of the order is 18 while section 786 sealing occurs before that time and thus requires broader access to sealed records. As a result the committee is not making this change.
6.	Orange County Bar Association Nikki P. Milliband, President	AM	<ul style="list-style-type: none"> <li>• Does the proposal appropriately address the stated purpose? Yes.</li> <li>• Is it helpful to probation departments to approve optional form JV-597 for their use, or would it be preferable to rely on local probation notice forms? Yes, form JV-597 is helpful.</li> <li>• Should proposed new rule 5.850 to implement section 786.5 cover the probation notice requirements or focus only on court procedures to review a determination that a diversion program was not satisfactorily completed? It is recommended that probation notice requirements be covered in addition to the court procedures.</li> <li>• Is it preferable to require the probation department to file a request for review of denial of sealing under section 786.5, or should that burden be on the child? We recommend that the child be required to notify the probation officer that they would like to request a review of</li> </ul>	<p>No response required.</p> <p>No response required.</p> <p>The committee agrees and has clarified these provisions of rule 5.850.</p> <p>The committee has adopted this approach – the child must request the review, and probation then files the petition.</p>

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			<p>denial. The probation officer would then be required to notify the court and submit the appropriate documentation.</p> <ul style="list-style-type: none"> <li>• Is it necessary to appoint counsel for a child who seeks to challenge the denial of sealing under section 786.5, or should appointment be at the discretion of the court? It is recommended that counsel be appointed to represent the child.</li> <li>• Do the changes to rule 5.552 effectively implement newly enacted section 827.12? Yes.</li> <li>• JV-598, under Instructions, it is missing the word “complete”.</li> </ul>	<p>As explained in the response to comment 1, on page 30, the committee has concluded that appointment of counsel is mandatory under section 634.</p> <p>No response required.</p> <p>The committee has made this change to add the missing term.</p>
7.	Superior Court of Los Angeles	AM	<p>Suggested Modifications: FORM JV-590 Item 4 In Los Angeles County, we use a local form that allows for multiple petitions that are identified by number, so that the court can clearly indicate which of the juvenile’s petitions are ordered sealed and which are denied (because it is a 707(b), or does not otherwise qualify for sealing). We recommend using that numbering system from the local form in the JV-590 form by adding the table below to Item 4 of JV-590. Petitioner requests that an order be made sealing all records, papers, exhibits in petitioner’s case in the custody of the juvenile court, including the juvenile court record, case</p>	<p>The committee has added the table to the order form as requested with an additional column added to the table to allow for a court identification number.</p>



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			in the majority of cases.	
8.	Superior Court of Riverside Susan D. Ryan, Chief Deputy, Legal Services	AM	<p><u>General Comments:</u></p> <p><u>Form JV-596-Info:</u> We suggest modifying the form title to <i>Sealing of Records After Completion of Probation or Diversion</i>. A person looking at the current title may not realize that the information sheet also addresses the unsatisfactory completion of probation; and further, may not understand its applicability to a diversion program.</p> <p><u>Form JV-597:</u> Assuming rule 5.850(d) is implemented, it would be beneficial to include language in item 4 stating that the child may also submit a request to the probation department to file the JV-598 with the court.</p> <p><u>Form JV-598:</u> In the instruction box, first line add “you did not satisfactorily <u>complete</u> your diversion program...”</p> <p><u>Response to Request for Specific Comments:</u></p> <p>1. Does the proposal appropriately address the stated purpose?</p> <p>Yes.</p> <p>2. Is it helpful to probation departments to approve optional form JV-597 for their use, or would it be preferable to rely on local probation notice forms?</p>	<p>This form is to be given to those whose records were sealed for satisfactory completion of probation, and since the diversion information has been removed, the committee opted not to change the title.</p> <p>The committee has added an instruction to the form directing the child to give the petition to probation to file with the court.</p> <p>The committee has made this change to add the missing term.</p> <p>No response required.</p> <p>The committee concurs and will make the optional form available.</p>

