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# Sealing of Juvenile Records: A Clean Slate?

Aidan R. Gough\*

Basic to the concept of the juvenile court is the doctrine that its proceedings are not criminal, resulting in a criminal conviction, but are akin to guardianship proceedings, equitable in nature.<sup>1</sup> They are proceedings in which "the state as *parens patriae* seeks to relieve the minor of the stigma of a criminal conviction."<sup>2</sup>

However beneficial this may be in theory, it is recognized that the desired result may not be obtained in practice.

While the juvenile court law provides that adjudication of a minor to be a ward of the court shall not be deemed a conviction of crime, nevertheless, for all practical purposes, this is a legal fiction, presenting a challenge to credulity and doing violence to reason. . . . Let him attempt to enter the armed services of his country or obtain a position of honor and trust, and he is immediately confronted with his juvenile record.<sup>3</sup>

Since roughly 6.5 per cent of the population has contact with a law enforcement agency as a minor which results in some record of arrest and many more have "informal" contacts which may result in some record of delinquency, it is apparent that the question of juvenile records and their ultimate disposition is by no means unimportant.<sup>4</sup>

## 1961 JUVENILE COURT LAW

In recognition of this problem, means were provided by statute in California, upon the re-writing of the California Juvenile Court Law in 1961, to effect the sealing of juvenile court records under certain circumstances.<sup>5</sup> Section 781 of the Welfare and Institutions Code permits the minor who has been made a ward of the juvenile court for delinquent acts or tendencies to petition the court for sealing of his records, upon the expiration of a period of five years from the date of termination of the court's jurisdiction over him, providing that he has not been convicted of a felony or misdemeanor involving moral turpitude in the interim.

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<sup>1</sup> CAL. WELF. & INST. CODE § 503. For similar provisions in other states see Nicholas, *History, Philosophy & Procedures of Juvenile Courts*, 1 J. FAMILY L. 151 (1961). Cf. STANDARD JUVENILE COURT ACT § 25, 5 N.P.P.A.J. 378 (1959). All statutory citations refer to the California Welfare and Institutions Code, unless otherwise indicated.

<sup>2</sup> *People v. Fifield*, 136 Cal.App.2d 741, 742; 289 P.2d 303, 304 (1955).

<sup>3</sup> *In re Contreras*, 109 Cal.App.2d 787, 789; 241 P.2d 631, 633 (1952).

<sup>4</sup> Based on figures from the FEDERAL BUREAU OF INVESTIGATION UNIFORM CRIME REPORTS, CRIME IN AMERICA: 1961 98 (1962). (479,721 persons under the age of 18 years arrested; total population sampled 73,522,044.) Because of the variations in reporting, classification and sampling procedures, it is impossible to obtain complete figures.

<sup>5</sup> CAL. WELF. & INST. CODE § 781. Although popularly referred to as an "expungement" section, § 781 differs from a true expungement provision in that it does not call for the physical destruction of the records. See *Andrews v. Police Court of Stockton*, 123 P.2d 128 (Cal.App. 1942), *aff'd* 21 Cal.2d 479, 133 P.2d 398 (1943), 40 OPS. CAL. ATT'Y GEN. 50 (1962).

The section further authorizes the issuance of an order directed to law enforcement agencies compelling the submission of their records to the juvenile court, where they are subsequently sealed. It is expressly provided that upon such sealing, "the proceedings in such case shall be deemed never to have occurred, and such former ward may properly reply accordingly to any inquiry about the events."<sup>6</sup>

This is a desirable and laudable step, obviously taken in furtherance of the basic philosophy of the juvenile court. The section has been called "a clear policy statement of the legislature to grant the errant juvenile a clean slate if he grows into a law-abiding adult."<sup>7</sup> A clear policy statement it may be, but an effective means of carrying out that policy it is not.

The statute allows a petition for the sealing of records *only* in the case of a minor who has been made a ward under section 601 or 602 of the Welfare and Institutions Code.<sup>8</sup> By these words of limitation, the statute bars from its relief two broad classes of persons.<sup>9</sup> First, by use of the word "ward," the right to petition is denied those whose difficulties were such as to require handling by a court or law enforcement agency, but not great enough to merit wardship. Second, by specification of section 601 ("delinquent tendencies") and section 602 ("delinquent acts"—*i.e.*, law violations), sealing of records is denied those who have had contact or been made wards as dependent or neglected children.

At first glance, it might seem that there would be little, if any, need to include these persons within the purview of the statute. Since no juvenile court proceeding results in a criminal record and, a fortiori, action on the grounds of dependency or neglect would not bear the taint of criminality, one may question why the inclusion of this class of persons within those granted the right of petition is necessary to effectuate the overall intent of the law.

