

**REPORT OF THE
CHIEF LEGISLATIVE ANALYST**

DATE: April 19, 2018

TO: Honorable Members of the Rules, Elections, and Intergovernmental Relations Committee

FROM: Sharon M. Tso *Sharon M. Tso* Council File No:
Chief Legislative Analyst Assignment No: 18-04-0295

SUBJECT: Police Department Recommendation to include Support for SB 1281 in the 2017-2018 State Legislative Program

CLA RECOMMENDATION: Adopt the attached Resolution to include in the City's 2017 - 2018 State Legislative Program SUPPORT for SB 1281 (Stern).

SUMMARY

On April 3, 2018, the Police Department (LAPD) forwarded a bill response report to the Chief Legislative Analyst's Office seeking a City position on SB 1281 (Stern). This bill would prohibit the destruction of a sealed juvenile record of an individual if the offense in that record has made the person subject to a firearm restriction until he or she turns 33 years of age, and would allow a prosecutor or the California Department of Justice to access, inspect, or utilize these records for the enforcement of firearm restrictions.

Upon review, this Office has prepared the attached Resolution in support of this legislation. The Resolution seeks an official position of the City of Los Angeles to support SB 1281 (Stern).

BACKGROUND

Under California Welfare and Institutions Code (WIC) Section 786, minors are entitled to have their juvenile criminal records that are in the possession of law enforcement agencies, the probation department, the California Department of Justice (DOJ) and juvenile courts sealed, except under limited circumstances. Further, sealed records must be destroyed by a specified date.

California Penal Code (PC) Section 29820 prohibits juveniles from owning or possessing a firearm before the age of 30 if they have been adjusted a ward of the court for having committed specified offenses, including assault with a deadly weapon, sexual battery and domestic violence. WIC Section 786 and Penal Code Section 29820 are incompatible, as WIC Section 786 does not allow for access to and inspection of sealed juvenile records applicable to the prohibition on owning or possessing a firearm, which makes enforcing Penal Code Section 29820 impossible.

SB 1281 (Stern) would rectify this problem by prohibiting a juvenile court from ordering the destruction of records associated with the petition of any juvenile who has been adjudged a ward of the court for committing any offense listed in Penal Code Section 29820. Due to statute of limitation issues for firearm prohibition issues, SB 1281 would set the age of destruction for eligible juvenile records at 33 years old.

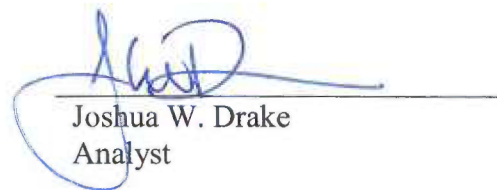
SB 1281 maintains the right of individuals convicted of crimes as a juvenile the ability to have their records sealed, but ensures that the public's interest in ensuring that certain individuals do not have access to firearms is maintained. Under this bill, information in sealed records would be made available to prosecuting attorneys for the evaluation of charges of offenses related to firearm restrictions and to the California Department of Justice for the purpose of determining if an individual is allowed to purchase, own or possess a firearm.

DEPARTMENTS NOTIFIED

Police Department

BILL STATUS

02/16/2018	Bill introduced
03/01/2018	Referred to the Senate Committee on Public Safety
04/03/2018	From committee: do pass (6-0) and re-referred to the Senate Committee on Appropriations



Joshua W. Drake
Analyst

SMT:jwd

Attachments: (1) Resolution
(2) SB 1281 (Stern)

RESOLUTION

WHEREAS, any official position of the City of Los Angeles with respect to legislation, rules, regulations or policies proposed to or pending before a local, state or federal governmental body or agency must have first been adopted in the form of a Resolution by the City Council with the concurrence of the Mayor; and

WHEREAS, California law provides that, if a minor satisfactorily completes an informal program of supervision, probation as specified, or a term of probation for any offense, the court shall order the petition dismissed; and

WHEREAS, current law requires the court to order all records pertaining to a dismissed petition in the custody of the court, law enforcement agencies, probation department or the State Department of Justice to be sealed; and

WHEREAS, current law prohibits a person adjudged a ward of the juvenile court because they committed specified crimes from owning or possessing a firearm until they are 30 years of age; and