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	Commentator	Position	Comment	Committee Response
			<p>Since the JV-597 is optional, it would be helpful for probation departments to have a choice between the JV-597 and a locally created form.</p> <p>3. Should proposed new rule 5.850 to implement section 786.5 cover the probation notice requirements or focus only on court procedures to review a determination that a diversion program was not satisfactorily completed?</p> <p>It would be best if the probation notice requirements and the court review procedures were better delineated. This could be accomplished by a separate rule, or by additional subdivisions within rule 5.850. The proposed rule 5.850 subdivision (d) is somewhat confusing, in part because while it seems to foreclose a child filing the JV-598 directly with the court, it also anticipates that a child represented by counsel may well have done so: ("If the petitioner is not represented by counsel, the clerk must provide a copy of the petition to the probation department . . ."). At a minimum, the rule should make clear that a child may file the petition directly with the court.</p> <p>4. Is it preferable to require the probation department to file a request for review of denial of sealing under section 786.5, or should that burden be on the child?</p>	<p>The committee has clarified rule 5.850 to require that probation file the petition for review at the request of the child as is the case with other sealing petitions. The committee determined that in many counties it would be logistically challenging for a child to file a petition independently and thus drafted the rule and the form to ensure access to the review process.</p> <p>As described above, the committee has clarified</p>

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	Commentator	Position	Comment	Committee Response
			<p>We see nothing in Welfare &amp; Institutions Code § 786.5 shifting the burden of filing the petition to the probation department, though nothing precludes the probation department from assuming responsibility of filing the petition either. The rule should make clear that the probation department is only required to file the petition if requested to do so by the child; and that the child retains the right to file the petition directly with the court. Moreover, consideration should be given to the procedure by which the child makes a request to the probation department to file the petition.</p> <p>5. Is it necessary to appoint counsel for a child who seeks to challenge the denial of sealing under section 786.5, or should appointment be at the discretion of the court?</p> <p>The appointment of counsel should be left to the discretion of the court, however from a practical standpoint the court would likely almost always appoint counsel. It may streamline the process and lead to less court hearings if the appointment of counsel is automatic per rule of court.</p> <p>6. Do the changes to rule 5.552 effectively implement newly enacted section 827.12?</p> <p>Yes.</p> <p>7. Would the proposal provide cost savings?</p>	<p>the rules and the petition form to make it clear that probation should file the request for review after receiving a completed petition from the child and notify the child of the date, time, and location of the hearing.</p> <p>As explained in the response to comment 1, on page 30, the committee has concluded that appointment of counsel is mandatory under section 634.</p> <p>No response required.</p>

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			<p>No. To the contrary, this will increase costs to the court. There will be increased staffing costs depending on how many of these types of petitions need to processed and adjudicated.</p> <p>8. What would the implementation requirements be for courts?</p> <p>Clerk's office and courtroom staff would need to be trained on how to process these types of petitions (approximately 1 hour). Procedures would need to be created for filing the petitions, setting the hearings and completing minute entries. Codes would need to be created in the case management system for processing the documents and hearings. Procedures would also need to be updated for the sealing of records as well as the processing of WIC 827 disclosure requests.</p> <p>9. Would 4 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</p> <p>Yes.</p> <p>10. How well would this proposal work in courts of different sizes?</p> <p>No difference.</p>	<p>The committee notes this comment and will report the impact of the legislative change to the Judicial Council.</p> <p>The committee will report this impact to the Judicial Council along with the proposed changes to implement the legislation.</p> <p>No response required.</p> <p>No response required.</p>

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	Commentator	Position	Comment	Committee Response
9.	Superior Court of San Diego Mike Roddy, Court Executive Officer	AM	<ul style="list-style-type: none"> <li>• Does the proposal appropriately address the stated purpose? <b>Yes.</b></li> <li>• Is it helpful to probation departments to approve optional form JV-597 for their use, or would it be preferable to rely on local probation notice forms? <b>It is probably more helpful to approve optional form JV-597.</b></li> <li>• Should proposed new rule 5.850 ... cover the probation notice requirements or focus only on court procedures to review a determination that a diversion program was not satisfactorily completed? <b>It should include the notice requirements so that probation departments will have a clear understanding of what is expected from them.</b></li> <li>• Is it preferable to require the probation department to file a request for review of denial of sealing under section 786.5, or should that burden be on the child? <b>Probation should file the request if the child is not represented by counsel. Otherwise, the child's attorney should file it.</b></li> <li>• Is it necessary to appoint counsel for a child who seeks to challenge the denial of sealing under section 786.5, or should appointment be at the discretion of the court? <b>If the child is not represented by counsel, the court should appoint counsel solely for the purpose of challenging the</b></li> </ul>	<p>No response required.</p> <p>The committee concurs and will make the optional form available.</p> <p>The committee has retained and clarified these provisions of rule 5.850.</p> <p>The committee has revised the rule and form instructions to make clear that probation should file the petition as with other sealing petitions, and has not drafted a provision for an attorney to file because so very few children in diversion matters will be represented by counsel at the time the petition for review is filed.</p> <p>As explained in the response to comment 1, on page 30, the committee has concluded that appointment of counsel is mandatory under</p>