Perhaps the best answer is provided by the report of the Governor's Special Study Commission on Juvenile Justice, which led to the enactment of the new Juvenile Court Law: "The public primarily identifies juvenile courts with delinquency, and consequently assumes that all juvenile court wards are delinquents."<sup>10</sup> Another answer is found in the often-blurred lines of distinction between "delinquency" and "dependency." It is a distinct possibility that a minor might be apprehended by a law enforcement agency and referred to the probation department for a delinquent act, such as shoplifting, and yet be presented to the court and made a ward upon a petition alleging dependency or neglect, based on facts uncovered by the probation officer or law enforcement juvenile bureau on their subsequent investigation.<sup>11</sup> As a result of his apprehension for an act violative

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<sup>6</sup> CAL. WELF. & INST. CODE § 781.

<sup>7</sup> 40 OPS. CAL. ATT'Y GEN. 50, 52 (1962).

<sup>8</sup> CAL. WELF. & INST. CODE § 781.

<sup>9</sup> CAL. WELF. & INST. CODE §§ 600-602.

<sup>10</sup> CALIFORNIA GOVERNOR'S SPECIAL STUDY COMMISSION ON JUVENILE JUSTICE REPORT, pt. I, at 19 (1960).

<sup>11</sup> One example of this, in which the author was involved as a probation officer, concerned a twelve-year-old boy apprehended by a storekeeper and turned over to the police for stealing luncheon meats, which, the boy said, were intended to sustain him while running away from home. As he refused to return home, and the police were unable to contact his parents, he was admitted to juvenile hall for shoplifting and being an "uncontrollable juvenile"—*i.e.*, for delinquent acts. Subsequent

of law, he will have a juvenile record; perhaps not an "arrest record" as such, but the effect may be the same. The distinction may well be one "beyond the compass of the ordinary mind." Ostensibly, the wording of section 725 of the Welfare and Institutions Code, speaking of "wardship" with reference to the "delinquent" sections of the Juvenile Court Law, and of "dependent child of the court" with reference to the dependent sections, purports to establish this clear difference, and it was perhaps with this in mind that the present wording of section 781 was adopted.<sup>12</sup> At the extremes of either classification, the differences may be apparent; if the case is not so extreme, the court is forced (at the possible peril of the minor) to "decimate a hair, and count the pieces."<sup>13</sup> Basically, the exclusion of the minor referred for dependency or neglect from the right to petition for sealing of records does not comport with the underlying theory of the juvenile court. When it is realized that roughly 40 per cent of all juvenile court cases in California involve dependent and neglected children, it would seem readily apparent that this exclusion is to the detriment of a substantial class.<sup>14</sup>

An even greater problem exists by the limiting of the right to wards of the court.<sup>15</sup> When a minor is contacted by a law enforcement agency for some difficulty, a number of dispositions are possible. The child may be summarily dealt with by the officer on the spot and a "field interrogation card" made out, or he may be brought to the juvenile bureau of the enforcement agency and released by them to the parents. The juvenile bureau may undertake informal follow-up, or may refer the minor and family to a community social agency or to a citizens' advisory council. On the other hand, the minor may be referred to the probation department, either by admission to juvenile hall, or by citation. The probation department, in its turn, may settle the matter at intake, place the minor under "informal supervision" in lieu of filing a petition, or may file a petition for the minor's court appearance. If a petition is filed, the court may dismiss it, place the minor on probation for a period not to exceed six months without declaring wardship, or declare the minor a ward.<sup>16</sup> In all of these cases, records would exist of necessity; in all of them the individual concerned would be unable to effect their sealing.

#### PROBLEMS

Part of the problem which exists with these and any records is that of unauthorized access. This is not the crux of the matter dealt with here, for it is the mere existence of the record which can be troublesome. While a lesser offender is unable to rid himself of it, the true delinquent is able to say that

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investigation revealed home conditions defying description, including a nearly constant state of inebriation on the part of both parents. The minor was made a ward of the court on the basis of being a "neglected child." Under the law as it presently stands, he cannot avail himself of the right to have his records sealed—and the police reports indicate an apprehension for delinquent acts. Had he been made a ward upon the basis of these acts, he could have his record sealed.

<sup>12</sup> Compare CAL. WELF. & INST. CODE § 725 with §§ 600-602.

<sup>13</sup> PARSONS, MEMOIR OF THEOPHILUS PARSONS 160 (1859).

