

RESOLUTION 7-06-05

DIGEST

Juvenile Court: Access to Records by District Appellate Projects

Amends Welfare and Institutions Code section 827 to give district appellate project representatives access to juvenile case files.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Welfare and Institutions Code section 827 to give district appellate project representatives access to juvenile case files. This resolution should be approved in principle because it would reduce costs and remove other obstacles associated with the representation of juvenile defendants.

Section 827 lists the persons and entities permitted to access juvenile case files without a court order. The attorneys for the parties are included in this list. (Welf. & Inst. Code, § 827, subd. (a)(1)(E).) However, representatives of district appellate projects are not included. This can cause problems when appellate counsel is appointed.

As the proponent points out, appointed appellate counsel is often located far from the district in which the appeal is pending. Under the present statute, only the counsel of record is permitted access to the juvenile case file. Therefore, if appointed appellate counsel wants to inspect the file or obtain copies, they are required to travel to the district and review the file in person, rather than requesting assistance from the local district appellate project. This can create unnecessary effort and prohibitive expenses for counsel and the parties. Barring the appellate project from reviewing the files can also hinder the appointment of appellate counsel in the first place, since without reviewing the file it is difficult to decide which counsel should be appointed.

Allowing the local district appellate project staff access to juvenile case files would improve the administration of the appointment program, and would assist out-of-town appellate counsel by reducing the time and expenses expended on appeals. This resolution would accomplish both of these goals.

TEXT OF RESOLUTION

RESOLVED, that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to amend Welfare and Institutions Code section 827 to read as follows:

- 1 § 827
- 2 (a)(1) Except as provided in Section 828, a case file may be inspected only by the following:
- 3 (A) Court personnel.
- 4 (B) The district attorney, a city attorney, or city prosecutor authorized to prosecute criminal or
- 5 juvenile cases under state law.
- 6 (C) The minor who is the subject of the proceeding.
- 7 (D) His or her parents or guardian.
- 8 (E) The attorneys for the parties, and judges, referees, other hearing officers, probation officers and
- 9 law enforcement officers who are actively participating in criminal or juvenile proceedings involving
- 10 the minor.
- 11 (F) The superintendent or designee of the school district where the minor is enrolled or attending
- 12 school.

13 (G) Members of the child protective agencies as defined in Section 11165.9 of the Penal Code.
14 (H) The State Department of Social Services to carry out its duties pursuant to Division 9
15 (commencing with Section 10000), and Part 5 (commencing with Section 7900) of Division 12 of the
16 Family Code to oversee and monitor county child welfare agencies, children in foster care or
17 receiving foster care assistance, and out-of-state placements.
18 (I) To authorized legal staff or special investigators who are peace officers who are employed by, or
19 who are authorized representatives of, the State Department of Social Services, as necessary to the
20 performance of their duties to inspect, license, and investigate community care facilities, and to
21 ensure that the standards of care and services provided in those facilities are adequate and
22 appropriate and to ascertain compliance with the rules and regulations to which the facilities are
23 subject. The confidential information shall remain confidential except for purposes of inspection,
24 licensing, or investigation pursuant to Chapter 3 (commencing with Section 1500) and Chapter 3.4
25 (commencing with Section 1596.70) of Division 2 of the Health and Safety Code, or a criminal, civil,
26 or administrative proceeding in relation thereto. The confidential information may be used by the
27 State Department of Social Services in a criminal, civil, or administrative proceeding. The confidential
28 information shall be available only to the judge or hearing officer and to the parties to the case.
29 Names that are confidential shall be listed in attachments separate to the general pleadings. The
30 confidential information shall be sealed after the conclusion of the criminal, civil, or administrative
31 hearings, and may not subsequently be released except in accordance with this subdivision. If the
32 confidential information does not result in a criminal, civil, or administrative proceeding, it shall be
33 sealed after the State Department of Social Services decides that no further action will be taken in
34 the matter of suspected licensing violations. Except as otherwise provided in this subdivision,
35 confidential information in the possession of the State Department of Social Services may not
36 contain the name of the minor.
37 (J) Members of children's multidisciplinary teams, persons or agencies providing treatment or
38 supervision of the minor.
39 (K) A judge, commissioner, or other hearing officer assigned to a family law case with issues
40 concerning custody or visitation, or both, involving the minor, and the following persons, if actively
41 participating in the family law case: a family court mediator assigned to a case involving the minor
42 pursuant to Article 1 (commencing with Section 3160) of Chapter 11 of Part 2 of Division 8 of the
43 Family Code, a court-appointed evaluator or a person conducting a court-connected child custody
44 evaluation, investigation, or assessment pursuant to Section or 3118 of the Family Code, and
45 counsel appointed for the minor in the family law case pursuant to Section 3150 of the Family Code.
46 Prior to allowing counsel appointed for the minor in the family law case to inspect the file, the court
47 clerk may require counsel to provide a certified copy of the court order appointing him or her as the
48 minor's counsel.
49 (L) A court-appointed investigator who is actively participating in a guardianship case involving a
50 minor pursuant to part 2 (commencing with section 1500) of division 4 of the probate code and acting
51 within the scope of his or her duties in that case.
52 (M) A local child support agency for the purpose of establishing paternity and establishing and
53 enforcing child support orders.
54 (N) Juvenile justice commissions as established under Section 225. The confidentiality provisions of
55 Section 10850 shall apply to a juvenile justice commission and its members.
56 (O) Representatives of the district appellate project who are responsible for the selection and
57 supervision of appointed appellate counsel for the parties
58 (P) Any other person who may be designated by court order of the judge of the juvenile court upon
59 filing a petition.
60 (2) Notwithstanding any other law and subject to subparagraph (A) of paragraph (3), juvenile case
61 files, except those relating to matters within the jurisdiction of the court pursuant to Section 601 or
62 602, that pertain to a deceased child who was within the jurisdiction of the juvenile court pursuant to
63 Section 300, shall be released to the public pursuant to an order by the juvenile court after a petition
64 has been filed and interested parties have been afforded an opportunity to file an objection. Any
65 information relating to another child or which could identify another child, except for information
66 about the deceased, shall be redacted from the juvenile case file prior to release, unless a specific