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Commentator	Position	Comment	Committee Response
		<p>denial of sealing under section 786.5. (See, e.g., Cal. Rules of Court, rule 5.906(e)(2) [appointment of attorney solely for hearing on request for return to juvenile court jurisdiction].)</p> <ul style="list-style-type: none"> <li>• Do the changes to rule 5.552 effectively implement newly enacted section 827.12? <b>Yes.</b></li> <li>• Would the proposal provide cost savings? <b>Unknown.</b></li> <li>• What would the implementation requirements be for courts? <b>Developing or revising required procedures in collaboration with the probation department, training court staff, writing or revising docket codes, replacing old forms with new versions.</b></li> <li>• Would four months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? <b>Probably.</b></li> <li>• How well would this proposal work in courts of different sizes? <b>It is probably sufficient for the varying needs of different courts, particularly since the only mandatory forms are the JV-595-INFO and the JV-596-INFO.</b></li> </ul> <p><b><u>CRC 5.552</u></b></p> <p>Subd. (e): Typo – change (§ 872.12(a)(2)) to (§ 827.12(a)(2)). Now would be a good time to add</p>	<p>section 634.</p> <p>No response required.</p> <p>No response required.</p> <p>The committee will note these impacts in its report to the Judicial Council.</p> <p>No response required.</p> <p>No response required.</p> <p>The committee has corrected the error and added section 827.10 to subdivision (b).</p>

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			<p>a reference to WIC 827.10 as well.</p> <p><b><u>CRC 5.840</u></b></p> <p><u>Subd. (c), last sentence</u>: Add language – Access to the records for research purposes must be provided as required in sections 787 and 827.12.</p> <p><b><u>CRC 5.850</u></b></p> <p>The proposal states, “These procedures include a requirement that the probation department file with the court the request for the court to review the determination for the child and that <b>the court appoint counsel for any child</b> seeking review in a court hearing before or during the hearing.” (Proposal, p. 3.) The draft rule, however, does not contain any provision requiring the court to appoint counsel for a child seeking review of the decision not to seal. Was such a requirement intentionally deleted from the draft rule (perhaps because WIC § 786.5 does not expressly require the appointment of counsel for court review of probation’s decision)? Note: The last sentence on proposed form JV-598 <i>does</i> state, “If you do not have an attorney, the court will appoint one for you before or at the hearing.”</p> <p>If it was inadvertently omitted, the fourth</p>	<p>The committee does not view section 827.12 as applying to sealed records, but only to records that would otherwise be confidential under section 827, thus the committee has not made this change.</p> <p>Rule 5.850 has been revised to require appointment upon request by the child.</p>



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			<p>sentence of subdivision (d) could be revised as follows: “If the petitioner is not represented by counsel, <b>the court must appoint counsel for the petitioner, and</b> the clerk must provide a copy of the petition to the probation department at the time notice of the hearing is provided.”</p> <p>Also, it is not clear why the clerk is required to provide a copy of the petition to probation when probation itself is responsible for filing the petition with the court. Is it simply to provide probation with a file-stamped copy of the petition? If so, then perhaps that part of the sentence could be revised for clarification to: “the clerk must provide a <b>file-stamped</b> copy of the petition to the probation department at the time notice of the hearing is provided.”</p> <p><u>Subd. (b):</u> Arguably, this subdivision is unnecessary, as it merely paraphrases subdivision (a) of WIC § 786.5. If it is deleted, subdivisions (c) and (d) should be relettered to (b) and (c) respectively, and the first sentence of the new subdivision (b) should be revised as follows: “The probation department must notify the person in writing that his or her records have been sealed based on satisfactory completion of the <b>supervision or diversion</b> program.” At a minimum, since much of subdivisions (b) and (c) just copies WIC 786.5 verbatim, they could be shortened and simplified.</p> <p><u>Subd. (d): Suggested revisions --</u></p>	<p>The committee has adopted this suggested change.</p> <p>While the committee generally refrains from including statutory text in the rules, this subdivision is needed logically to set forth the process for sealing under section 786.5, thus the committee is retaining this subdivision.</p>

