

# A Study of Juvenile Record Sealing Practices in California

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Section 781 of the Welfare and Institutions Code<sup>1</sup> permits persons who acquired records as juveniles to petition the juvenile court to have those records sealed. The policy underlying the law is to provide young persons an opportunity to begin their adult lives without the stigma of a juvenile record. The

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1. CAL. WELF. & INST. CODE §§ 781 (West Supp. 1977), appears in Appendix A. All references to statutory sections are to the Welfare and Institutions Code unless indicated otherwise.

importance of this section to a young person's future<sup>2</sup> cannot be over-estimated because the exposure of a juvenile record can have a detrimental effect upon a person's ability to secure employment and positions of trust<sup>3</sup> as well as his ability to avoid a life of criminality.<sup>4</sup> .

So little is known about the operation of section 781 that it is impossible to judge how the statute has been utilized by young persons throughout California. In this paper we propose to examine the operation of section 781 in detail. After a description of the ways in which records are created and maintained and the ways in which records can be harmful to a person's efforts to lead a productive adult life, the paper will focus upon data

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2. Unfortunately, this Section has been ignored by many who are responsible for the supervision and shaping of juvenile court practices and policies. For instance the recently written Juvenile Court Rules designed to "apply to every action and proceeding to which the juvenile court law applies" contains no reference to this aspect of juvenile court proceedings. See JUVENILE COURT RULES, Judicial Council of California, Advisory Committee, Juvenile Court Rules Project, 1976, effective July 1, 1977. See also, Title 4 SPECIAL RULES FOR TRIAL COURTS §§ 44.5 et seq. (Administrative Offices of Cal. Courts, effective July 1, 1977).

3. See Balch, *Negative Reactions to Delinquent Labels in a Junior High School* (1972), (unpublished Ph. D. Dissertation in University of Oregon Library) reported in Mahoney, *Effect of Labelling Upon Youths*, 8 LAW & SOC'Y REV. 583, 600 (1974); Buikhuisen and Kijksterhuss, *Delinquency and Stigmatization*, BRITISH J. CRIMINOLOGY 185 (1971); Horvitz, *The Expungement of Records: Post Acquittal Recourse for Youthful Offenders*, 1 JUST. SYST. J. 60, 60-68 (1975); Lemert, *The Juvenile Court—Quest and Realities*, TASK FORCE REPORT: JUVENILE DELINQUENCY AND YOUTH CRIMES, PRESIDENTIAL COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE 92-93 (1967); Hayden, *How Much Does the Boss Need to Know*, 3 CIV. LIB. REV. 23, 23-24 (1976); Melicherik, *Employment Problems of Former Offenders*, 2 NAPP A J. 43 (1956); S. RUBINS, THE LAW OF CRIMINAL CORRECTIONS, 725-727 (1973); Schiavo, *Condemned by the Record*, 55 A.B.A. J. 541 (1969); Schrag & Divoky, THE MYTH OF THE HYPERACTIVE CHILD, 191-200 (1975); Swartz & Skolnick, *Two Studies in Legal Stigma*, 10 SOC. PROB. 133, 135 (1952); TOWARD UNITY: CRIMINAL JUSTICE AND CORRECTIONS DEPT' OF CANADIAN COMM. ON CORRECTIONS, 407-412 (1969) reprinted in THE CRIMINAL IN CONFINEMENT 47-51 (— Radzinowicz & — Wolfgang eds. (1971)); PRESIDENTIAL COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE THE CHALLENGE OF CRIME IN A FREE SOCIETY 74-77 (1967); Wallerstein, *Testing Opinion of Causes of Crime*, 28 FOCUS 103 (1949). Menard v. Mitchell, 403 F.2d 286, 493-494 (D.C. Cir. 1969).

4. TASK FORCE REPORT, *supra* note 3 at 74-76. In the Task Force Report the authors point out that the stigma of a juvenile record can not only limit vocational opportunities, but it can lower the aspirations and expectations of record holders to the extent that their unemployment may be a self-fulfilling prophecy leading to a life of vice, criminality or a retreat from conventional society. See also Bazelon, *Racism, Classism, and the Juvenile Process*, 53 JUDICATURE 373 (1970).

To brand a child a criminal for life is harsh enough retribution for almost any offense. But it becomes an all but inconceivable response when we realize that to so brand him may in fact make him a criminal for life. The stigma of a criminal conviction may itself be a greater handicap in later life than an entire misspent youth.

collected from many of the juvenile probation departments in California. The data reveal the practices of these departments in implementing the statute and also contain implicit and explicit criticisms of the law. The final section will include an alternative approach to the present system of record sealing.

#### TERMINOLOGY

Perhaps there is no area of the law in which terminology has been used with less precision than in the law relating to the sealing of records.<sup>5</sup> Commentators and those who are responsible for the supervision of records as well as the public use different terms interchangeably without regard for their technical meanings. For the purposes of clarity certain terms will be defined at the outset.<sup>6</sup>

record—an account of some fact or event preserved in writing or other permanent form; a document on which such an account is inscribed.

destroy—to put a thing out of existence.

expunge—to strike out, blot out, erase.

seal—to close by any kind of fastening that must be broken before access can be obtained.

#### THE CREATION AND MAINTENANCE OF JUVENILE RECORDS

Numerous kinds of juvenile records are created daily.<sup>7</sup> For the minor who is stopped for a suspected law violation, warned

5. For a thorough criticism of the misuse of this language see Kogan & Loughery, Jr., *Sealing and Expunging of Criminal Records—The Big Lie*, 61 J. CRIM. L., CRIMINOLOGY & POLICE SCI. 378, 392 (1970). See also, Gough, *The Expungement of Adjudication Records of Juvenile and Adult Offenders: A Problem of Status*, 1966 WASH. U.L.O. 148, 149-150 (1966).

6. These definitions are derived from the OXFORD ENGLISH DICTIONARY, Oxford University Press, 1971. For a lengthy discussion of these terms, see Kogan & Loughery, Jr., *id.* at 379-381.

7. A brief overview of the structure of the juvenile justice system may clarify the following discussion.

In a delinquency matter (CAL. WELF. & INST. CODE § 602 (West Supp. 1977)). The peace officer having contact with the minor has several options open to him. He may warn and release the minor or arrest him and take one of the following steps: cite him to appear at the juvenile probation department; refer him to a Youth Service Bureau, or book him in at juvenile hall (CAL. WELF. & INST. CODE § 626 (West Supp. 1977)). If cited the minor will appear at the juvenile probation department for an interview. At that time the probation officer may settle the matter by any of the following procedures. First, he may refer the case to another agency. Second, he may close the case at intake. Third, he may place the minor on informal supervision (CAL. WELF. & INST. CODE § 654 (West Supp. 1977)). Fourth, he may request that the district attorney file a petition on the

by the police and then released without an arrest or further action, there may be a report made and kept in the police files. If the minor was detained in a store or company (for petty theft, for instance) the store might keep a record of the incident. If the case involved a motor vehicle, the Department of Motor Vehicles will be informed of the situation and they will keep a record of the incident. The minor's school may also have a record of the case, particularly if the matter was school-related.

An arresting police officer may decide to cite the minor and inform him of his obligation to appear before the probation department.<sup>8</sup> A record of that contact will also be made. If the officer takes the minor to a police station, booking procedures including fingerprinting, photographing and the collection of

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minor's behalf. If arrested and booked the minor must be taken to juvenile hall (CAL. WELF. & INST. CODE § 626 (West Supp. 1977)). There the intake probation officer has the same options the probation officer had at the citation hearing, and, in addition, he must decide whether to detain the minor in juvenile hall pending determination of the matter. The detained minor will have the right to a detention hearing to determine his status as well as shorter time limits in which the probation department and district attorney must take action against him (CAL. WELF. & INST. CODE §§ 626, 630, 632 (West Supp. 1977)).

If a petition is filed the matter will be heard in the local juvenile court before a Superior Court Judge, a Commissioner or a referee (CAL. WELF. & INST. CODE §§ 551-554 (West 1972)).