WHEREAS, it is difficult to enforce the ban on firearm ownership in these cases, as current law does not allow for sealed juvenile records to be inspected for firearms restrictions; and

WHEREAS, SB 1281 (Stern) would amend current law to require sealed juvenile records of individuals barred by law from owning or possessing a firearm be maintained until that person turns 33 years of age; and

WHEREAS, SB 1281 allows prosecuting attorneys and the State Department of Justice access to those records in specific circumstances;

NOW, THEREFORE, BE IT RESOLVED, with the concurrence of the Mayor, that by the adoption of this Resolution, the City of Los Angeles hereby includes in its 2017 - 2018 State Legislative Program SUPPORT for SB 1281 (Stern), which would require that the sealed juvenile records of individuals who are ineligible for firearms ownership due to acts committed as a minor be maintained until that person turns 33 years old, and that those records be available for inspection by prosecuting attorneys for the evaluation of charges and prosecution of gun-related offenses or by the Department of Justice for the purpose of determining if the person is eligible to purchase, own or possess a firearm.

Introduced by Senator Stern

February 16, 2018

An act to amend Section 786 of the Welfare and Institutions Code, relating to juveniles.

LEGISLATIVE COUNSEL'S DIGEST

SB 1281, as introduced, Stern. Juvenile records.

Existing law generally subjects any person under 18 years of age who commits a crime to the jurisdiction of the juvenile court, which may adjudge that person to be a ward of the court. Under existing law, juvenile court proceedings to declare a minor a ward of the court are commenced by the filing of a petition by the probation officer, the district attorney after consultation with the probation officer, or the prosecuting attorney, as specified. Existing law requires the juvenile court to order the petition of a minor who is subject to the jurisdiction of the court dismissed if the minor satisfactorily completes a term of probation or an informal program of supervision, as specified, and requires the court to seal all records pertaining to that dismissed petition in the custody of the juvenile court and in the custody of law enforcement agencies, the probation department, or the Department of Justice. Existing law requires the court to send a copy of the order to each agency and official named in the order, direct the agency or official to seal its records, and specify a date by which the sealed records are to be destroyed. Existing law prohibits a minor who has committed certain serious, violent, drug-related, or firearm-related offenses, as enumerated, from owning, or having in his or her possession, custody, or control, any firearm until he or she turns 30 years of age.

This bill would prohibit the destruction of a sealed record of a ward who is subject to those firearm restrictions until the date upon which he or she turns 33 years of age.

Existing law authorizes certain persons or entities to access, inspect, or utilize a sealed record under those provisions for limited purposes.

This bill would further authorize a prosecuting attorney or the Department of Justice to access, inspect, or utilize those records for specified purposes relating to the enforcement of the firearm restrictions described above.

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

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

1 SECTION 1. Section 786 of the Welfare and Institutions Code
2 is amended to read:
3 786. (a) If a person who has been alleged or found to be a ward
4 of the juvenile court satisfactorily completes (1) an informal
5 program of supervision pursuant to Section 654.2, (2) probation
6 under Section 725, or (3) a term of probation for any offense, the
7 court shall order the petition dismissed. The court shall order sealed
8 all records pertaining to the dismissed petition in the custody of
9 the juvenile court, and in the custody of law enforcement agencies,
10 the probation department, or the Department of Justice. The court
11 shall send a copy of the order to each agency and official named
12 in the order, direct the agency or official to seal its records, and
13 specify a date by which the sealed records shall be destroyed. *If a*
14 *record contains a sustained petition rendering the person ineligible*
15 *to own or possess a firearm until 30 years of age pursuant to*
16 *Section 29820 of the Penal Code, then the date the sealed records*
17 *shall be destroyed is the date upon which the person turns 33 years*
18 *of age. Each agency and official named in the order shall seal the*
19 *records in its custody as directed by the order, shall advise the*
20 *court of its compliance, and, after advising the court, shall seal the*
21 *copy of the court's order that was received. The court shall also*
22 *provide notice to the person and the person's counsel that it has*
23 *ordered the petition dismissed and the records sealed in the case.*
24 *The notice shall include an advisement of the person's right to*
25 *nondisclosure of the arrest and proceedings, as specified in*
26 *subdivision (b).*

1 (b) Upon the court's order of dismissal of the petition, the arrest
2 and other proceedings in the case shall be deemed not to have
3 occurred and the person who was the subject of the petition may
4 reply accordingly to an inquiry by employers, educational
5 institutions, or other persons or entities regarding the arrest and
6 proceedings in the case.