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			<p>A person who receives notice from the probation department that he or she has not satisfactorily completed the program and that his or her records have not been sealed may submit a request to that same probation department for the court to review that determination, and the probation department must file <del>that petition</del> <i>the Petition to Review Denial of Diversion Program Sealing of Records</i> (form JV-598) or similar local form with the court for a hearing to review whether he or she has met the satisfactory completion requirement and is eligible for record sealing by the probation department. This petition must be filed with the juvenile court in the county that issued the notice within 60 days of the petitioner's receiving the notice from the probation department and must include a copy of that notice. The clerk of the court must set the matter for hearing and notify the petitioner and the probation department of the date, <u>time, and location</u> of the hearing. If the petitioner is not represented by counsel, the clerk must provide a copy of the <u>file-stamped</u> petition to the probation department at the time notice of the hearing is provided. If the court finds after the hearing that the petitioner is eligible for</p>	<p>The committee has adopted these clarifying changes to subdivision (d) as suggested.</p>

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			<p>sealing of the records under section 786.5, it must order the probation department to promptly comply with the sealing and notice requirements of this rule.</p> <p>Subdivision (d) has some internal inconsistencies and some inconsistencies with WIC 786.5(d). The rule says the petition is to be filed with the probation department, and the statute says the youth may petition the juvenile court. The rule sets a 60-day deadline that is not in the statute. The rule states that the court clerk must provide a copy of the petition to the probation department, even though it is the probation department that would have filed the petition under the proposed procedure. The rule does not address appointment of counsel, but form JV-598 states that counsel will be appointed. These inconsistencies should be corrected and/or clarified.</p> <p style="text-align: center;"><b><u>FORM JV-590</u></b></p> <p><u>Title and center footers:</u> Suggested changes for consistency with other Judicial Council forms (e.g., JV-425, JV-426, JV-430, JV-431, JV-436, JV-441, JV-448 et al.) Change from:</p> <p>ORDER TO SEAL JUVENILE RECORDS— WELFARE AND INSTITUTIONS CODE</p>	<p>The committee has clarified rule 5.850 to provide that the way for a petitioner to seek review is via probation who will file the petition. The rule has also been clarified to indicate that the will notice the hearing and the file stamped copy requirement has been removed. The 60 day deadline is a procedural requirement to ensure that these cases can be handled efficiently.</p> <p>The committee has opted to retain the title distinction that incorporates the relevant code sections into the form titles to promote clarity.</p>

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		<p>SECTION 781</p> <p>To:</p> <p>ORDER TO SEAL JUVENILE RECORDS (Welf. &amp; Inst. Code § 781)</p> <p><u>Right footer:</u> Insert space between “§” and “781.”</p> <p><u>Item 5(c):</u> Our court recommends: "Court records must be retained."</p> <p>The Or is not necessary and the reference to WIC 781(d) is duplicative.</p> <p><b><u>FORM JV-595-INFO</u></b></p> <p><u>Page 1, left column - suggested changes:</u></p> <p>For more information about when the court seals your records at <del>termination</del> <u>the completion</u> of probation, see form JV-596-INFO.</p> <p>Who <del>qualifies to can</del> ask the court to seal their juvenile records?</p> <p>If the court has not already sealed your records, you can ask the court to make that order. <del>You</del> <u>qualify</u> if:</p> <p>The court will not consider outstanding fines</p>	<p>The committee has adopted this technical change.</p> <p>The committee has adopted this clarifying change.</p> <p>The committee has adopted all of the suggested changes to Form-JV-595-INFO from this commentator for clarity and plain language.</p>

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			<p>and court-ordered fees when deciding whether to seal your records, ...</p> <p><u>Page 1, right column - suggested changes:</u></p> <p>Capitalize the F in Department of Juvenile Facilities.</p> <p>If you were convicted <u>as an in adult court</u> of an offense involving moral turpitude, such as: ...</p> <p>If you are unsure if you <u>are eligible qualify</u>, ask your attorney.</p> <p><u>The</u> DMV can see your vehicle and traffic records and share them with insurance companies.</p> <p>A prosecuting attorney may see your records that were sealed for an offense listed under <u>Welfare and Institutions Code</u> section 707(b) in a later proceeding for the reasons listed in <u>Welfare and Institutions Code</u> section 781(a)(1)(D).</p> <p>If your sealed record was for a 707(b) offense <u>committed</u> when you were 14 or older, the prosecutor, probation, and the court may unseal your records if you are charged <u>later</u> with a <u>subsequent</u> felony.</p> <p>You can request the court to unseal your records if you want to have access to them or allow</p>	