If the minor is sixteen or seventeen at the time of the alleged offense, he may be found unfit for juvenile court and his case may be referred to the courts of criminal jurisdiction for prosecution (CAL. WELF. & INST. CODE § 707 (West Supp. 1977)). If the case proceeds to the jurisdictional stage, the minor may admit the allegations contained in the petition or deny them and have a jurisdictional hearing (CAL. WELF. & INST. CODE §§ 650-655, 701 (West Supp. 1977)). If jurisdiction is found, the case proceeds to the dispositional hearing (CAL. WELF. & INST. CODE § 702 (West Supp. 1977)). At this stage the judge will consider a social report prepared by the probation department and decide what should be done with the minor. A wide range of alternatives is possible from dismissal of the case or return of the minor home on probation to placement of the minor in a foster home, a local ranch or at the California Youth Authority. Supplemental and review proceedings are possible thereafter, (CAL. WELF. & INST. CODE §§ 729, 777-779 (West 1972)), as in an appeal of the findings of the judge (CAL. WELF. & INST. CODE § 800 (West Supp. 1977)).

A case arising under Section 601 may have many of the same stages as in a Section 602 matter, however, there are some important differences. No minor arrested pursuant to Section 601 may be detained in a secure detention facility (CAL. WELF. & INST. CODE § 506 (West 1972)). Moreover, a school-related case such as truancy must be referred to the local School Advisory Review Board (SARB) before it can be petitioned in the juvenile court (CAL. WELF. & INST. CODE §§ 601.1, 601.2 (West Supp. 1977)).

Matters relating to Section 300 also involve many of the same stages and procedures. One important difference in cases arising under this section is that the minor who is in need of protection will be kept at a shelter facility instead of at juvenile hall (CAL. WELF. & INST. CODE § 506 (West 1972)).

Traffic matters resemble delinquency cases except that the minor is usually cited and then appears before the traffic hearing officer for trial. Only if the case is serious will it result in a formal petition being filed (CAL. WELF. & INST. CODE §§ 560-564 (West 1972)).

8. See CAL. WELF. & INST. CODE § 626(b) (West Supp. 1977).

certain information may be completed. The booking information will be kept by the local police agency and copies may be sent to the Federal Bureau of Investigation in Washington, D.C. and to the Bureau of Criminal Identification and Investigation in Sacramento, California.<sup>9</sup>

After an arrest the police officer will generally deliver the minor to the juvenile probation department.<sup>10</sup> There another record is created as the intake probation officer talks the matter over with the minor and his parents. If no further action is to be taken, the minor will be released and the record will reflect an intake disposition of the case.<sup>11</sup> The intake officer may decide the minor is eligible for some type of diversion program and refer the minor to the department or agency administering that program.<sup>12</sup> Finally the intake officer may refer the matter to the District Attorney for the filing of a petition.<sup>13</sup> If a petition is filed a juvenile court record will be created and it will reflect the outcome of all the subsequent court proceedings.

Different records of the minor's involvement in the juvenile justice system will be created and maintained by any detention facility in which he may be placed. If mental health or hospital services are required in connection with his case, county mental health or hospital facilities will have appropriate records. Even the attorneys who may be involved in the case (usually the District Attorney and the Public Defender or court-appointed counsel) will have records of the court proceedings in the minor's name.

As a result of the court proceedings, if the minor is not returned home, he may be placed into a foster home, a group home, a private or public institution, a camp or ranch, or at the California Youth Authority. Each of these maintain records relating to the minor.

All of these potential records arise from a delinquency case.<sup>14</sup>

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9. The records may also be transferred to the Computerized Criminal History system (CCH), See Hayden, *supra* note 3, at 30.

10. See CAL. WELF. & INST. CODE § 626(c) (West Supp. 1977).

11. See CAL. WELF. & INST. CODE § 654 (West Supp. 1977).

12. *Id.*

13. Under the current (1977) law the district attorney is the petitioner in all juvenile court delinquency matters. See, CAL. WELF. & INST. CODE § 650(b) (West Supp. 1977).

14. CAL. WELF. & INST. CODE § 602 (West Supp. 1977):

It is also possible to create records pertaining to minors who are beyond control of their parents, truant from school, or who have run away. This type of behavior is described in Section 601 of the Welfare and Institutions Code.<sup>15</sup> The police, the juvenile probation department, non-secure detention facilities,<sup>16</sup> the courts, the attorneys and the placement facilities are among some of the agencies that may have records relating to this kind of behavior.

Even minors who are allegedly the victims of parental neglect or abuse, so-called dependent children,<sup>17</sup> have records. Again the police who detect the potential problem, the juvenile probation department that screens and investigates the family situation, the court that hears the case and the different facilities and agencies that may render assistance to the minor will all have records relating to the minor and the particular case.<sup>18</sup>

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Any person who is under the age of 18 years when he violates any law of this state or of the United States or any ordinance of any city or county of this state defining crime other than an ordinance establishing a curfew based solely on age, is within the jurisdiction of the juvenile court, which may adjudge such person to be a ward of the court.

15. (a) Any person under the age of 18 years who persistently or habitually refused to obey the reasonable and proper orders or directions of his parents, guardian, or custodian, or who is beyond the control of such person, or who is under the age of 18 years when he violated any ordinance of any city or county of this state establishing a curfew based solely on age is within the jurisdiction of the juvenile court which may adjudge such person to be a ward of the court.

(b) If a school attendance review board determines that the available public and private services are insufficient or inappropriate to correct the habitual truancy of the minor, or to correct the minor's persistent or habitual refusal to obey the reasonable and proper orders or directives of a school attendance review board or to services provided, the minor is then within the jurisdiction of the juvenile court which may adjudge such person to be a ward of the court; provided, that it is the intent of the Legislature that no minor who is adjudged a ward of the court pursuant solely to this subdivision shall be removed from the custody of the parent or guardian except during school hours.

16. As of 1977 a minor accused of conduct that would bring him within the description of Section 601 must be detained in a non-secure detention facility.

17. CAL. WELF. & INST. CODE § 300 (West Supp. 1977)

Any person under the age of 18 years who comes within any of the following descriptions is within the jurisdiction of the juvenile court which may adjudge such person to be a dependent child of the court.

(a) Who is in need of proper and effective parental care or control and has no parent or guardian, or has no parent or guardian willing to exercise or capable of exercising such care or control, or has no parent or guardian actually exercising such care or control.

(b) Who is destitute, or who is not provided with the necessities of life, or who is not provided with a home or suitable place of abode.

(c) Who is physically dangerous to the public because of a mental or physical deficiency, disorder or abnormality.

(d) Whose home is an unfit place for him by reason of neglect, cruelty, depravity, or physical abuse of either of his parents, or of his guardian or other person in whose custody or care he is.

18. This brief summary of the persons and agencies who might have records pertaining to juveniles is not exhaustive. It should, however, give an indica-

The number of records will be greatly increased if the case arises in one county and then has to be transferred to a second county.<sup>19</sup> When a case is transferred, each parallel agency in the second county may record the events surrounding the case.

#### ACCESS TO JUVENILE RECORDS

"[I]t is frequently said that juveniles are protected by the process from disclosure of their deviational behavior . . . . This claim of secrecy, however, is more rhetoric than reality."<sup>20</sup>

California law restricts access to juvenile court records and juvenile probation department documents relating to minors.<sup>21</sup> The law further declares that juvenile records held by law enforcement agencies must be kept confidential.<sup>22</sup>

Despite these efforts to insure the confidentiality of juvenile records, the law permits numerous agencies to have direct ac-

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tion of the numbers of potential record holders and the consequent difficulties in limiting access to these records.

19. See generally, sections 750-755 and 567 for the code sections describing transfer proceedings.

20. *In re Gault*, 387 U.S. 1, 24 (1967).

21. CAL. WELF. & INST. CODE § 827 (West Supp. 1977) limits access to court records to "court personnel, the minor who is the subject of the proceeding, his parents or guardian, the attorneys for such parties, and such other persons as may be designated by court order of the judge of the juvenile court upon filing a petition therefor."

