



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on September 24, 2019

Title	Agenda Item Type
Juvenile Law: Sealing of Records	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Amend Cal. Rules of Court, rule 5.840; revise form JV-596-INFO	January 1, 2020
Recommended by	Date of Report
Family and Juvenile Law Advisory Committee	September 5, 2019
Hon. Jerilyn L. Borack, Cochair Hon. Mark A. Juhas, Cochair	Contact
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Executive Summary

The Family and Juvenile Law Advisory Committee proposes amending one rule of court and revising one information form so that they conform to recently enacted statutory provisions concerning the sealing of juvenile records. The proposal would update the recently adopted rule and form, which implement sealing of records for cases sealed under Welfare and Institutions Code section 786, to include changes to that section that went into effect on January 1, 2019.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council effective January 1, 2020:

1. Amend California Rules of Court, rule 5.840, to incorporate changes to Welfare and Institutions Code section 786; and
2. Revise *Sealing of Records for Satisfactory Completion of Probation* (form JV-596-INFO) to accurately describe Welfare and Institutions code section 786.

The text of the amended rule and the revised form are attached at pages 6–8.

Relevant Previous Council Action

Rule 5.840 was adopted by the Judicial Council effective July 1, 2016, to implement the provisions of Welfare and Institutions Code section 786,¹ and amended effective September 1, 2018, to incorporate legislative changes. *Sealing of Records for Satisfactory Completion of Probation* (form JV-596-INFO) was adopted effective July 1, 2016, to implement section 786, and subsequently revised effective September 1, 2017, and September 1, 2018, to incorporate ongoing changes in the law on sealing of records.

Analysis/Rationale

In 2014, the Legislature enacted Welfare and Institutions Code section 786 to require the sealing and dismissal of specified juvenile petitions when a child has satisfactorily completed probation. In that legislation and a number of subsequent bills, the Legislature has sought to provide access to those records for a variety of purposes. In 2018, Assembly Bill 2952 (Stone; Stats. 2018, ch. 1002) enacted an additional provision allowing access to a record by a prosecuting attorney when the attorney has reason to believe that the record may contain favorable or exculpatory information that must be disclosed to a defendant in a criminal case. These changes require that the court notify the person whose records have been sealed that the prosecutor's request is being considered so that the person may have an opportunity to respond to the request. They further require the court to review the records and make a specific order with regard to access that protects the confidentiality of the person whose records are being accessed.

In 2017, the Court of Appeal heard a dispute regarding a potential conflict between section 786 and Penal Code section 29820. That latter statute prohibits juveniles with sustained petitions for specified offenses, including firearms and domestic violence offenses, from owning or possessing a firearm before age 30. The court in *In re Joshua R.* (2017) 7 Cal.App.5th 864, found that the statutory provisions could be reconciled absent legislative clarification by preserving the information needed to enforce the firearms prohibition at the Department of Justice while destroying the rest of the records. In 2018, the Legislature stepped in to clarify its intent by enacting Senate Bill 1281 (Stern; Stats. 2018, ch. 793), which provides that sealed records under section 786 for an offender subject to the firearms prohibition must be maintained beyond the offender's 30th birthday and destroyed on the date the offender attains age 33.

The committee proposes amending rule 5.840 of the California Rules of Court and revising form JV-596-INFO to conform to and implement the changes in section 786 enacted by AB 2952 and SB 1281.

Rule 5.840 amended to clarify dates for destruction

Rule 5.840 describes the procedures for sealing and dismissing petitions under section 786. Subdivision (d) of the rule currently states the parameters for the court to use when setting a destruction date for the records being sealed. This subdivision would be amended to include the

¹ Hereinafter, all statutory references are to the Welfare and Institutions Code unless otherwise indicated.

new requirement that records that contain a sustained petition that is subject to Penal Code section 29820 should not be destroyed until the subject of the order attains the age of 33.

Form JV-596-INFO updated to include new provisions allowing access to sealed records

Sealing of Records for Satisfactory Completion of Probation (form JV-596-INFO) is an information form provided to all juveniles at the end of their cases when their records have been sealed under section 786. This form includes a bulleted list of all the circumstances under which a sealed record may be accessed without requiring that the records be unsealed. The committee proposes adding two bullets to that list to explain that records may be accessed to enforce a firearms prohibition or to allow a prosecutor to comply with *Brady* obligations.