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			<p>someone else to <del>inspect</del> <b>see</b> them.</p> <p>In the section about employers, our court recommends: You should seek legal advice if you have questions <del>about</del> <b>of</b> what an employer can ask of you. (Same comment on JV-596-INFO)</p> <p>You should seek legal advice if you have questions <del>of</del> <b>about</b> what an employer can ask of you.</p> <p><u>Page 2, left column - suggested changes:</u></p> <p>3. If you think there are agencies that might have records on you that were never sent to probation, you need to <del>include them</del> <b>name those agencies</b>, or the court will not know to seal <del>them</del> <b>those records</b>.</p> <p>5. If you are <del>currently</del> 26 years of age or older, you may have to pay a fee. ...</p> <p>7. The court will review your application. The court may decide right away to seal your juvenile records. <del>Or</del> the court may order a hearing. If there is a hearing, you will receive a notice in the mail with the date, <del>and time, and</del> <b>location</b> of the hearing. If the notice says your hearing is “unopposed” (meaning there is no disagreement with your request), you may choose not to go.</p>	

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			<p><u>Page 2, right column - suggested changes:</u></p> <p>9. If the court grants your request, it will order each agency, entity, or person on your list to seal your records. The court will also order the records destroyed by a certain date. If the sealed records are for a 707(b) offense <b>committed</b> when you were 14 or older, the court will not <b>destroy order those records destroyed</b>.</p> <p>If you <b>are seeking want</b> to enlist in the military or apply for a job requiring you to provide information about your juvenile records, seek legal advice about this issue.</p> <p>Juvenile sex offender registration is governed by Penal Code section 290.008.</p> <p><b><u>FORM JV-596</u></b></p> <p><u>Title and center footers:</u> Suggested changes for consistency with other Judicial Council forms (e.g., JV-425, JV-426, JV-430, JV-431, JV-436, JV-441, JV-448 et al.)</p> <p>Change from:</p> <p>DISMISSAL AND SEALING OF RECORDS— WELFARE AND INSTITUTIONS CODE SECTION 786</p>	<p>As explained above, the committee is using this format for clarity and to distinguish types of sealing orders and thus is opting to retain the current title.</p>

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			<p>To:</p> <p>DISMISSAL AND SEALING OF RECORDS (Welf. &amp; Inst. Code § 786)</p> <p><u>Item 1, suggested change:</u> Name of <b>subject</b> child:</p> <p><u>Item 7, suggested changes:</u> The court finds that sealing the following additional public agency records will promote the successful reentry and rehabilitation of the <b>subject</b> child and orders <b>sealed</b> the records in their custody relating to petitions and arrests listed in items 5 and 6 <b>sealed</b>:</p> <p><b><u>FORM JV-596-INFO</u></b></p> <p>Probation does not dismiss a petition or make a sealing order. Instead of adding "or probation" to the existing paragraphs, our court recommends that a new paragraph be added to address sealing in diversion cases. That would also allow a brief explanation of the court review process, which is missing from this form.</p> <p><u>Page 1, left column - suggested changes:</u></p> <p>The court will not seal your records at the end of your case if you were found to have committed an offense listed in Welfare and Institutions Code section 707(b) (a violent</p>	<p>The committee has made the remaining suggested changes to this form for clarity.</p> <p>The committee agrees that the differences in sealing between WIC 786 and 786.5 are significant enough that they cannot be on the JV-596-INFO together and has moved the WIC 786.5 content regarding diversion to the JV-595-INFO in part because additional sealing by petition may be desirable for those whose diversion records are sealed.</p>