22. CAL. WELF. & INST. CODE § 828 (West Supp. 1977) limits dissemination of information gathered by a law enforcement agency relating to a minor taken into custody to "another law enforcement agency, or to any person or agency which has a legitimate need for the information for purposes of official disposition of a case." See also, *T.N.G. v. Superior Court*, 4 Cal. 3d 767, 484 P.2d 981, 94 Cal. Rptr. 813 (1971). As a result of the ruling in this case many Superior Courts in California issued court orders listing the persons and agencies to whom law enforcement agencies might release information concerning juvenile arrests. These orders typically listed the parties to whom a release of information might be made and forbade any other dissemination. See the court order of Judge John M. Brenner, December 13, 1971, filed in the Santa Clara County Superior Court. Some of those who might officially have access to a minor's record held by a law enforcement agency include the minor, the minor's attorney, the local district attorney, all law enforcement agencies who require it for investigation or reporting purposes, the adult and juvenile probation departments, court personnel, the department of social services, the parents or guardian of the minor, the school attended by the minor, victims or parents of victims of juvenile crime who wish to pursue the enforcement of civil liability, hospitals, schools, camps, job corps, ranches or placement agencies which require the information for the placement, treatment or rehabilitation of the minor, the persons entitled thereto under Vehicle Code Sections 20003-20012, any coroner, the CII and the FBI. See also, Schrag and Divoky, *supra* note 3 at 194.

cess to them, and many agencies and private parties have the means of finding out about these records in spite of the law.<sup>23</sup>

That is not to say that much record dissemination does not come from the minor or young adult himself. Often the employment or military interview includes such questions as "Have you ever been arrested?" or "Have you ever had your record sealed?" The applicant may be caught on the horns of a dilemma if the interviewer adds that a lie by the applicant discovered later will result in a termination of the employment/military career. A truthful answer may limit his employment opportunities now while an untruthful answer may well end his employment in the future.

It is important to appreciate the wide dissemination of juvenile records and the ease with which they can be discovered because the existence of such a record will, if revealed, have generally detrimental results for the minor in his efforts to secure employment and to become a law-abiding member of society. Several studies have been made concerning the effects upon employment opportunities of both juvenile and criminal records. They indicate without exception that the record will limit the applicant's opportunity to secure a job.<sup>24</sup> Moreover, the

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23. See also, Hayden, *supra* note 3 at 31, who reports:

But an absence of effective enforcement and sanctions has allowed virtually unfettered dissemination of criminal records far beyond the "authorized" community: to private employers, landlords, credit reporting agencies, educational institutions, insurance companies, newspaper reporters, and all manner of social service agencies, both public and private. Almost anyone who cares to make the effort can get another person's criminal record.

Note also that the dissemination and access aspects of juvenile records are changing rapidly as a result of the computers. For an indication of the problems related to the use of computers see, *The Computerization of Government Files: What Impact on the Individual*, 15 UCLA L. REV. 1374 (1968) and Baugher, *Interagency Information Sharing: A Legal Vacuum*, 9 SANTA CLARA LAW. 301 (1969). On the unauthorized access to juvenile records, see, Schrag and Divoky, *supra* note 3 at 195-96.

24. See generally the articles cited in note 3, *supra*. Even the California Appellate Courts have pointed out the stigmatized effects of a juvenile record. See, *In re Contreras*, 109 Cal. App.2d 787, 789, 241 P.2d 631, 633 (1952); cited in *People v. Dotson*, 46 Cal.2d 891, 899, 299 P.2d 875, 880 (1956) and *In re Poff*, 135 F. Supp. 224, 227 (D.D.C. 1955).

While the juvenile court law provides that adjudication of a minor to be a ward of the court shall not be deemed to be a conviction of crime, nevertheless, for all practical purposes, this is a legal fiction, presenting a challenge to credulity and doing violence to reason. Courts cannot and will not shut their eyes to everyday contemporary happenings.

It is common knowledge that such an adjudication when based upon a charge of committing an act that amounts to a felony, is a blight upon the character of and is a serious impediment to the future of such minors. Let him attempt to enter the armed services of his country or

studies suggest that the nature of the record is not as significant to the prospective employer as is its mere existence.<sup>25</sup>

#### THE CALIFORNIA STATUTE

The California legislature recognized the importance of protecting minors from the lasting effects of juvenile records when it passed Welfare and Institutions Code Section 781 (then 752)<sup>26</sup> in 1959. The purpose of the statute was evident.

This Section has been called a clear statement of the legislative policy to grant the errant juvenile a clean slate if he grows into a law-abiding adult.<sup>27</sup>

The original statute permitted only certain kinds of records to be sealed, those of persons who "became a ward of the juvenile court for the reasons described in Section 601 or Section 602." Amendments in 1963, 1965 and 1967 have added several categories of records to the statute so that today minors who have been taken before or cited to appear before a probation officer pursuant to Section 626, and minors taken before an officer of a law enforcement agency as well as dependent children are permitted to petition the juvenile court to have their records sealed.<sup>28</sup> These amendments reflect the recognition that the record of an informal or dependency proceeding can be as harmful to the young adult as the record of a delinquency court proceeding.<sup>29</sup>

The law now permits a person or the county probation department,<sup>30</sup> upon his eighteenth birthday or five years after the

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obtain a position of honor and trust and he is immediately confronted with his juvenile court record.

25. [T]he fact that the index provides only limited information is no deterrent against bias by employers, military recruiters or insurance companies; the existence of the "record" is in itself usually enough to slam the doors, particularly if the individual was once associated with a criminal offense. Schrag and Divoky, *supra* 3 at 196.

*See also*, Schwartz and Skolnick, *supra* note 3, who report that prospective employers when considering applicants have a negative response to persons who were accused but acquitted of a criminal charge.

26. No doubt these changes were made partly in response to the excellent criticisms of Gough, *Sealing of Juvenile Records: A Clean State?* 3 SANTA CLARA LAW. 119, 120-121 (1963).

27. 40 OP. CAL. ATT'Y GEN. 50, 52 (1962).

28. Former CAL. WELF. & INST. CODE § 752 (West Supp. 1977) was added by CAL. STAT. ch. 1723 p. 4132 (1959).

29. *See supra* note 25.

30. Although the statute permits the probation department to petition on

event to petition the court for sealing of the juvenile record. Notification must be given to the district attorney, the county probation officer and anyone else having relevant evidence concerning the petition. If, after the hearing, the court determines that the minor has not been convicted of a felony or a misdemeanor involving moral turpitude<sup>31</sup> and, further, that he has been rehabilitated, the court then orders sealing of the court records and any records in the custody of other agencies and officials named in the order. Thereafter, the proceedings in the case are deemed never to have occurred and the person may reply accordingly to any inquiry about the events sealed. The court also sends a copy of the order to each agency and official in the order and directs them to seal the records as ordered. The agencies are then to send back notice of compliance.

The sealed records may be unsealed for inspection only upon an action based upon defamation as described in 781(b). Even under this subsection the unsealed material shall be available for inspection only by the court, jury, parties, counsel for the parties, and any other persons who are authorized by the court to inspect them.

### *Section 781 in Operation*

It is difficult to know how Section 781 is being carried out in California. The statute leaves much to the discretion of the county probation departments and the juvenile court judges. It is left to the minor to initiate the proceedings. The entire process has been described as complicated,<sup>32</sup> yet no one seems to know how well it is working across the state. No statistics are published concerning the petitioning procedures and persons who utilize the sealing procedures. Numerous questions remain unanswered among them the following:

- (1) Are minors notified of their rights pursuant to Section 781? If they are given notice, at what stage of the proceedings is it given and in what form is it presented to them?

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behalf of the minor, the data reveal that no probation department initiates record sealing without first being asked by the minor.

31. Moral turpitude has been held to include crimes involving infamy (In re Rothrock, 16 Cal.2d 449, 106 P.2d 907 (1940)), depravity (In re Boyd, 48 Cal.2d 69, 302 P.2d 625 (1957)), or "intentional dishonesty for purposes of personal gain." (In re Halliman, 43 Cal.2d 243, 247-248, 272 P.2d 768, 771 (1954)). The last category is the most frequently applied. The crimes usually mentioned are bribery, forgery, theft, extortion, fraud, or misappropriation of funds.

32. Expunging (sic) records is not the simple operation it may seem. In California it requires initiative from the party concerned and usually the assistance of an attorney; the procedure necessitates a hearing, and it may be complicated or impossible if a person has been a juvenile ward in more than one county. Lemert, *supra* note 3 at 93.

- (2) Are there certain categories of minors (delinquents, cases settled informally, etc.) which are less likely to receive notice of their rights than others?
- (3) Are steps taken to remind minors of their rights pursuant to Section 781 upon their reaching the age of 18 or 5 years after the case has ended?
- (4) How difficult is it for minors to take advantage of Section 781? Does a minor's likelihood of utilizing the Section depend on which county he lives in?
- (5) Do probation departments ever initiate record sealing on their own motion?
- (6) Is there a more efficient and effective means of accomplishing the policies of Section 781?