Policy implications

As described above, this proposal narrowly implements the changes made to section 786 by recent legislation. The committee opted not to implement a standard procedure to carry out one aspect of the legislative change relating to the changes in access allowed for prosecutors to comply with their *Brady* obligations; instead, the committee asked for comments on whether considering such a procedure in the future would be of value. With one exception, all the commenters recommended that the committee put in place such a procedure; thus, the committee will be proposing to the Rules and Projects Committee that this work be included on its annual agenda for 2020. Much of the increased workload from these legislative changes will come from implementation of these provisions, and the committee will work to try and mitigate those impacts in drafting a proposal to be circulated for public comment.

The Joint Rules Subcommittee of the Trial Court Presiding Judges Advisory Committee and Court Executives Advisory Committee suggested that it might be too difficult for courts to implement this proposal in the four months from its proposed approval until its effective date. The committee considered the suggestion to delay implementation of the proposal for an additional two months but decided against a delay given that the underlying statutory changes have been in effect since January 1, 2019.

Comments

This proposal circulated for public comment from April 9 to June 8, 2019, as part of the regular spring comment cycle. Eight organizations submitted comments: four commenters agreed with the proposal; four organizations—including the aforementioned Joint Rules Subcommittee—agreed if the proposal was modified. A chart with the full text of the comments received and the committee's responses is attached at pages 9–25.

Date for destruction of records

Three commenters had concerns about the implementation of the new provisions in section 786(a), which require the court to destroy records for persons subject to firearms prohibitions because of their offenses on the date they reach 33 years of age. Rule 5.40 of the California Rules of Court, which states the provisions for sealing and destroying court records under section 786, was written to give courts broad discretion to set a destruction date up to the limits set in the other juvenile court records sealing statute, section 781. Section 781 provides for destruction at

age 38. Before the change concerning the firearms prohibition, section 786 provided no guidance on this issue, and thus the committee drafted a rule giving courts full discretion to make a case-by-case determination.

One commenter was concerned that implementation of the requirement to destroy cases subject to the firearms prohibition at age 33 would have the anomalous result that some less serious records would be preserved until the person reaches age 38 while these more serious offense records would be destroyed when the person reaches age 33. That commenter proposed that the committee modify the rule to require destruction at age 25 (when the juvenile court no longer has jurisdiction) or at age 33 so that this anomaly would be addressed. Two other commenters suggested that the rule of court provide that the records in the firearms cases be destroyed “no sooner than” the date the person reaches age 33 so that these records could be maintained until age 38, as is their practice with other 786 records.

Although the committee recognizes the logic of both these approaches, it determined that such a decision is a policy choice that must be made by the Legislature. The Legislature has amended section 786 on numerous occasions but has yet to set a standard destruction date for these records. As a result, the committee opted to implement the plain language of the statute narrowly and not substitute its judgment on the larger policy question of the most appropriate destruction date for records not subject to the firearms preservation statute. The committee would note that each court may mitigate the workload impact of this change by opting to select the date a person reaches age 33 as a default destruction date if the court determines that is the appropriate way to implement the discretion inherent in the rule. Alternately, courts may determine that the *Brady* implications of these records push in favor of their preservation for a longer period. Until this issue is clarified by the Legislature, the committee recommends maintaining maximum discretion.

Alternatives considered

The committee considered changing only the rule and leaving the information form incomplete, but determined that it would be misleading to include some of the bases for access to 786 records while remaining silent on others. As described above, the committee also considered setting a destruction date consistent with the date prescribed by section 786 for offenses involving firearms prohibitions, but it determined that such an approach was beyond its purview and required clearer legislative guidance.