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			<p>offenses such as murder, rape, or kidnapping, and <del>also</del> some offenses involving drugs or weapons) when you were 14 or older <del>and it was not unless that offense was</del> dismissed or reduced to a misdemeanor or a lesser offense not listed in 707(b), but <del>except for certain sex offenses,</del> you can ask the court to seal your records at age 18 (or age 21 if you were committed to the Division of Juvenile Facilities) <del>unless you were found to have committed one or more of certain sex offenses.</del></p> <p>If you have done what you were ordered to do while on probation and have not been found to have committed any further crimes (felonies or <del>any</del> misdemeanors <del>for</del> crimes involving moral turpitude, such as a sex crime or a crime involving dishonesty), the court will find that your probation was satisfactorily completed even if you still owe restitution, court-ordered fees, and fines, BUT...</p> <p><u>Page 1, right column - suggested changes:</u></p> <p>If you are in foster care, <u>the</u> child welfare <u>agency</u> can look at your records to determine where you should live and what services you need.</p> <p><u>Page 2, par. 2 - suggested changes:</u></p> <p>... You should seek legal advice if you have questions <del>of about</del> what an employer can ask of</p>	<p>The committee has made the remaining suggested changes to this form for clarity.</p>

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			<p>you.</p> <p style="text-align: center;"><b><u>FORM JV-597</u></b></p> <p><u>Title and center footers:</u> Suggested changes for consistency with other Judicial Council forms (e.g., JV-425, JV-426, JV-430, JV-431, JV-436, JV-441, JV-448 et al.)</p> <p style="text-align: center;">Change from:</p> <p style="text-align: center;">DIVERSION PROGRAM, PROBATION DEPARTMENT NOTICE ON SEALING OF RECORDS— WELFARE AND INSTITUTIONS CODE SECTION 786.5</p> <p style="text-align: center;">To:</p> <p style="text-align: center;">PROBATION DEPARTMENT NOTICE ON SEALING OF RECORDS AFTER DIVERSION PROGRAM (Welf. &amp; Inst. Code § 786.5)</p> <p><u>Item 1, suggested deletion:</u></p> <p>Name of <span style="background-color: yellow;">subject</span> child:</p> <p><u>Item 1, suggested addition (underneath name of child):</u></p> <p>Name of child's attorney:</p>	<p>Because this form is not a court order, the committee has adopted the suggested title change to distinguish it from the other sealing orders.</p> <p>The committee all of the suggested changes to this</p>

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			<p style="text-align: center;"><b>RECORDS</b>  <b>AFTER DIVERSION PROGRAM</b>  <b>(Welf. &amp; Inst. Code § 786.5)</b></p> <p><u>Instructions, suggested changes:</u></p> <p>In the first line of the instructions, it should be "you did not satisfactorily <b>complete</b> your diversion program". In item 2, it should be diversion program, rather than probation. There is an extra r in the signature line.</p> <p>Use this form if you received a notice from <b>a probation officer</b> saying that you did not satisfactorily <b>complete</b> your diversion program and you want the court to review this determination so that your records can be sealed.</p> <p>• How to fill out the form:  A. <b>Put Print</b> your name and contact information in the box at the top of the form and in item 1 below.  B. <b>Put Print</b> the address of the juvenile court in the county where you were on probation for this offense <b>in the second box at the top of the form</b>.  C. <b>Fill out Print in</b> item 2 <b>about the reasons</b> why you think that you did satisfactorily complete your diversion program.  D. Attach the notice from probation <b>that you received</b> telling you that you did not satisfactorily complete your diversion program.</p>	

**W18-06**

**Juvenile Law: Sealing of and Access to Records** (Adopt Cal. Rules of Court, rule 5.850; amend rules 5.552 and 5.840; approve forms JV-597 and JV-598; revise forms JC-590, JV-595-INFO, JV-596, and JV-596-INFO)

All comments are verbatim unless indicated by an asterisk (\*).

	Commentator	Position	Comment	Committee Response
			<p><u>Item 2, suggested changes:</u></p> <p>It should be diversion program, rather than probation.</p> <p><u>Item 3, suggested changes:</u></p> <p>I have attached a copy of the notice from <b>the probation department stating determining</b> that I did not complete my program satisfactorily (form JV-597 or similar local form) to this form.</p> <p><u>Signature line:</u> Delete lower case “r”</p> <p>SIGNATURE OF PETITIONER#</p>	
10.	Santa Clara County Department of Children and Family Services Francesca LeRue, Director	A	With the implementation of this law, there is potential for impact on the ability of the child welfare system to provide a thorough 241.1 assessment of a dually involved youth. Should the social worker not have access to significant historical information, due to sealed records, important clinical factors might be missed, in turn affecting potential recommendations to the Juvenile Justice Court for services and associated case planning.	No response required.