It was with these questions in mind that the following data were collected.

### THE DATA

#### *Procedure*

A questionnaire concerning juvenile record sealing procedures was sent to all fifty-eight juvenile probation departments in the state of California. Fifty-two departments responded, often attaching additional information and relevant documents to the questionnaire.<sup>33</sup> The responding counties represent 98.3% of the state population including all counties with over 1 million in population.<sup>34</sup>

The questionnaire was sent out under the auspices of the Santa Clara County Bar Association and was typically filled out by the head of the juvenile probation department or the person assigned to record sealing in the department. The areas of inquiry covered in the questionnaire included how juvenile records are kept, how minors are advised of their rights under Welfare and Institutions Code Section 781, what procedures are

33. The counties responding included Los Angeles, Tulare, Marin, Kern, Imperial, Yolo, San Benito, Tuolumne, Plumas, Merced, Butte, Placer, Sutter, San Joaquin, Tehama, Colusa, San Francisco, Yba, Trinity, Santa Cruz, San Diego, Riverside, Glenn, San Bernardino, Madera, Stanislaus, Nevada, Sonoma, Amador, Alpine, San Mateo, Lake, Kings, Del Norte, Monterey, Mariposa, Fresno, Lassen, Sacramento, Ventura, San Luis Obispo, El Dorado, Santa Clara, Mendocino, Humboldt, Alameda, Orange, Solano, Modoc, Contra Costa, Shasta, and Wapa. The counties that did not respond were Calaveras, Inyo, Mono, Siskiyou, Santa Barbara and Sierra.

34. In all there were five counties with a population of 1,000,000 and over; six counties with a population of 500,000 and over; nine counties with a population between 200,000 and 500,000; seven counties with a population between 100,000 and 200,000; seven counties with a population between 50,000 and 100,000; six counties with a population between 25,000 and 50,000; seven counties with a population of between 10,000 and 25,000; and five counties with a population under 10,000. All population estimates are based upon the census reports in UCR Program Report—*Crimes and Arrests*, Cal. Dept. Justice (1974).

followed to petition the court for record sealing, what steps are taken to implement a court order to seal, and, finally, what types of juveniles and how many of each type are granted a sealing of their records.<sup>35</sup>

### *How Records Are Kept*

All fifty-two departments reported that they keep records of minors who are referred to their department whose cases never go to court, of minors who do go to court, and of minors who are placed in institutions or foster homes as a result of a court order. All departments answered that the record keeping included cases of children who fall within the description of Sections 602 and 602 of the Welfare and Institutions Code. Records of children who fall within the description of Section 300 (previously 600) were included in twenty-six of the departments, while most of the remainder stated that the Social Services Department maintained records of these cases.

The data show a great deal of variation with respect to how long records are kept. Twenty counties responded that they keep juvenile records indefinitely.<sup>36</sup> Twenty-four counties reported that they keep all records for five years, while one county stated it keeps all records for three years and one county reported ten years. Finally, some counties keep records according to the minor's age rather than the number of years expired. One county keeps all records until the minor's 18th birthday, two counties keep the records until the 18th birthday for informal cases and until the 25th birthday for formal cases, and one county keeps informal records until the 18th birthday and all other records for five years.

How probation departments dispose of the records they do not maintain also varies. Some counties report that all records are burned, some say purged, some say sealed, and five counties say "destroyed, except for an index card." We compared this data with population size of the counties and found no correlation. The suspected tendency for larger counties to dispose of their records more quickly because of their heavy paper load was not supported by the data.<sup>37</sup>

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35. A copy of the questionnaire is available upon request from the author.

36. Five of these counties destroy the actual records after five years, but keep index cards of records indefinitely.

37. In the counties of 1,000,000 and over, two counties keep records indefinitely, two for five years and one until age 18 for informal cases and until age 25 for formal cases. In counties between 500,000 and 1,000,000, five counties keep records indefinitely, four for five years, and one until the 18th (informal cases)

*Advisement Practices*

Section 781 does not expressly require that the probation department or law enforcement personnel inform the minors with whom they come into contact that their juvenile records can be sealed. Most probation departments require the minor himself to request sealing.<sup>38</sup> Thus in order for a minor to have his record sealed it is important that he first be advised of his rights pursuant to Section 781.

In spite of the obvious importance of this notice to the minor, our data indicate that there are differences as to which minors are advised of their sealing rights, at what time they are advised, and in what form they are notified. Several departments indicate that there are no set procedures for giving information about Section 781. One county reported that the matter only comes up when the parents of the minor raise the question, and three counties said that the information is given, "but not with any consistency."

*Who Receives Information About Section 781?*

Forty-one counties responded that minors who have contact with the department but who never go to a court hearing (informal cases) are advised of their rights under Section 781. Seven counties do not give such advisement to this category of minor, two counties advise such minors sometimes, and one county gives advice only when the matter is raised. It is interesting to note that minors who go to court but who are not placed on probation or made wards or dependents of the court are less frequently advised of their rights pursuant to 781 than are the informal cases. Thirty-nine counties give such minors information about Section 781. Three counties give it sometimes, and nine do not give advice at all. Among those counties which do not advise this category of minor, a frequent comment was that

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and 25th (formal) birthday. In the counties with less than 500,000, eighteen keep records from three to ten years, but twelve keep records indefinitely, five keep index cards indefinitely, but destroy the actual records after five years, and two keep informal cases until the 18th and formal cases until the 25th birthday. One county keeps formal cases indefinitely and destroys the informal case records after five years.

38. No probation department reported that it would initiate a petition to seal without the minor first requesting such action.

“the probation officer will have no more contact with the minor after the case is dismissed and he is hard to reach.” In contrast, forty-eight counties give advice concerning 781 to minors who have been placed on formal the court, while only three do not. Again one county gives such advice only when the question is raised. It appears that the more involved the minor becomes in the formal juvenile justice system, the more likely he is to be informed of Section 781, while those who are less involved in the juvenile justice system (the less serious cases) are less likely to be informed.<sup>39</sup>

*In What Form Is The Advice Given?*

The form of the advisement can effect the minor’s ability to recall his rights when the time comes to petition for record sealing. A written notice or a form letter is probably superior to oral notice which may be forgotten during the stress of an interview or court session. Thornhill found that of the forty California counties responding to his questionnaire, twenty-five did not require specific written notice be given to minors concerning their rights pursuant to Section 782.<sup>40</sup> His data revealed that eleven counties used written notice while twenty-five indicated they notify orally. The data did not indicate whether there was any difference between informal and formal cases.

Our data show the frequency of oral and written notice of Section 781 rights in informal and formal cases.

TABLE 1  
*Type of Advisement About Record Sealing-Formal and Informal Cases*  
Type of Case

Type of Advice	Type of Case	
	Informal	Formal
Oral	36	29
Written	5	16
Both	2	5
Total	43*	50**

\* One county gives information only when the question is raised; eight counties give no information at all.

\*\* One county gives information only when asked; one county gives no information.

39. Our data does not reveal the extent to which minors stopped in the field and never taken to the juvenile probation department receive any notification at all concerning their rights pursuant to Section 781. In the authors’ experience it would indeed be rare that an officer would make such an advisement. It is also clear that these contacts might not create harmful records, refer to Schrag and Divoky, *supra* note 3 at 191-192.

40. Thornhill, *Inadequacies of the Juvenile Sealing Procedure in California*, 7 CAL. WESTERN L. REV. 421, 421-437 (1971).

Table 1 shows that the majority of counties give oral advice to minors concerning their rights pursuant to Section 781 and that minors with formal cases are more likely to receive written notice of Section 781 than are minors with informal cases. The table indicates that minors with the more serious cases receive more frequent and substantial advice than those with less serious cases. The data further reveal that counties that inform minors orally were also more likely to give the advisement sporadically or inconsistently.<sup>41</sup>

#### *At What Time Is The Advisement Given?*

The timing of the advisement may also effect the minor's ability to take advantage of the statute. A minor who is informed at the beginning of his case may forget his rights during the proceedings and the months or years that follow before he becomes eligible to petition for record sealing. Our data show that in informal cases ten counties stated they give verbal advice at intake, five stated they give verbal advice at dismissal, and four stated they give both oral and written advice upon termination of the case, or at "the time of action."<sup>42</sup>

Regarding formal cases, fourteen counties stated they send out written notice at dismissal and one at intake. Among those counties that give verbal notice in formal cases, five give this notice at intake, one at dismissal, and six both at intake and dismissal.<sup>43</sup> These results reveal little uniformity and again suggest that minors with more serious cases are more likely to receive written notice at the time of dismissal than are minors with less serious cases.