<sup>14</sup> CALIFORNIA GOVERNOR'S SPECIAL STUDY COMMISSION ON JUVENILE JUSTICE REPORT, pt. I (1960); see also ROSENHEIM, JUSTICE FOR THE CHILD 46 (1962).

<sup>15</sup> CAL. WELF. & INST. CODE § 781.

<sup>16</sup> CAL. WELF. & INST. CODE § 725.

he has no record. There also exists a distinct lack of uniformity in the way in which juvenile records are kept or classified by the various law enforcement agencies, and it is submitted that only by having a central source responsible for their ultimate disposition, such as the juvenile court, can any effective clearance of the records be made.<sup>17</sup>

While most of the law enforcement agencies do an outstanding job, and are (in the author's experience) particularly attentive to the problem of eventual record, there is always the chance of human error which might later prejudice the minor involved. Once an arrest record or report is made out, there is a marked tendency—especially where minors are concerned—to assume that the subject is guilty.<sup>18</sup> If a dismissal is not entered, and the files purged, the minor may be hard put for explanation some years later. Also, some law enforcement agencies interpret the sealing order as effective only with respect to the offense for which wardship was initially declared, excluding offenses occurring after wardship but before its termination, as well as offenses occurring before wardship.

Since provisions already exist for the submission of law enforcement agency records to the court upon a petition for sealing, there seems no logical reason to limit this right of petition. If the provisions were expanded to cover others than wards for delinquent acts and tendencies, the statute would be a much more effective tool for the implementation of the juvenile court philosophy. It is true there have been attempts to remedy these defects—or possibly to avoid them. At least one juvenile court judge has construed the language of section 781 to include dependent children.<sup>19</sup> This construction, however, does violence to the express provisions of the statute.

Senate Bill 714, now pending, would give the right to petition for the sealing of records to any person who had been the subject of a petition in the juvenile court.<sup>20</sup> This would include dependent children and those not made wards. While this is an improvement, it does not go far enough, and still leaves without recourse all minors handled informally, whether by the probation department or by the law enforcement agencies. Perhaps these minors have, in a sense, the greatest need of a right of petition for sealing. A probation officer could make the same essential disposition—*i.e.*, the settling of the case at intake—in the case of a minor who was wrongly identified as the perpetrator of an offense, and subsequently exculpated, and in the case of a minor who had committed a delinquent

<sup>17</sup> See, generally, MYREN & SWANSON, *POLICE WORK WITH CHILDREN* 77-94 (1962).

<sup>18</sup> Isaacs, *The Crime of Present-Day Reporting*, 52 J. CRIM. L., C. & P.S. 405, 407 (1961). In one case known to the author, a minor was arrested at the age of 14, driving without a license a car which had no registration. Because he could not prove his claim that his uncle had lent him the car, he was placed in juvenile hall for auto theft. He was shortly released, when it was found that indeed the car was his uncle's and he was driving it with permission, albeit without a license. He assumed—wrongly, as it turned out—that the police files would be closed, and that he had no record of arrest. He answered questions accordingly, without difficulty until some ten years after the incident, when he had graduated from law school and was applying for a coveted position with the federal government. In the course of checking his application, the federal investigators unearthed his arrest for a felony—grand theft auto. Fortunately, the agency involved cooperated fully and he obtained the position, but at the cost of no little delay and considerable anguish. Had the remedy of petition to seal the records been available as a safeguard against error, the problem would have been easily resolved.

<sup>19</sup> CARKEET, *A REVIEW OF THE NEW JUVENILE COURT LAW* 23 (Aug. 25, 1961). Cf. CAL. WELF. & INST. CODE § 503 (law to be liberally construed).

<sup>20</sup> Senate Bill 714, introduced by State Senator Stanley Arnold. Passed by the Senate on April

act whose situation indicated little need for corrective treatment. Since these "non-petition" cases involve, in essence, solely administrative discretion, it would seem essential to give them at least the same rights of clearance as those more seriously involved. In short, it does not seem to make sense to require a minor to be seriously involved in order to obtain clearance.

Collateral to these two glaring faults in the present law, but nonetheless important to make the remedy of record-sealing truly effective, are other problems raised by the present statute. Section 781 does not specify where the petition for sealing may be filed, and while one can surely argue that because the statute speaks in terms of "the juvenile court" the action could be brought in any county, it is at least inferable from the present language of the section that the action is to be brought only in the county in which wardship is declared. This could conceivably work a hardship upon the petitioner. More important, it does not solve the problem present in transfer cases, where the minor may be declared a ward in one county, and later have his case transferred to another county because of a change of residence or other reasons.<sup>21</sup> Wardship would have existed in both counties, and it hardly seems that the intent of the legislature would be to encourage multiple actions by requiring that a petition be filed in each county.