67 order is made by the juvenile court to the contrary. Except as provided in this paragraph, the
68 presiding judge of the juvenile court may issue an order prohibiting or limiting access to the juvenile
69 case file, or any portion thereof, of a deceased child only upon a showing that release of the juvenile
70 case file or any portion thereof is detrimental to the safety, protection, or physical, or emotional well-
71 being of another child who is directly or indirectly connected to the juvenile case that is the subject of
72 the petition.

73 (3) Access to juvenile case files pertaining to matters within the jurisdiction of the juvenile court
74 pursuant to Section 300 shall be limited as follows:

75 (A) If a juvenile case file, or any portion thereof, is privileged or confidential pursuant to any other
76 state law or federal law or regulation, the requirements of that state law or federal law or regulation
77 prohibiting or limiting release of the juvenile case file or any portions thereof shall prevail. Unless a
78 person is listed in subparagraphs (A) to (N), inclusive, of paragraph (1) and is entitled to access
79 under the other state law or federal law or regulation without a court order, all those seeking access,
80 pursuant to other authorization, to portions of, or information relating to the contents of, juvenile case
81 files protected under another state law or federal law or regulation, shall petition the juvenile court.
82 The juvenile court may only release the portion of, or information relating to the contents of, juvenile
83 case files protected by another state law or federal law or regulation if disclosure is not detrimental to
84 the safety, protection, or physical or emotional well-being of a child who is directly or indirectly
85 connected to the juvenile case that is the subject of the petition. This paragraph shall not be
86 construed to limit the ability of the juvenile court to carry out its duties in conducting juvenile court
87 proceedings.

88 (B) Prior to the release of the juvenile case file or any portion thereof, the court shall afford due
89 process, including a notice of and an opportunity to file an objection to the release of the record or
90 report to all interested parties.

91 (4) A juvenile case file, any portion thereof, and information relating to the content of the juvenile
92 case file, may not be disseminated by the receiving agencies to any persons or agencies, other than
93 those persons or agencies authorized to receive documents pursuant to this section. Further, a
94 juvenile case file, any portion thereof, and information relating to the content of the juvenile case file,
95 may not be made as an attachment to any other documents without the prior approval of the
96 presiding judge of the juvenile court, unless it is used in connection with and in the course of a
97 criminal investigation or a proceeding brought to declare a person a dependent child or ward of the
98 juvenile court.

99 (b)(1) While the Legislature reaffirms its belief that juvenile court records, in general, should be
100 confidential, it is the intent of the Legislature in enacting this subdivision to provide for a limited
101 exception to juvenile court record confidentiality to promote more effective communication among
102 juvenile courts, family courts, law enforcement agencies, and schools to ensure the rehabilitation of
103 juvenile criminal offenders as well as to lessen the potential for drug use, violence, other forms of
104 delinquency, and child abuse.