The most effective time to inform minors about their record sealing rights would seem to be when they reach the age of eighteen or five years after the jurisdiction of the court has ended. Receipt of notice at this time would permit the minor to take advantage of the statute immediately. We asked if the probation departments had any means of keeping track of minors' ages and addresses so that upon reaching their eighteenth birth-

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41. Five counties stated the minors received oral advice "not as standard procedure," "not with any regularity," "sometimes," "not with any consistency," and "it varies with the individual case."

42. Not all counties provided information on this question.

43. Again not all counties provided information on this question.

day or five years after the case had ended they could be advised of their rights pursuant to Section 781. Ten counties answered yes to this question, forty one answered no, and one did not answer. Both counties that answered yes and no often commented that minors are advised about Section 781 at the termination of their case. No county indicated that it did in fact keep track of minors' addresses and advise them of their record sealing rights when they became eligible. Most counties said that although they would know when the minor turned eighteen they would not know his whereabouts at that time. Eight counties responded that Section 781 does not require such advisement, and that it was not the responsibility of the probation department to give such advice. A typical response to our question was this:

We feel that it is the responsibility of the person wanting his records sealed to take the initiative to ask for such action. To try to notify all those persons referred to us upon reaching their 18th birthday would be impossible as their whereabouts at that time may be entirely different than at the time the department was involved with them, not to mention the monumental amounts of staff and money required to even attempt such an undertaking.

The smaller counties, on the other hand, claim that they are able to keep track of the minor's age and address through the local "grapevine." Not even the small counties indicated they would remind a minor of his rights when the minor reached his eighteenth birthday.

Finally, we asked whether a minor who moves out of the jurisdiction of the juvenile probation department is thereafter advised of his rights pursuant to Section 781. To this question seventeen counties answered yes and thirty-one answered no.<sup>44</sup> Again no probation department indicated it would do anything more than advise the minor of his rights at the termination of his case, if this should come before moving. Many counties stated that this was either the minor's own problem or the responsibility of the new jurisdiction.

We attempted to determine whether the county population might effect the advisement procedures. The data reveal that the larger counties are more likely to employ form letters than are the smaller counties.<sup>45</sup> We could find no other correlation between population and advisement procedures.

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44. A "yes" answer, therefor, may not mean that the minor is tracked down and advised upon reaching his 18th birthday, but only that he is advised at the termination of his case.

45. One county reported that there is no advisement of minors unless they bring up the matter themselves.

In summary, for a minor to have his record sealed, it is important that he be informed of his rights pursuant to Section 781. Our data show that the more contact a minor has with the juvenile justice system and the more formalized the contact, the more likely he is to be given notice of his rights, and the more likely the advisement will be in a written rather than a verbal form. We shall see later that this also results in more record sealing efforts by minors with frequent contact with the probation department than by minors with little contact.

### *Implementation of Section 781*

Whether or not the minor has been advised of his rights pursuant to Section 781, he must request that his records be sealed. Thereafter an elaborate implementation procedure begins. Forty-two counties reported they have a special division or person in the juvenile probation department who has responsibility for the implementation of Section 781, while nine do not. All of the latter have a population of less than 50,000.

Section 781 does not require the minor to retain an attorney to have his records sealed. Yet two counties expressly stated that the minor must hire an attorney to initiate the proceedings. Some counties state that the minor may retain an attorney to petition a second time if his petition has been denied. Most counties, however, will begin implementation of the record sealing procedures as a service to the minor provided the minor takes the initiative and asks them first.

The implementation procedures are often long and cumbersome. Nine departments request the minor to come in for a personal interview before a formal investigation of his delinquent behavior is begun. The interview serves as a screening process in which the minor may be told that he will not be eligible for record sealing.<sup>46</sup> The law states that for the minor to have his records sealed he must not have committed any

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46. We have incomplete information on the practices of those counties that screen minors and determine ineligibility for Section 781 without ever filing a petition. Most counties indicated that the screening consists of ascertaining, through an interview or investigation, whether the juvenile has committed a felony or a misdemeanor involving moral turpitude and whether the minor has been rehabilitated. We received no data on how many minors are screened out at this juncture.

felonies or misdemeanors involving moral turpitude,<sup>47</sup> and the court must find him rehabilitated. Thus the initial screening process may result in the discovery of such crimes or other information that the juvenile probation officer believes will exclude the minor from the sealing process.<sup>48</sup>

If the minor is found eligible to petition for sealing during the initial contact, most probation departments start an investigation of the minor's involvement in criminality by checking with law enforcement agencies, the CII and the FBI.<sup>49</sup> There is a great deal of variation at this point in the process. Some departments have an intensive screening of the applicant before deciding whether to file a petition on his behalf. Several counties reported that if they believe the minor does not legally qualify for record sealing, they advise him to clear his record, retain an attorney or otherwise take steps to remove the disability preventing sealing. Other counties indicated that even if criminality or lack of rehabilitation is discovered in the investigative process, the petition will be filed, a report will be submitted to the court, and the judge will make the final determination.<sup>50</sup> Several counties also indicate that they give notice to the district attorney of the proceedings and at least one county reported that opposition from the district attorney would be sufficient to prevent the case from going to court.

The standards for determining eligibility for record sealing are set down in Section 781.<sup>51</sup> While it is not difficult to determine whether a minor has been convicted of a felony, there may be some difficulty deciding whether a misdemeanor involved moral turpitude.<sup>52</sup> What is judged to be rehabilitation may also vary from county to county. One probation officer wrote,

The hardest question to deal with in 781 is the question of rehabilitation and what rehabilitation means. Without being specific, our department has recently devised a guideline for officers handling expungements to give them some method, at least in a time frame, of determining when rehabilitation has occurred. I do not know if anything of this would seem to me that the accountability of minors and their being responsible for their own actions, 781 regarding rehabilitation. Very

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47. *See supra* note 31.

48. *See supra* note 46.

49. The FBI is the agency that is least likely to honor requests to seal records. Since it is a federal agency the local and state statutes have no authority over its record keeping. Several counties indicated that they do not follow up on requests to the FBI since they refuse to comply anyway.

50. It is interesting to note that some counties require the minor to be present for the record sealing hearing while most do not.

51. *See* Appendix A.

52. *See supra* note 31.

apparently, each county has a different set of rules or requirements as to what they need to expunge a juvenile record.

If the court grants the request to seal the records, an order is signed, and the order is sent to all "relevant" agencies. The "relevant" agencies included in the order will vary according to the needs of the case.<sup>53</sup> Many local, state and federal agencies may have records of the juvenile, yet often only local agencies are asked to comply with the request. One county warns the applicants that the sealing may only apply to local and certain state agencies, but most departments do not issue such warning. Thus, the minor may be told that his records are sealed when in fact some agencies holding records were not notified or did not comply with the order. Several probation officers wrote that it is misleading to tell a minor that his records have been sealed when the FBI, private agencies and institutional schools may still be holding unsealed records.

#### *Steps Taken To Enforce The Order*

We asked if the departments had any procedures by which they can determine that a court order to seal records has actually been carried out. Twenty-two departments said they asked for the return of a compliance letter, thirteen said that this was the responsibility of the county clerk, and seventeen did not indicate any followup.<sup>54</sup> Four departments that rely upon compliance letters stated that they still had no way of knowing whether the order had actually been complied with. One county made the assertion that a probation department "had no authority to enforce compliance, nor any capability to do so." Another said, "The probation department does not investigate other agencies for the purposes of determining whether they have carried out a sealing order by the Juvenile Court."

We also included a more detailed question about procedures for determining compliance with a sealing order. We asked how departments make certain that agencies such as the FBI, CII, local police and other custodians have complied with a court order to seal.

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53. See *supra* note 22 and the accompanying text.

54. These 17 counties could have understood the question to mean more than a return of a compliance letter and might have sent out compliance letters themselves as well.