Fiscal and Operational Impacts

Courts may incur additional costs in ensuring that they set the appropriate destruction dates for records that must be maintained to enforce the firearms restrictions. Commenters noted that included in the costs for this compliance would be training, case management system changes, and changes in file storage management. The provisions allowing for courts to determine if files should be accessed for mitigating evidence will result in additional judicial workload. Printing costs may be incurred by courts to provide form JV-596-INFO, as required by law. Some courts may incur programming charges if electronic systems are used for the court orders. In addition,

because the informational forms are available in other languages, there will be costs to translate the revised forms. All these impacts are a result of legislative changes and are necessary to make the rule and form legally accurate.

Attachments and Links

1. Cal. Rules of Court, rule 5.840, at page 6
2. Form JV-596-INFO, at pages 7–8
3. Chart of comments, at pages 9–25
4. Link A: Assembly Bill 2952,
http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB2952
5. Link B: Senate Bill 1281,
http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB1281

Rule 5.840 of the California Rules of Court is amended, effective January 1, 2020, to read:

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

2
3 (a) * * *

4
5 (b) **Dismissal of petition**

6
7 If the court finds that a minor subject to this rule has satisfactorily completed his or her
8 informal or formal probation supervision, the court must order the petition dismissed. The
9 court must not dismiss a petition if it was sustained based on the commission of an offense
10 listed in subdivision (b) of section 707 when the minor was 14 or older unless the finding
11 on that offense has been dismissed or was reduced to a misdemeanor or an offense not
12 listed in subdivision (b) of section 707. The court may also dismiss prior petitions filed or
13 sustained against the minor if they appear to the satisfaction of the court to meet the
14 sealing and dismissal criteria in section 786. An unfulfilled order, or condition, ~~or~~ of
15 restitution or an unpaid restitution fee must not be deemed to constitute unsatisfactory
16 completion of probation supervision. The court may not extend the period of supervision
17 or probation solely for the purpose of deferring or delaying eligibility for dismissal and
18 sealing under section 786.

19
20 (c) * * *

21
22 (d) **Destruction of records**

23
24 The court must specify in its order the date by which all sealed records must be destroyed,
25 consistent with the following provisions:

26
27 (1) If the record to be sealed contains a sustained petition that makes the subject of the
28 order ineligible to own or possess a firearm until attaining 30 years of age under
29 Penal Code section 29820, the court must order the records destroyed on the date that
30 the subject attains 33 years of age.

31
32 (2) If the record does not contain a sustained petition that results in firearms prohibitions
33 for the subject, as described in paragraph (1), the date for destruction of the records
34 must be set consistent with this paragraph. For court records, this date may be no
35 earlier than the date the subject of the order attains age 21 and no later than the end
36 of the time frame ~~set forth~~ stated in section 781(d). For all other records, the date
37 may be no earlier than the date the subject of the order attains age 18, and no later
38 than the time frame ~~set forth~~ stated in section 781(d), unless that time frame expires
39 ~~prior to~~ before the date the subject attains 18 years of age.

40
41 (e)-(f) * * *

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 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 must still be paid.

Even if your records are sealed, you must still pay your restitution and court-ordered 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 are not allowed to have a gun because of your offense, the Department of Justice can look at your records to make sure you do not buy or own a gun.
- If a prosecutor thinks something in your record would be helpful to someone who is charged with a crime in another case, the prosecutor can ask the court to provide that information. If this request is made, the court will let you know. You and your lawyer may object.



- 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 about what an employer can ask.

SPRING 19-26

Juvenile Law: Sealing of Records (Amend Cal. Rules of Court, rule 5.840; revise form JV-596-INFO)

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

	Commenter	Position	Comment	Committee Response
1.	Judicial Council and Trial Court Leadership By: Corey Rada, Senior Analyst Sacramento, CA	AM	<p>The proposal is required to conform to a change of law. The proposal is required by statute or Judicial Council directive to be adopted, amended, or revised by a specific date.</p> <p>The JRS notes the following impact to court operations:</p> <ul style="list-style-type: none"> ▪ Significant fiscal impact ▪ Impact on existing automated systems (e.g., case management system, accounting system, technology infrastructure or security equipment, Jury Plus/ACS, etc.) ▪ Results in additional training, which requires the commitment of staff time and court resources. ▪ Increases court staff workload. ▪ Changes the responsibilities of the presiding judge and/or supervising judge. ▪ Impact on local or statewide justice partners. <p>The JRS also notes that the fiscal impact, particularly for larger courts will be significant, although unmeasurable at this point. As discussed in the specific comments below, the staff training will be significant. Case management systems will have to be reprogrammed. Actual file storage will be modified. Future requests to release the otherwise sealed information will increase judicial workload.</p> <p>Requests for Specific Comments, SPR19-26 1. Does the proposal address the stated purpose?</p>	<p>No response required.</p> <p>The committee will note these impacts in its report to the council, but notes that they are a consequence of the legislative changes and not the proposal.</p>