105 (2) Notwithstanding subdivision (a), written notice that a minor enrolled in a public school,
106 kindergarten to grade 12, inclusive, has been found by a court of competent jurisdiction to have
107 committed any felony or any misdemeanor involving curfew, gambling, alcohol, drugs, tobacco
108 products, carrying of weapons, a sex offense listed in Section 290 of the Penal Code, assault or
109 battery, larceny, vandalism, or graffiti shall be provided by the court, within seven days, to the
110 superintendent of the school district of attendance. Written notice shall include only the offense found
111 to have been committed by the minor and the disposition of the minor's case. This notice shall be
112 expeditiously transmitted by the district superintendent to the principal at the school of attendance.
113 The principal shall expeditiously disseminate the information to those counselors directly supervising
114 or reporting on the behavior or progress of the minor. In addition, the principal shall disseminate the
115 information to any teacher or administrator directly supervising or reporting on the behavior or
116 progress of the minor whom the principal believes needs the information to work with the pupil in an
117 appropriate fashion, to avoid being needlessly vulnerable or to protect other persons from needless
118 vulnerability.

119 Any information received by a teacher, counselor, or administrator under this subdivision
120 shall be received in confidence for the limited purpose of rehabilitating the minor and protecting

121 students and staff, and shall not be further disseminated by the teacher, counselor, or administrator,
122 except insofar as communication with the juvenile, his or her parents or guardians, law enforcement
123 personnel, and the juvenile's probation officer is necessary to effectuate the juvenile's rehabilitation
124 or to protect students and staff.

125 An intentional violation of the confidentiality provisions of this paragraph is a misdemeanor
126 punishable by a fine not to exceed five hundred dollars (\$ 500).

127 (3) If a minor is removed from public school as a result of the court's finding described in subdivision
128 (b), the superintendent shall maintain the information in a confidential file and shall defer transmittal
129 of the information received from the court until the minor is returned to public school. If the minor is
130 returned to a school district other than the one from which the minor came, the parole or probation
131 officer having jurisdiction over the minor shall so notify the superintendent of the last district of
132 attendance, who shall transmit the notice received from the court to the superintendent of the new
133 district of attendance.

134 (c) Each probation report filed with the court concerning a minor whose record is subject to
135 dissemination pursuant to subdivision (b) shall include on the face sheet the school at which the
136 minor is currently enrolled. The county superintendent shall provide the court with a listing of all of
137 the schools within each school district, within the county, along with the name and mailing address of
138 each district superintendent.

139 (d) Each notice sent by the court pursuant to subdivision (b) shall be stamped with the instruction:
140 "Unlawful Dissemination Of This Information Is A Misdemeanor." Any information received from the
141 court shall be kept in a separate confidential file at the school of attendance and shall be transferred
142 to the minor's subsequent schools of attendance and maintained until the minor graduates from high
143 school, is released from juvenile court jurisdiction, or reaches the age of 18, whichever occurs first.
144 After that time the confidential record shall be destroyed. At any time after the date by which a record
145 required to be destroyed by this section should have been destroyed, the minor or his or her parent
146 or guardian shall have the right to make a written request to the principal of the school that the
147 minor's school records be reviewed to ensure that the record has been destroyed. Upon completion
148 of any requested review and no later than 30 days after the request for the review was received, the
149 principal or his or her designee shall respond in writing to the written request and either shall confirm
150 that the record has been destroyed or, if the record has not been destroyed, shall explain why
151 destruction has not yet occurred.

152 Except as provided in paragraph (2) of subdivision (b), no liability shall attach to any person
153 who transmits or fails to transmit any notice or information required under subdivision (b).

154 (e) For purposes of this section, a "juvenile case file" means a petition filed in any juvenile court
155 proceeding, reports of the probation officer, and all other documents filed in that case or made
156 available to the probation officer in making his or her report, or to the judge, referee, or other hearing
157 officer, and thereafter retained by the probation officer, judge, referee, or other hearing officer.

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: San Diego County Bar Association

STATEMENT OF REASONS:

Existing Law: Existing law specifies who may access juvenile court records.

Resolution: This resolution adds a provision specifically permitting representatives from the district appellate projects to access juvenile court records.

The Problem: The district appellate projects are responsible for administering the appointed counsel program for indigent defendants on appeal, which includes juvenile dependency and delinquency appeals. Under existing law, there is no provision for the district appellate projects to access this information.

Reasons: Permitting the district appellate projects to access juvenile court records will allow the projects

to perfect notices of appeal on behalf of indigent defendants and to provide assistance to appointed appellate counsel in obtaining court records on behalf of their clients. Appellate counsel are appointed to represent juvenile defendants on appeal without regard to counsel's proximity to the local court. The appellate projects frequently access materials in the juvenile court records on behalf of the appointed appellate counsel when it is more economical. Permitting the district appellate projects access to the juvenile court files not only permits the projects to fulfill their duties as administrators of the appointed counsel program, it also allows for a savings of state resources by reducing needless travel expenses incurred by appointed counsel traveling to view the juvenile court records.

IMPACT STATEMENT:

This resolution would affect California Rules of Court, rule 1423 which governs the confidentiality of juvenile records. Subdivision (b) permits inspection by "A[o]nly those persons specified in section 827 and 828."

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