TABLE 2  
*Follow-up Procedures*

Response	Agencies			
	FBI	CII	Local Police	Other Custodians
Letter of Compliance	15	15	15	14
Requested County Clerk Checks	11	23	24	21
No check made	13	6	6	6
No answer	7	8	7	9

We asked what the probation department would do if it discovered an agency that had not complied with the sealing order. Eighteen counties reported that they had experience<sup>2</sup> such a situation, while thirty-one said they had not. Of the eighteen, eleven took some action against the non-complying agencies, while five did not. One department that took no action said that the agency in question “was excluded from the court order.”

The action taken by the eleven probation departments varied from merely reminding the agency of its non-compliance by letters and phone calls to bringing the matter to the attention of the juvenile court and having the agency held in contempt of court. While one county reported that a contempt of court action was taken against the chief of police, another county responded that “(t)o our knowledge the court has never been in the position of citing an agency who may not have complied for contempt.” In the majority of cases the probation departments obtained a new order from the court specifying the non-complying agency.

A complaint stressed by several responding departments was that Section 781 does not provide for any disciplinary action which could be initiated against the non-complying agencies. Many doubt that, even when a new order is issued, the court can do anything to ensure compliance. One county voiced the common frustration:

The court has a dual responsibility. One is to issue the order for sealing, the other is to ensure that the orders are complied with. It seems ridiculous to give minors a copy of the order of the court indicating that their records are sealed when in fact they are not.

The FBI is the agency that causes the most concern. Many departments describe experiences where the FBI has refused to comply, and most have been frustrated in their efforts to have

the minor's record extracted from this agency.<sup>55</sup> Some departments described a procedure they have developed to obtain some compliance by the FBI. These departments routinely recommend to the juvenile court that as a part of the sealing order the court require the local law enforcement agency that originally submitted the report to the FBI to request the FBI return the information.<sup>56</sup>

*Results of Section 781 Actions*

What are the results of the advisement practices and implementation procedures we have discussed? How many minors with records actually request to have them sealed, and how many of these are successful?<sup>57</sup>

We asked the probation departments to make an estimate of how many requests to seal they had received monthly in 1975 or 1976. As expected there was a wide variation in the number of these requests ranging from none at all (population less than 1,000) to 146 a month (a county with over 1,000,000). When we compared the number of requests within the same population bracket, the range is still considerable. Table 3 shows the distribution of monthly requests by population size.

TABLE 3  
*Monthly Requests by Population*

	Size of County							
	over 1,000,000	500,000 1,000,000	200,000 500,000	100,000 200,000	50,000 100,000	25,000 50,000	10,000 25,000	under 10,000
Range	58-146	22-60	10-30	1-9.2	2-15	2.4-5	0.1-10	0-
Average	108.7	39	15.9	4.2	6.8	2.1	2.3	0.
Number	4*	7	9	6	5	6	6	5

\* One County did not give an estimate.

The differences in the number of requests for sealing within each population bracket might be explained by differences in

55. See *supra* note 49.

56. The proposed statute in Appendix B utilizes this approach.

57. One would expect the volume of requests for sealing to vary with the size of the county and the advisement practices used by the probation department. The number of successful attempts would probably also vary by size of county, by efficiency in the record sealing procedures employed and the extensiveness of the minor's prior record.

advisement procedures. We examined in detail the practices of the top and lowest county in each population bracket. Generally, it was found that the counties with the highest number of requests were more likely to give written notice than those with the lowest number.<sup>58</sup>

In addition to requesting information about how many requests are received monthly we also asked the departments to estimate how many of the minors who have contact with their departments actually attempt to have their records sealed. Nine counties reported 5% or less, twenty-eight counties said 10%, four counties said 20%, one county said 30%, and two counties said 40%. Eight counties gave no answer, and three stated that it was impossible to make such an estimate.

From the data it is apparent that in all reporting counties most minors do not take advantage of their rights under Section 781. Many departments stated that it is a good thing that so few apply. As one probation officer wrote, "(i)f every minor requested sealing per 781, the consequences in terms of workload for all agencies involved would be catastrophic."

We examined these estimates with respect to size of the county reporting and found that there does not appear to be any correlation between the percentage of minors who attempt to have their records sealed and the county population.<sup>59</sup>

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58. In the 1,000,000 and over population group, both the lowest and the highest county give written advice to minors. However, the county with the lowest frequency of requests advises its clients that the sealing may only apply to local and state agencies. On the other hand, the county with the high frequency of sealing requests does not advise minors whose cases are dismissed from court.

In the population group between 500,000 and 1,000,000, the county with the highest frequency of requests gives written advice of § 781 rights upon termination of the minor's case, while the county with the smallest number of requests gives oral advice to informal cases, and written notice to formal cases. The latter county also commented that "most people only think about record sealing at the time they try to enter the Armed Services or such employment. Further a number of people think that § 781 is automatic and they need not apply." This attitude may account for the low number of applicants in this county.

In the population group of between 200,000 and 500,000, the number of requests varies from 10 to 30. One of the counties with an average number of 10 per month says that the minors are advised somewhere along the line, and that the "community grapevine" is well versed in § 781. The advice there is oral and may vary with the individual case. The other county with 10 requests a month also advises its minors orally. Similarly, in the other population brackets, the counties with the lowest frequency of requests tend to give oral advice, while the higher frequency counties tend to give written notice.

59. The counties estimating 40% included populations between 50,000 and 100,000 for one and under 10,000 for the other. In the 30% bracket, the county has a population between 200,000 and 500,000. In the 20% category one county has a

After the minor has petitioned to have his record sealed, it may take some time to complete the sealing process. The time period for sealing varies greatly among different counties probably reflecting the efficiency of the particular department and the numbers of requests processed. Three counties reported that it would take only one week to complete the sealing process. Two of these are very small counties. Seventeen counties reported one month, five counties said from one to three months, seven counties reported two months, seven said three months, one county reported three to six months and one county reported four months due to difficulties in getting back orders from the traffic court and a large backlog of cases. Generally, the more populous the county and the larger the number of monthly requests, the longer it takes to complete the sealing process.

We next asked how many minors who petition the court are successful in getting their records sealed. The data reveal that the overwhelming majority are in fact successful in their efforts. Nine counties said that 100% are successful, eighteen counties reported that 95-99% are successful, twenty-one counties said that 90% are successful, three counties said 80% and one county said 20% are successful. Thus 93% (forty-eight in number) of the counties in our sample said that 90% or more of the petitioning minors are successful in getting their records sealed. It is apparent from these data that the success rate has no relationship to the number of requests or the size of the county. We examined these variables specifically and found that there were no significant correlations. In most counties 90% or more of all minors who do apply for record sealing are successful in getting their requests granted.

This high success rate could be due to the fact that only minors with minimal juvenile records or few contacts with the

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population between 200,000 and 500,000; one is between 25,000 and 50,000; and one is under 10,000. In the 20% category one county has a population between 500,000 and 1,000,000; one county is between 200,000 and 500,000; one is between 25,000 and 50,000; and one is under 10,000. In the thirty-four counties that estimate, 10% attempt to have their records sealed; six have a population of between 200,000 and 500,000; six are between 10,000 and 25,000; five are between 50,000 and 100,000; five are between 10,000 and 25,000; five are between 500,000 and 1,000,000; four are between 25,000 and 50,000, and two have a population of over 1,000,000.

probation department apply to have their records sealed. We asked each county whether minors with less contact were more likely to request sealing. Twenty-six counties responded that minors who have more contact with the juvenile justice system are more likely to request sealing. Only seventeen counties reported that minors with less contact are more likely to request sealing. Nine counties said that the two categories are equally likely to request sealing. These data are consistent with the data on advisement practices. The data indicate that the more the minor has contact with the juvenile justice system, the more likely he is to be advised and reminded of his rights pursuant to 781 and the more likely he is to request sealing when he becomes eligible.<sup>60</sup>

#### DISCUSSION OF THE DATA

This study has revealed that Section 781 is being administered very differently in various California counties. Juvenile probation departments differ in the length of time and manner in which they maintain juvenile records. They differ with respect to whom, in what form and at what time the advisement of rights pursuant to Section 781 is given, and they also differ in both their implementation and checking for compliance procedures.

The study has further revealed that even when advice about record sealing is routinely given, only about 10% of all minors who come in contact with the probation department attempt to take advantage of the sealing procedures. As one probation officer said,

Most persons who have probation contact either are not advised, forget, or don't care about their 781 rights, hence only a small fraction of records are sealed.