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

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	Commenter	Position	Comment	Committee Response
			<p>-Yes, the proposed modification squarely addresses, and accomplishes the stated purpose.</p> <p>2. Should the committee draft and circulate for comment a proposal in a future cycle to provide procedures for courts to comply with the notice requirements for the subject of an order whose records are sought to be disclosed by the prosecutor to comply with Brady obligations? If so, what specific requirements should be included?</p> <p>-Yes, the committee should draft and circulate for comment a proposal in a future cycle to provide procedures for courts to comply with notice requirements. Specifically, Welfare and Institutions Code Section 786(g)(1)(I) provides,</p> <p>A request to access information in the sealed record for this purpose, including the prosecutor’s rationale for believing that access to the information in the record is necessary to meet the disclosure obligation, shall be submitted by the prosecuting attorney to the juvenile court. The juvenile court shall notify the person having the sealed record, including the person’s attorney of record, that the court is considering the prosecutor’s request to access the record, and the court shall provide that person with the opportunity to respond, in writing or by appearance, to the request prior to making its determination.</p> <p>The notice requirement will best be accomplished by use of a standard judicial</p>	<p>No response required.</p> <p>The committee received consistent feedback from commenters that a rule would be of value and will seek to add that task to its upcoming annual agenda.</p> <p>The committee appreciates the suggested approach and will keep it in mind when</p>

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			<p>council form with a response or hearing date noticed. The committee should circulate such a form that would provide efficiency and consistency for juvenile courts.</p> <p>3. Would the proposal provide cost savings? If so, please quantify. -No, the proposal would not provide cost savings. To the contrary, the proposal would have result in an increase in court labor, training, programming, changes to automated systems, printing, translation, and mailing costs, as well as increased judicial workload.</p> <p>4. What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems? -Implementation of the rule modification will include significant action by the courts. For instance, the implementation will require training all juvenile clerks of the new requirements. Such training will be substantial to the extent legal considerations will be necessary (i.e., determining who will be prohibited from possession a firearm until the age of 30). Two to four hours of training should be expected for each clerk.</p> <p>Court processes will be significantly modified. This will include changes to case management</p>	<p>developing a proposal to implement these provisions in a future cycle.</p> <p>The committee takes note of these impacts and will report them with the proposal.</p> <p>The committee takes note of these impacts and will report them with the proposal.</p>

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	Commenter	Position	Comment	Committee Response
			<p>systems, and re-programming any automated destruction date calculations. Court staff workload will increase significantly. This will include substantial communication with law enforcement agencies, substantial notice requirements, and potentially substantial court hearings.</p> <p>5. Would four months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? -For larger courts, four months is a not a reasonable amount of time to allow for implementation. To accomplish the changes in process and the training required, implementation should take approximately 6 months.</p> <p>6. How well would this proposal work in courts of different sizes? -The burden on the court will vary, depending on the size of the court and juvenile department. Larger courts, with many law enforcement agencies will be tasked with significant additional workload.</p>	<p>The underlying statute has been in effect since January 1, 2019 so the committee has concluded that a January 1, 2020 implementation date is preferable to any further delay.</p> <p>The committee takes note of these impacts and will report them with the proposal.</p>
2.	Orange County Bar Association By: Deirdre Kelly President	A	<p>Does the proposal appropriately address the stated purpose? Yes.</p> <p>Should the committee draft and circulate for comment a proposal in a future cycle to provide procedures for courts to comply with the notice requirements for the subject of an order whose records are sought to be disclosed by the</p>	No response required.