7 (c) (1) For purposes of this section, satisfactory completion of
8 an informal program of supervision or another term of probation
9 described in subdivision (a) shall be deemed to have occurred if
10 the person has no new findings of wardship or conviction for a
11 felony offense or a misdemeanor involving moral turpitude during
12 the period of supervision or probation and if he or she has not
13 failed to substantially comply with the reasonable orders of
14 supervision or probation that are within his or her capacity to
15 perform. The period of supervision or probation shall not be
16 extended solely for the purpose of deferring or delaying eligibility
17 for dismissal of the petition and sealing of the records under this
18 section.

19 (2) An unfulfilled order or condition of restitution, including a
20 restitution fine that can be converted to a civil judgment under
21 Section 730.6 or an unpaid restitution fee shall not be deemed to
22 constitute unsatisfactory completion of supervision or probation
23 under this section.

24 (d) A court shall not seal a record or dismiss a petition pursuant
25 to this section if the petition was sustained based on the
26 commission of an offense listed in subdivision (b) of Section 707
27 that was committed when the individual was 14 years of age or
28 older unless the finding on that offense was dismissed or was
29 reduced to a misdemeanor or to a lesser offense that is not listed
30 in subdivision (b) of Section 707.

31 (e) If a person who has been alleged to be a ward of the juvenile
32 court has his or her petition dismissed by the court, whether on
33 the motion of the prosecution or on the court's own motion, or if
34 the petition is not sustained by the court after an adjudication
35 hearing, the court shall order sealed all records pertaining to the
36 dismissed petition in the custody of the juvenile court, and in the
37 custody of law enforcement agencies, the probation department,
38 or the Department of Justice. The court shall send a copy of the
39 order to each agency and official named in the order, direct the
40 agency or official to seal its records, and specify a date by which

1 the sealed records shall be destroyed. Each agency and official
2 named in the order shall seal the records in its custody as directed
3 by the order, shall advise the court of its compliance, and, after
4 advising the court, shall seal the copy of the court's order that was
5 received. The court shall also provide notice to the person and the
6 person's counsel that it has ordered the petition dismissed and the
7 records sealed in the case. The notice shall include an advisement
8 of the person's right to nondisclosure of the arrest and proceedings,
9 as specified in subdivision (b).

10 (f) (1) The court may, in making its order to seal the record and
11 dismiss the instant petition pursuant to this section, include an
12 order to seal a record relating to, or to dismiss, any prior petition
13 or petitions that have been filed or sustained against the individual
14 and that appear to the satisfaction of the court to meet the sealing
15 and dismissal criteria otherwise described in this section.

16 (2) An individual who has a record that is eligible to be sealed
17 under this section may ask the court to order the sealing of a record
18 pertaining to the case that is in the custody of a public agency other
19 than a law enforcement agency, the probation department, or the
20 Department of Justice, and the court may grant the request and
21 order that the public agency record be sealed if the court determines
22 that sealing the additional record will promote the successful
23 reentry and rehabilitation of the individual.

24 (g) (1) A record that has been ordered sealed by the court under
25 this section may be accessed, inspected, or utilized only under any
26 of the following circumstances:

27 (A) By the prosecuting attorney, the probation department, or
28 the court for the limited purpose of determining whether the minor
29 is eligible and suitable for deferred entry of judgment pursuant to
30 Section 790 or is ineligible for a program of supervision as defined
31 in Section 654.3.

32 (B) By the court for the limited purpose of verifying the prior
33 jurisdictional status of a ward who is petitioning the court to resume
34 its jurisdiction pursuant to subdivision (e) of Section 388.

35 (C) If a new petition has been filed against the minor for a felony
36 offense, by the probation department for the limited purpose of
37 identifying the minor's previous court-ordered programs or
38 placements, and in that event solely to determine the individual's
39 eligibility or suitability for remedial programs or services. The
40 information obtained pursuant to this subparagraph shall not be

1 disseminated to other agencies or individuals, except as necessary
2 to implement a referral to a remedial program or service, and shall
3 not be used to support the imposition of penalties, detention, or
4 other sanctions upon the minor.