The data further indicate that minors with more contact with the juvenile justice system are deriving the greatest benefit from Section 781. Not only do more of these minors request to have their records sealed, they also tend to receive better and more frequent notice of their rights.

From the data we conclude that the present system of record sealing inadequately carries out the policy of Section 781 to "grant the errant juvenile a clean slate if he grows into a law-abiding adult."<sup>61</sup> Great numbers of minors who deserve to have their records sealed because they have had only minimal con-

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60. The minor who has had more contact with the juvenile justice system also is more motivated to initiate the sealing process since he has a more significant record to seal.

61. CAL. ATT'Y GEN., *supra* note 27.

tact with the juvenile justice system are not taking advantage of Section 781.<sup>62</sup>

This may be true because minors are not adequately advised of their rights. It may be because minors believe they have no record or what record there is will be destroyed or kept confidential. It may be because minors have simply forgotten about their contact with the juvenile justice system. It may be because minors believe their record will be of no significance in their adult lives. Whatever the reason, few minors utilize their rights pursuant to Section 781. One probation officer summarized this deficiency in the record sealing process, "Record sealing is a patchwork process and undoubtedly uneven. Obviously many do not apply who should."

Not only is the system of record sealing failing to reach most of the deserving juveniles, it is also lengthy, complicated and costly.<sup>63</sup> Yet even with these procedures 90% or more of those who attempt to have their records sealed are successful. This high success rate is remarkable since the data indicate minors who have more contact with the juvenile justice system are more heavily represented in the total number of minors who petition for record sealing.

The data also reveal dissatisfaction with the record sealing process even after an order sealing a minor's records has been made. Several departments complained that there is a lack of

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62. See *supra* note 39 and accompanying text.

63. The total cost of the California system of retaining and sealing juvenile records is beyond the scope of this paper. Some of the factors to be considered in making the total cost calculation are discussed below.

The juvenile probation departments indicated that a special individual or unit is assigned to the record sealing operation. (See *discussion at How Records are Kept, supra.*) The number of hours devoted to the record sealing scheme would have to be calculated for the entire state. Moreover, there are many other agencies that hold juvenile records. A similar calculation would have to be made for each of those agencies.

Other costs include the materials used such as files, paper, and cabinets as well as storage space. Because the court order must be sent to all agencies holding juvenile records there is the additional cost of envelopes and postage. Some agencies microfilm records. The cost for such a procedure includes the machine, the processing, the film, the microfiche jacket as well as the viewer. (Note: even after microfilming, the records cannot be destroyed under the current law. See Section 826.5(b))

Finally there are the costs related to investigation, interviewing and court hearings.

cooperation between local, state and nationwide record keepers. They stated that local authorities have little or no authority to enforce court orders to seal.<sup>64</sup> The result of this lack of cooperation and coordination may be that records still exist or remain unsealed even after the minor has been told to the contrary. One probation officer summarized the dissatisfaction:

The whole process of record sealing is misleading to applicants as they feel their record is really "wiped clean." This is not so and never will be.

#### A NEW APPROACH TO RECORD SEALING

Based on the data and the suggestions contained therein we conclude that Section 781 should be rewritten so that the purposes of the statute can be more effectively carried out. We suggest that certain records should be destroyed automatically by all governmental agencies holding them. Other records should be reviewed automatically by the court with the assistance of the juvenile probation department to determine whether they should be destroyed or left as they are. Formal hearings on the question of destruction should be provided only if a minor's record is not ordered destroyed and the minor wishes to contest the court's ruling. The text of our proposed statute appears in Appendix B. A discussion of its important provisions follows.

#### *Destruction*

The statute selects destruction instead of sealing as the final disposition for many records. The reasons for this preference are several. First, destruction is the final disposition for records held by many agencies under the current law.<sup>65</sup> What is lacking is regularity in destruction procedures and some assurance that it has occurred. Second, there is a finality about destruction that insures that the record will not be reopened for improper reasons by whomever may have access to the record storehouse, legitimate or not.<sup>66</sup> Third, destruction is less expensive than

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64. The probation department would not have any legal authority to punish a violating agency, but the Superior Court Judge would through a contempt of court proceeding.

65. See *supra* notes 35-36 and accompanying text.

66. Destruction would make reference to the records in a defamation suit impossible and would negate the effect of the present § 781(b).

Destruction of juvenile records raises an important question related in part to Section 781(b). What will happen if the record becomes an important issue at some future time? What if a person's past becomes the subject of a lawsuit or a security clearance investigation? Someone may remember that the person had some contact with the juvenile justice system, but no record will exist to determine exactly what happened.

sealing,<sup>67</sup> the latter requiring preservation of a record including the space and personnel to supervise over the restricted area.<sup>68</sup>

### *Automatic Destruction*

Our statute proposes that certain records should be destroyed automatically and that all other records should be reviewed automatically at the minor's 18th birthday. That great numbers of juvenile records should be destroyed automatically is one of the important conclusions derived from the data. Minors who have had limited contacts with law enforcement and with the juvenile justice system are those who are least likely to be informed of their rights pursuant to 781. They are also the least likely to remember to take advantage of the Section. Finally, they are the persons whom the law should most protect from the potential stigma of a juvenile record. Our data indicate clearly

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We believe destruction is the proper disposition of most juvenile records despite this problem. First, there is no way of knowing which records would be needed and over how long a period of time. Thus all records would have to be kept at least until the person's death. Second it is likely that the person or persons in the best position to remember the facts and disposition of the incident in question will be the minor (now an adult) and his family. Incidentally, there is nothing in the proposed statute that would prohibit a person or his family from keeping whatever records they wished to protect against inaccurate or improper reference to the incident at some later date. Third, it seems that the type of record search indicated would occur rarely if at all. The Chief Clerk of the Juvenile Division of the Santa Clara County Clerk's Office reports that no cases have arisen under Section 781(b) to his knowledge. Finally, if the record has been destroyed pursuant to the proposed statute, it should not be the subject of any investigation. It has been legally voided for all purposes.

67. Whether the legislature has the constitutional authority to order the executive branch of government to destroy records is presently the subject of some controversy. The Attorney General takes the position that the legislature may not do so. 59 Op. Att'y Gen. 31 (1976). The issue will be decided soon. *See*, Mack v. Younger (S.F. 23597), Attorney General v. Superior Court (Mack) (S.F. 23517), and Court of Appeal v. Superior Court (Spelio) (L.A. 30648). Should the Supreme Court rule that the legislative branch does not have this power, that portion of this paper which argues for destruction would not be operable. The authors would then argue that juvenile records be sealed automatically consistent with the discussion in the text below.

68. Even recording on microfilm is expensive though the space used thereafter may be insignificant. It may be difficult and costly, however, to keep track of records so that different agencies will know when a particular minor reaches the age of eighteen. In other words, the filing of juvenile records would have to be done by the minor's birthday so that when he reached eighteen the automatic destruction or review would be possible without a search. Agencies holding records and reports have had to deal with filing problems more complicated and challenging than this; no reporting agency or person interviewed for this study indicated an insurmountable problem would result.

that had these minors petitioned for record sealing, their requests would have been granted. We believe the law should assert their rights for them and order automatic destruction of all of their records.<sup>69</sup>

Which records should fall into the category for automatic destruction is certainly an area for legislative debate. Our statute orders automatic destruction for all records of minors in cases (602's, 601's, 300's and traffic) which never resulted in a court hearing, that is, cases in which a petition was never filed. Our reasoning is that if the law enforcement agencies working with the district attorney and the juvenile probation department did not believe the matter was important enough for court action, the legislature can safely assume the matter should not be left in the record books of the different agencies that possess it. Thus the statute orders all agencies holding such records to destroy them upon the minor attaining the age of eighteen.

The statute also includes all records of 601 and 300 cases, including court records, in the automatic destruction category. The California legislature has taken great care to separate 601 cases from 602 matters in the juvenile court. The legislature has recognized that 601 conduct is not a serious threat to society nor does it involve conduct that would be a crime if committed by an adult. Children who are under court jurisdiction pursuant to Section 300 are the least blameworthy of all persons who appear before the juvenile court. They are perceived by the law as victims. The state has little interest in keeping records relating to either of these categories of minors.