Moreover, what of the case where the minor is made a ward, or is otherwise dealt with while under the age of eighteen years, and subsequent to his eighteenth birthday becomes involved in a misdemeanor? Section 1203.45 of the Penal Code provides that the minor's adult record can be sealed upon petition, with the same effect as that provided by section 781, *i.e.*, that thereafter the proceedings shall, for all purposes, be deemed never to have occurred. It would seem both salutary and economical to provide that the juvenile court, in a petition for sealing under section 781, would have the power to order all such misdemeanor records sealed, provided that they related to incidents occurring before the majority of the petitioner. Since the law provides the remedies, albeit separately, there appears no good reason why they should not be combined.

Lastly, greater implementation is needed with respect to the effect given by the sealing of records. It is very clear that after sealing, the petitioner may reply to "any inquiry about the events" as if the "proceedings in such case . . . never occurred."<sup>22</sup> Seemingly, this would allow a negative answer not only to questions relative to his arrest, but also relative to whether or not he had been a party to, or been involved in, court appearances of any kind. However, it appears, from informal opinions obtained from representative agencies, that the statute will not be so interpreted by agencies issuing professional licenses or hiring government employees. The line here is very thin, and there is an obvious need for full disclosure in many instances to protect the national security and the integrity of the professions involved. On the other hand, it does not seem proper to have a record declared never to have existed for some purposes and for some agencies, and not for others. If the legislative policy is not for complete clearance, perhaps the most satisfactory answer would be a provision forbidding the consideration

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4, 1963, and presently awaiting committee assignment in the Assembly.

<sup>21</sup> See CAL. WELF. & INST. CODE §§750-55, governing the transfer of cases.

<sup>22</sup> CAL. WELF. & INST. CODE § 781; see also 40 OPS. CAL. ATT'Y GEN. 50 (1962).

of the record save in certain specified instances where the legislature might deem it necessary. This is far from a desirable solution, but it would have, at least, the virtue of some certainty. Under the present provisions, the petitioner cannot tell what he is to say, for example, in an application for admission to the practice of law: if he follows the mandate of the statute, he might be guilty of nondisclosure to the bar examiners. Additionally, the federal agencies receiving state or local records, such as the Federal Bureau of Investigation, are not bound by the orders of the California courts, and some clear their records only at the express request of the submitting agency. Some law enforcement agencies apparently interpret the law as giving them no authority to request such clearance once they have transmitted their record to the federal agency. The law should be changed to require that this be done.

### CONCLUSION

In summary, the legislative "clean slate" policy as exemplified by section 781 of the Welfare and Institutions Code is not only desirable, but necessary to implement the philosophy of allowing young persons to begin their adult careers with a clear background.<sup>23</sup> To grant a youthful offender the eventual right to cleanse his slate, is to give him a powerful incentive for rehabilitation. However, this policy must be capable of being carried out effectively, and the law must provide the means to that end. To that effect, the following changes in the law relative to the sealing of juvenile records are suggested.

The scope of the existing section should be broadened to grant to any person the right to have sealed any juvenile records, including those of dependency and neglect, but excluding those relating to traffic offenses, whether from records of court, probation department, or law enforcement agency; upon proof of the petitioner's good character and rehabilitation, as evidenced by lack of conviction of a felony or misdemeanor involving moral turpitude since reaching the age of eighteen years. The action could be brought upon the expiration of five years from the termination of the juvenile court's jurisdiction over the petitioner or his attainment of age eighteen, whichever occurs last.

It should be expressly stated that the right to petition for closure of records may be exercised in any county of this state, regardless of the county in which wardship or other record was incurred.

It should be provided that if the petitioner desires, and so indicates by naming the specific agencies involved, the proceedings under section 781 will be effective to seal records in adult courts acquired during minority, which would be subject to sealing under section 1203.45 of the Penal Code of California.

Some clarification should be made of the effect to be given the sealing, especially with respect to professional licensing agencies.

It is believed these changes are practically feasible and theoretically sound, and would make effective California's leadership in this relatively small, but nonetheless vital, area of juvenile court practice.<sup>24</sup>

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<sup>23</sup> MYREN & SWANSON, *op. cit. supra* note 17, at 79.

<sup>24</sup> For comparative practices, see MYREN & SWANSON, *op. cit. supra* note 17, at 78-79; and STANDARD JUVENILE COURT ACT § 25 (and commentary thereto), 5 N.P.P.A.J. 378 (1959).