5 (D) Upon a subsequent adjudication of a minor whose record
6 has been sealed under this section and a finding that the minor is
7 a person described by Section 602 based on the commission of a
8 felony offense, by the probation department, the prosecuting
9 attorney, counsel for the minor, or the court for the limited purpose
10 of determining an appropriate juvenile court disposition. Access,
11 inspection, or use of a sealed record as provided under this
12 subparagraph shall not be construed as a reversal or modification
13 of the court's order dismissing the petition and sealing the record
14 in the prior case.

15 (E) Upon the prosecuting attorney's motion, made in accordance
16 with Section 707, to initiate court proceedings to determine whether
17 the case should be transferred to a court of criminal jurisdiction,
18 by the probation department, the prosecuting attorney, counsel for
19 the minor, or the court for the limited purpose of evaluating and
20 determining if such a transfer is appropriate. Access, inspection,
21 or use of a sealed record as provided under this subparagraph shall
22 not be construed as a reversal or modification of the court's order
23 dismissing the petition and sealing the record in the prior case.

24 (F) By the person whose record has been sealed, upon his or
25 her request and petition to the court to permit inspection of the
26 records.

27 (G) By the probation department of any county to access the
28 records for the limited purpose of meeting federal Title IV-B and
29 Title IV-E compliance.

30 (H) The child welfare agency of a county responsible for the
31 supervision and placement of a minor or nonminor dependent may
32 access a record that has been ordered sealed by the court under
33 this section for the limited purpose of determining an appropriate
34 placement or service that has been ordered for the minor or
35 nonminor dependent by the court. The information contained in
36 the sealed record and accessed by the child welfare worker or
37 agency under this subparagraph may be shared with the court but
38 shall in all other respects remain confidential and shall not be
39 disseminated to any other person or agency. Access to the sealed
40 record under this subparagraph shall not be construed as a

1 modification of the court's order dismissing the petition and sealing
2 the record in the case.

3 (I) *By the prosecuting attorney for the evaluation of charges*
4 *and prosecution of offenses pursuant to Section 29820 of the Penal*
5 *Code.*

6 (J) *By the Department of Justice for the purpose of determining*
7 *if the person is suitable to purchase, own, or possess a firearm,*
8 *consistent with Section 29820 of the Penal Code.*

9 (2) When a record has been sealed by the court based on a
10 dismissed petition pursuant to subdivision (e), the prosecutor,
11 within six months of the date of dismissal, may petition the court
12 to access, inspect, or utilize the sealed record for the limited
13 purpose of refile the dismissed petition based on new
14 circumstances, including, but not limited to, new evidence or
15 witness availability. The court shall determine whether the new
16 circumstances alleged by the prosecutor provide sufficient
17 justification for accessing, inspecting, or utilizing the sealed record
18 in order to refile the dismissed petition.

19 (3) Access to, or inspection of, a sealed record authorized by
20 paragraphs (1) and (2) shall not be deemed an unsealing of the
21 record and shall not require notice to any other agency.

22 (h) (1) This section does not prohibit a court from enforcing a
23 civil judgment for an unfulfilled order of restitution ordered
24 pursuant to Section 730.6. A minor is not relieved from the
25 obligation to pay victim restitution, restitution fines, and
26 court-ordered fines and fees because the minor's records are sealed.

27 (2) A victim or a local collection program may continue to
28 enforce victim restitution orders, restitution fines, and court-ordered
29 fines and fees after a record is sealed. The juvenile court shall have
30 access to records sealed pursuant to this section for the limited
31 purpose of enforcing a civil judgment or restitution order.

32 (i) This section does not prohibit the State Department of Social
33 Services from meeting its obligations to monitor and conduct
34 periodic evaluations of, and provide reports on, the programs
35 carried under federal Title IV-B and Title IV-E as required by
36 Sections 622, 629 et seq., and 671(a)(7) and (22) of Title 42 of the
37 United States Code, as implemented by federal regulation and state
38 statute.

- 1 (j) The Judicial Council shall adopt rules of court, and shall
- 2 make available appropriate forms, providing for the standardized
- 3 implementation of this section by the juvenile courts.

O