### *Automatic Review of Cases*

For all 602 cases on which a petition was filed the statute directs that there be an automatic review upon the minor's eighteenth birthday or six months after the most recent contact with the juvenile court, whichever occurs later. The review would be to determine whether the minor's record should be destroyed. The standard to be used by the court in making this determination is whether the minor has been rehabilitated or that the record needs to be maintained for an articulated public

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69. There are certain situations in which arrests which do not result in the filing of a petition should not be automatically destroyed. When a minor is on parole from the California Youth Authority such an arrest may influence the minor's parole status. It is consistent with the other recommendations contained in this article that those records be retained by the Youth Authority until the minor's parole status is terminated. Thereafter there is nothing to prevent the minor from petitioning the court for destruction of any records pertaining to him.

interest need.<sup>70</sup> The district attorney shall be notified of this review and shall be permitted to take part in any hearing.

If the court orders destruction, the probation department is to instruct all agencies holding such records to destroy or return them much in the same manner as under the current law. If the court decides not to order destruction of the minor's record, it shall make written statement of reasons and findings upon which the order is based. Thereafter the minor shall be informed of his right to contest the finding in a formal hearing.

For those who have had their records destroyed automatically a dilemma arises. Should the probation department inform each one that his record has been destroyed? We think not as the notification itself might turn into a potentially harmful record. Instead, it is suggested that there be an intensive educational program carried out in the schools and in the press to inform young adults of the law and of the way they can legally refer to their contacts with the juvenile justice system after their eighteenth birthday.

One important aspect of the education should be that the young person with a destroyed record may answer inquiries about his juvenile past as though he had never been arrested or processed through the juvenile justice system.<sup>71</sup> This has been deplored by several commentators as a fiction and a lie.<sup>72</sup> These criticisms contain a degree of truth, but they neglect the central problem our society is addressing. Many children have juvenile records, but except in special cases it is in the best interests of our society that these young persons be given a clean slate when they start their adult lives. Given our awareness of the ways in which records are dispersed and misused, the best practical solution is to destroy the record and to deny that it ever existed.

The treatment of juvenile records is an important problem that deserves the immediate attention of our state legislature. Our present system of record sealing does not work well both

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70. Of course if the record is maintained, it should be done in a confidential manner. *See supra* notes 20-21. Under current case laws, minors not made the subject of petitions may answer inquiries about their records and declare they have never been arrested. *T.N.G. v. Superior Court*, 4 Cal.3d 767, 94 Cal. Rptr. 813, 494 P.2d 981 (1971). It is doubtful that many minors are aware of this right.

71. *See also* CAL. ATT'Y GEN. note 27 at 50-51.

72. *Kogon and Loughery, Jr., supra* note 5.

because of its cumbersome procedures and because it fails to assist those who most need and deserve its assistance. A system of automatic record destruction as outlined in this study should be given serious consideration. Such legislative innovation would be more equitable, more efficient and less costly than the present system.<sup>73</sup>

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73. Strong support for this approach appears in Volenick, *Juvenile Court and Arrest Records*, CLEARINGHOUSE REV. 169-174 (July 1975).

## APPENDIX A

## Section 781 of the Welfare and Institutions Code

§ 781. (a) In any case in which a petition has been filed with a juvenile court to commence proceedings to adjudge a person a dependent child or ward of the court, in any case in which a person is cited to appear before a probation officer or is taken before a probation officer pursuant to Section 626, or in any case in which a minor is taken before any officer of a law enforcement agency, the person or the county probation officer may, five years or more after the jurisdiction of the juvenile court has terminated as to the person, or, in a case in which no petition is filed, five years or more after the person was cited to appear before a probation officer or was taken before a probation officer pursuant to Section 626 or was taken before any officer of a law enforcement agency, or in any case, at any time after the person has reached the age of 18 years, petition the court for sealing of the records, including records of arrest, relating to the person's case, in the custody of the juvenile court and probation officer and any other agencies, including law enforcement agencies, and public officials as petitioner alleges, in his petition, to have custody of such records. The court shall notify the district attorney of the county and the county probation officer, if he is not the petitioner of the petition, and such district attorney or probation officer or any of their deputies or any other person having relevant evidence may testify at the hearing on the petition. If, after hearing, the court finds that since such termination of jurisdiction of action pursuant to Section 626, as the case may be, he has not been convicted of a felony or of any misdemeanor involving moral turpitude and that rehabilitation has been attained to the satisfaction of the court, it shall order sealed all records, papers, and exhibits in the person's case in the custody of the juvenile court, including the juvenile court record, minute book entries, and entries on dockets, and other records relating to the case in the custody of such other agencies and officials as are named in the order. Thereafter, the proceedings in such case shall be deemed never to have occurred, and the person may properly reply accordingly to any inquiry about the events, records of which are ordered sealed. The court shall send a copy of the order to each agency and official named therein, and each such agency and official shall seal records in its custody as directed by the order, shall advise the court of its compliance, and thereupon shall seal the copy of the court's order for sealing of records that it or he received. The person who is the subject of records sealed pursuant to this section may petition the superior court to permit inspection of the records by persons named in the petition, and the superior court may so order. Otherwise, except as provided in subdivision (b), such records shall not be open to inspection.

(b) In any action or proceeding based upon defamation, a court, upon a showing of good cause, may order any records sealed under this section to be opened and admitted into evidence. The records shall be confidential and shall be available for inspection only by the court, jury, parties, counsel for the parties, and any other person who is authorized by the court to inspect them. Upon the judgment in the action or proceeding becoming final, the court shall order the records sealed. (CAL. WELF. & INST. CODE § 781 (West Supp. 1977)).

APPENDIX B

Proposed addition to Section 781 of the Welfare and Institutions Code

§ 781.1 Section 781 shall not apply to minors whose eighteenth birthday occurs after the effective date of Chapter — of — Statutes, enacting Section 781.5.

§ 781.5 (a) All public agencies and officials, including county probation officers and law enforcement agencies, maintaining records of arrests or other contacts with minors, which did not result in the filing of a petition in the juvenile court, shall destroy such records upon the minor's reaching the age of eighteen years. Such records maintained by the Department of Youth Authority on wards under its jurisdiction should be exempt from this subsection.

(b) All public agencies and officials, including county probation officers, law enforcement agencies, and the juvenile court, maintaining records pertaining to minors who were believed to be or were found by the court to come within the meaning of Section 300 or Section 601, shall destroy all such records upon the minor's reaching the age of eighteen years.

(c) When any minor who has been the subject of a Section 602 petition filed in juvenile court attains the age of eighteen years, or when six months have elapsed after juvenile court jurisdiction has terminated as to the minor, whichever last occurs, the juvenile court shall review said minor's juvenile court records to determine whether the records shall be destroyed. Notice shall be provided to the District Attorney of the court review and the District Attorney shall have the right to appear at the review. The court shall destroy the records unless the court finds that the minor has not been rehabilitated or that the record must be maintained for an articulated public interest need. The court shall in any case in which it does not order the records destroyed include in the order a statement of reasons and findings of the specific facts upon which the order is based. The minor shall be presumed to have been rehabilitated unless the court finds facts which demonstrate that the minor has not been rehabilitated. The court's review may include, in addition to the entirety of the juvenile court records, any report or recommendation regarding destruction presented by the county probation officer or district attorney, and shall include a hearing upon notice to the minor if the court does not order the records destroyed upon automatic review.

(d) The destruction order shall direct destruction of all records, papers, and exhibits in the minor's case, in the custody of the Juvenile Court, including the Juvenile Court record, minute book entries, and entries on the dockets, and any other records relating to the case in the custody of any other agency or official known by the court to possess such records. Thereafter, the proceedings in such case shall be deemed never to have occurred, and the person may properly reply accordingly to any inquiry about the events, records of which are ordered destroyed. The destruction order shall command the Bureau of Identification, the probation officer, and any other agencies, including law enforcement agencies, and public officials to destroy such records and shall command any agency or official which previously forwarded any information of an arrest or a detention of the Federal Bureau of Investigation to direct a letter to the Federal Bureau of Investigation requesting the return to such agency or official of such person's fingerprints

and records on file with said bureau. The court shall send a copy of the order to each agency and official named therein, and each such agency and official shall destroy records in its custody as directed by the order, shall advise the court of its compliance, and thereupon shall destroy the copy of the court's order for destruction of records that it or he received.

(e) This section shall apply to all minors whose eighteenth birthday occurs on or after the effective date of this section.

This bill closely resembles a pending piece of legislation, S.B. 1163 introduced by Senator Sieroty on April 28, 1977.