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SPRING 19-26

Juvenile Law: Sealing of Records (Amend Cal. Rules of Court, rule 5.840; revise form JV-596-INFO)

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			<p>prosecutor to comply with Brady obligation? If so, what specific requirements should be included?</p> <p>Yes. The statute is clear on who must provide notice (the court) and to whom notice must be provided (the person with sealed record and their attorney of record). It is also clear that the court must provide the impacted party the opportunity to respond in writing or request an appearance. It is unclear on how long in advance notice must be given prior to the court's ruling, how far in advance of the ruling the party must submit a written objection, or when the party must request an appearance. A uniform approach to these issues would be preferable to leaving it up to individual superior courts to address through locals rules issued in accordance with rule 10.613.</p>	<p>The committee received consistent feedback from commenters that a rule would be of value and will seek to add that task to its upcoming annual agenda.</p>
3.	Pacific Juvenile Defender Center By: Eileen Manning-Villar, Grants and Projects Director	AM	<p>Does the proposal appropriately address the stated purpose?</p> <p>PJDC finds that the proposal appropriately addresses the stated purpose; however, it has specific concerns with the current language of Rule 5.840, subdivision (d), as will be explained further below.</p> <p>Should the committee draft and circulate for comment a proposal in a future cycle to provide procedures for courts to comply with the notice requirements for the subject of an order whose records are sought to be disclosed by the prosecutor to comply with Brady obligations? If so, what specific requirements should be included?</p>	<p>No response required.</p>

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			<p>PJDC also agrees that the committee should draft and circulate for comment a proposal that provides the courts with procedures they should follow when complying with the requirements to notify an individual whose sealed records are sought for disclosure to allow a prosecutor to comply with Brady obligations. These procedures need to outline the minimum amount of due diligence the prosecutor seeking such records must undertake to locate and notify the individual, including some type of proof of service of the notice. The procedures need to also require the prosecutor to report his or her efforts to locate the individual to the court in cases where the individual cannot be located. PJDC further recommends that in addition to these notice procedures, the committee should draft and circulate for comment procedures: (1) governing the minimum amount of time (at least 30 days) for the individual to respond after he or she has been served notice; (2) allowing multiple ways for individuals to respond to the notice; and (3) requiring courts to establish procedures that increase indigent individuals' access to this process.</p> <p>PJDC's Concerns With Rule 5.840, Subdivision (d) SPR 19-26 requests, among other things, comment on the addition of language to comport with the changes set forth in recent amendments to Welfare and Institutions Code section 786, subdivision (a) which require that "[i]f a record contains a sustained petition</p>	<p>The committee received consistent feedback from commenters that a rule would be of value and will seek to add that task to its upcoming annual agenda. The committee will keep these suggestions in mind when and if that proposal is undertaken.</p> <p>The committee appreciates the policy arguments underlying this comment, but has concluded that those arguments are better addressed to the legislative branch which has amended section 786 numerous times but has not to date placed any guidance on the destruction dates for these records other than to ensure that they are not destroyed</p>

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	Commenter	Position	Comment	Committee Response
			<p>rendering the person ineligible to own or possess a firearm until 30 years of age pursuant to Section 29820 of the Penal Code, then the date the sealed records shall be destroyed is the date upon which the person turns 33 years of age.” This makes sense as far as this all goes as the language added to Rule 5.840(d) says essentially the same thing. At the same time, however, this proposed modification to Rule 5.840(d) raises the issue that for any record sealed under Welfare and Institutions Code section 786 that does not contain a sustained petition resulting in this firearms prohibition, the juvenile court should look to section 781(d) for setting the destruction date. (See proposed Rule 5.840(d) [“If the record does not contain a sustained petition that results in firearms prohibitions . . . the date for destruction of the records must be set . . . [f]or court records . . . no earlier than the date the subject of the order attains age 21 and no later than the time frame set forth stated in section 781(d).”] This means that the court can set a destruction date for a sealed record as late as the individual’s 38th birthday. (See Welf. & Inst. Code, § 781, subd. (d) [“the court shall order the destruction of a person’s juvenile court records that are sealed pursuant to this section as follows: . . . when the person who is the subject of the record reaches 38 years of age if the person was alleged or adjudicated to be a person described by Section 602 . . .”].) So potentially individuals without a Penal Code section 29820 restriction, who often have much less serious</p>	<p>before the firearms restrictions expire. Given the new attention to the Brady uses of these records the committee is not inclined to select a mandatory destruction date by rule of court that is shorter than what is contained in section 781 without clear guidance from the legislative branch. The committee has concluded, after significant discussion that the silence on this matter in the statute was intended to provide each trial court judicial officer with the discretion to set a destruction date on a case by case basis. The amended rule continues to preserve that discretion with the caveat that the committee has made the rule consistent with the express direction of the legislature that destruction occur at age 33 where firearms restrictions are in place.</p>

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			<p>sustained offenses in their juvenile record or in some cases none at all, could have their sealed records still in existence up to five years longer than if they had committed certain firearm offenses. Presumably, Rule 5.840(d) refers to the older sealing statute Welfare and Institutions Code section 781 because section 786 itself is largely silent on the destruction deadlines for sealed records. Besides the issue set forth above, Rule 5.840(d)'s reference to Welfare and Institutions Code section 781 is problematic because section 786 is a statute enacted to address issues seen over the years with its older counterpart. (Sen. Com. on Public Safety, Analysis of Sen. Bill No. 1038 (2013-2014 Reg. Sess.) as amended Mar. 28, 2014, pp. 6-7.) Section 786 allows the automatic sealing of records for qualified youths without Welfare and Institutions Code section 707(b) offenses on their record (Welf. & Inst. Code, § 786, subds. (a) & (d)), while section 781's more complicated procedures remain available to youth with section 707(b) offenses (See Welf. & Inst. Code, § 781, subd. (a)(1)(D)). Indeed among the stated needs for the enactment of S.B. 1038, the legislation that put the original version of Welfare and Institutions Code section 786 in place, was to streamline the process of sealing eligible juveniles' records, thereby "better ensuring that juveniles have a clear pathway to cleaning their records, when in compliance with existing statutory and probationary requirements." (Sen. Com. on Public Safety, Analysis of Sen. Bill No. 1038</p>	

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			<p>(2013-2014 Reg. Sess.) as amended Mar. 28, 2014, p. 7.) In essence, S.B. 1038 was designed to give system involved youth “a second chance at a clean slate when pursuing higher education or entering the workforce,” which are two highly effective ways to fight recidivism. (Ibid.) Section 786 was later amended to ensure it covered youths whose petitions were dismissed prior to adjudication or not sustained following adjudication. (See Welf. & Inst. Code, § 786, subd. (e), as amended by Stats. 2017, ch. 685, § 1.5 (A.B. 529).)</p> <p>The use of Welfare and Institutions Code section 781(d) as the guide for setting the destruction dates for sealed records runs counter to many of the stated purposes of the underlying legislation that resulted in the section 786. It does little to streamline the process on the juvenile court’s end if it ends up keeping copies of the sealed record until the age of 38. It likewise undermines the “clean slate” intention of the law if a youth’s sealed record still exists 20 or more years after he or she has left the juvenile court system. And allowing the sealed records of non-culpable individuals to potentially remain in existence five years longer than their counterparts who incurred a gun restriction is an unjust, though likely unintended, result indeed.</p> <p>PJDC acknowledges that Welfare and Institutions Code section 786, subdivision (g) sets forth twelve separate categories under which a sealed record may be “accessed, inspected or utilized” and thus there are</p>	

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Juvenile Law: Sealing of Records (Amend Cal. Rules of Court, rule 5.840; revise form JV-596-INFO)

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			<p>justifications for maintaining the sealed records after they are sealed. However, most, if not all, of these will no longer be viable after the juvenile court loses jurisdiction of a minor which at the upper end is 25 years of age. (See Welf. & Inst. Code, §§ 607; 786, subd. (g)(1) & (g)(2).) Accordingly, PJDC urges Rule 5.840(d) be amended to set the maximum age for maintaining the individuals whose record was sealed according to section 786 at age 25, unless the minor has sustained an offense subjecting him or her to the firearms prohibition pursuant to Penal Code section 29820. Even if this committee finds that age 25 is for some reason too early to set as a maximum, PJDC urges to amend Rule 5.840(d) so that the maximum age for the destruction of sealed juvenile records is no greater than the 33 years set forth for those with firearms prohibitions. In any case, PJDC urges the committee to maintain the court’s flexibility of the setting the date of destruction in that the Rule provides a range from a minimum age of 18 or 21 as applicable. Below are PJDC’s proposed changes to Rule 5.840 in red text: Rule 5.840. Dismissal of petition and sealing of records (§ 786) (a)–(c) *</p> <p>* *</p> <p>(d) Destruction of records The court must specify in its order the date by which all sealed records must be destroyed, consistent with the following provisions: (1) <u>If the record to be sealed contains a sustained petition that makes the subject of the order ineligible to own or possess a firearm until</u></p>	

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			<p><u>attaining 30 years of age under Penal Code section 29820, the court must order the records destroyed on the date that the subject attains 33 years of age.</u></p> <p>(2) <u>If the record does not contain a sustained petition that results in firearms prohibitions for the subject as described in paragraph (1), the date for destruction of the records must be set consistent with this paragraph.</u> For court records, this date may be no earlier than the date the subject of the order attains age 21 and no later than the date the subject attains age 25 [or 33] end of the time frame set forth stated in section 781(d).</p> <p>(2) For all other records, the date may be no earlier than the date the subject of the order attains age 18, and no later than the date the subject attains age 25 [or 33] time frame set forth stated in section 781(d), unless that time frame expires prior to before the date the subject attains 18 years of age.</p>	
4.	Superior Court of Los Angeles County	A	<p>Request for Specific Comments</p> <p>Does the proposal appropriately address the stated purpose?</p> <p>-Yes, the proposal appropriately addresses the purpose.</p> <p>Should the committee draft and circulate for comment a proposal in a future cycle to provide procedures for courts to comply with the notice requirements for the subject of an order whose records are sought to be disclosed by the</p>	No response required.

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			<p>prosecutor to comply with Brady obligations? If so, what specific requirements should be included?</p> <p>-Procedure on these notice requirements are not necessary. It would be helpful if future changes to the Welfare and Institutions Code section 786 would require the prosecutor to give notice that they have requested the records.</p> <p>The advisory committee also seeks comments from courts on the following cost and implementation matters: Would the proposal provide cost savings? If so please quantify. -We do not anticipate cost savings.</p> <p>What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems? -Implementation requirements include training for staff on the noticing requirement and case management system changes to develop event codes.</p> <p>Would four months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? -Yes, four months would be sufficient.</p>	<p>Because the bulk of the other commenters have requested some sort of statewide standard for this process the committee intends to seek to include such a proposal on its next annual agenda. A future circulation will allow all interested stakeholders to provide feedback on the contents of that proposal.</p> <p>No response required.</p> <p>The committee takes note of these impacts and will report them with the proposal.</p> <p>No response required</p>

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5.	Superior Court of Orange County	AM	<p>Sealing of Records for Satisfactory Completion of Probation (JV-596-INFO)</p> <ul style="list-style-type: none"> ▪ The form references fines and fees must be paid. However, in the <i>Waiver of Rights – Juvenile Delinquency (JV-618)</i>, the committee recommended removing references to fees. ▪ For the first modified bullet on page one, it is recommended the sentence be revised to read: <i>If you are not allowed to have a gun <u>or</u> firearm because of your offense, the Department of Justice can look at your records to make sure you do not buy or own a gun.</i> <p>Request for Specific Comments</p> <p>Would the proposal provide a cost savings? -No, the proposal would not provide a cost savings.</p> <p>What would the implementation requirements be for courts? -Judges and staff would be notified of the changes in the rule and forms, but no changes would be needed on procedures or in the case management system.</p> <p>Would four months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</p>	<p>The committee appreciates this suggestion and will delete the references to fees in this form.</p> <p>The committee appreciates the suggestion but has concluded that “gun” is a comprehensive and plain language term.</p> <p>No response required.</p> <p>No response required.</p>

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			-Yes, four months would be sufficient time for implementation.	No response required.
6.	Superior Court of Riverside County By: Susan Ryan Chief Deputy – Legal Services	A	<p>Does the proposal appropriately address the stated purpose?</p> <p>-Yes. Updating Rule 5.840 to state courts must maintain records until age 33 when Penal Code § 29820 allegations are sustained would effectuate changes made by AB 2952 and SB1281. Updating JV-596-INFO would make it clear to minors and parents when records sealed pursuant to WIC § 786 could be accessed.</p> <p>Should the committee draft and circulate for comment a proposal in a future cycle to provide procedures for courts to comply with the notice requirements for the subject of an order whose records are sought to be disclosed by the prosecutor to comply with Brady obligations?</p> <p>-Yes. The proposal should include how notice would be given, and by whom. The proposal should also address forms or rule changes (or new creations) to address case flow. How long the court must give parties to object after notice? When should a hearing be set if an objection is received? What are the ramifications (if any) of a court order blocking the release? Would these types of orders have any impact on sealing of records and similar requests for that individual in the future?</p> <p>Would the proposal provide cost savings?</p> <p>-No.</p>	<p>No response required.</p> <p>The committee received consistent feedback from commenters that a rule would be of value and will seek to add that task to its upcoming annual agenda. The committee will keep these suggestions in mind when and if that proposal is undertaken.</p> <p>No response required.</p>

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			<p>What would the implementation requirements be for courts? -Notify the judicial officers, court staff and justice partners of the forms changes and Rule changes. Some minute and action codes may need to be created or updated in the case management system to allow the court to track when cases can be destroyed. Court staff would need to be trained, including records staff.</p> <p>Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? -Yes.</p> <p>How well would this proposal work in courts of different sizes? -The same notifications, training and update codes would likely need to be made in all courts. The proposal should work for courts of all sizes.</p>	<p>The committee takes note of these impacts and will include them in the report to the council.</p> <p>No response required.</p> <p>No response required.</p>
7.	Superior Court of San Diego County By: Mike Roddy Executive Officer	AM	<p>The committee should draft a proposal for a procedure to allow access pursuant to WIC 786(g)(1)(k). Our court has created a local procedure, but the procedures will vary from county to county without some statewide guidance.</p> <p>CRC 5.840(b): An unfulfilled order or condition of restitution or an unpaid restitution fee must not be deemed to constitute unsatisfactory completion of probation supervision.</p>	<p>The committee received consistent feedback from commenters that a rule would be of value and will seek to add that task to its upcoming annual agenda.</p> <p>The committee has adopted this proposed change.</p>

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			<p>CRC 5.840(d): The revision to subdivision (d) does comply with the amendment to WIC 786. Our court's policy has been to set the destruction date on the youth's 38th birthday, which is the end of the time frame stated in WIC 781(d). The amendments to WIC 786 and CRC 5.840 should have said "<i>no sooner than</i> the date upon which the person turns 33 years of age," but they say the records shall be destroyed <i>on the date</i> the person turns 33 years of age. This will require our court to separate our gun cases from other cases and sets up the odd situation that gun cases will be destroyed earlier than some less serious cases.</p> <p>Proposed revisions to form JV-596-INFO:</p> <p>1) page 1, first section: 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) . . .</p> <p>2) page 2, final sentence: You should seek legal advice if you have questions of about what an employer can ask about you.</p>	<p>While this comment is supported by policy logic, the plain language of the statute requires destruction on the date the person attains 33 years of age and the committee is not at liberty to substitute its judgment for that of the legislature.</p> <p>The committee has adopted these technical and clarifying revisions to form JV-596-INFO.</p>
8.	Superior Court of Ventura County By: Keri Griffith Court Senior Manager	A	To be consistent with CRC 5.840(d)(2), change the language in (d)(1) to give a "no earlier than" date and "no later than" date.	As explained above, while this comment is supported by policy logic, the plain language of the statute requires destruction on the date the person attains 33 years of age and the committee

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			Suggested:the court must order the records destroyed no earlier than the date the subject of the order attains age 33 and no later than the end of the time frame stated in section 781(d).	is not at liberty to substitute its judgment for that of the legislature.

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