

## Accessing, Inspecting, and Utilizing Records Sealed by The Court

### 706.1 PROCEDURE

#### 706.1.1 PROCEDURES FOR CONSIDERING INFORMATION FROM SEALED RECORDS

When writing a report where a petition has been filed against a youth, but no findings have been made, such as a Fast-Track report or Meet and Confer report, and the youth is alleged to have committed a felony offense, previous court-ordered programs or placements from a sealed case can be considered for the purposes of determining the youth's eligibility or suitability for remedial programs or services. Information obtained shall not be disclosed except as necessary to implement a referral to a program or service. (Welfare and Institutions Code § 786(g)(1)(C) If the alleged felony offense is later sustained, and the court orders Probation to write a subsequent report, the information from the sealed case can be documented in accordance with Welfare and Institutions Code § 786(g)(1)(D).

#### 706.1.2 PROCEDURES FOR REPORTING INFORMATION FROM SEALED RECORDS

When writing a delinquent history summary for a court report, delinquent records that have been sealed can be reported when:

- (a) The sealed offense was a 707(b) offense that was committed after the youth was 14 years of age, and the youth has since sustained a new felony true finding. The Probation Officer (PO) shall report the sealed information in the same manner as the non-sealed information, to include offense details, date of court hearings and findings, including the date the case was ordered sealed. This information should be reported in a supplemental delinquent history statement, which will be attached to the court report. The supplemental report containing the sealed delinquent history shall only be distributed to the District Attorney (DA) and the Court. The sealed case information will be used for the purpose of determining an appropriate disposition of the case. (Welfare and Institutions Code § 781(a)(1)(D)(ii)(III))
- (b) Submitting a Deferred Entry of Judgment (DEJ) report. The PO shall report the sealed information in the same manner as the non-sealed information, to include offense details, date of court hearings and findings, including the date the case was ordered sealed. This information should be reported in a supplemental delinquent history statement, which will be attached to the court report. The supplemental report containing the sealed delinquent history shall only be distributed to the DA and the Court. The case information will be used only to determine DEJ eligibility or is ineligible for a program of supervision per Welfare and Institutions Code 654.3. (Welfare and Institutions Code § 786(g)(1)(A))
- (c) The youth sustained a felony true finding. The PO shall report the sealed information in the same manner as the non-sealed information, to include offense details, date of court hearings and findings, including the date the case was ordered sealed. This information should be reported in a supplemental delinquent history statement, which will be attached to the court report. The supplemental report containing the sealed

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delinquent history shall only be distributed to the DA, court, and youth's counsel. The sealed case information will be used for the purpose of determining an appropriate disposition. (Welfare and Institutions Code § 786(g)(1)(D))

- (d) The DA's Office is requesting the youth be transferred to adult court. The PO shall report the sealed information in the same manner as the non-sealed information, to include offense details, date of court hearings and findings, including the date the case was ordered sealed. This information should be reported in a supplemental delinquent history statement, which will be attached to the court report. The supplemental report containing the sealed delinquent history shall only be distributed to the DA, court, and youth's counsel. The sealed case information will be used for the purpose of determining if a transfer is appropriate. (Welfare and Institutions Code § 786(g)(1)(E))

#### 706.1.3 ACCESSING SEALED CASE INFORMATION AND THE SAN DIEGO RISK AND RESILIENCY CHECKUP II (SDRRC II)

There are five circumstances when probation officers are allowed to access sealed case information. The probation officer will use the sealed case information for completing the SDRRC II assessment as stated below:

Welfare and Institutions Code § 781(a)(1)(D)(ii)(III): Allows the probation officer, the DA, and Court to access sealed case information when the sealed case is a 707(b) offense which the youth committed after the age of 14 years, and the new offense is a felony, for the purposes of determining an appropriate disposition. Because the SDRRC II score impacts the probation officer's disposition recommendation, information from sealed cases accessed per Welfare and Institutions Code § 781(a)(1)(D)(ii)(III) will be used when completing the SDRRC II.

Welfare and Institutions Code § 786(g)(1)(A): Allows the probation officer, DA, and Court to access sealed case information to determine DEJ Eligibility or if the youth is eligible for program of supervision per Welfare and Institutions Code § 654.3. Because the SDRRC II is not created for the purposes of determining DEJ eligibility or Welfare and Institutions Code § 654.3 eligibility, information from sealed cases accessed per Welfare and Institutions Code § 786(g)(1)(A) will not be used when completing the SDRRC II.

Welfare and Institutions Code § 786(g)(1)(C): Allows the PO to access sealed information post felony petition, but prior to findings being made. Only the program and placement information from the sealed case can be accessed, and only for the purpose of determining eligibility or suitability for remedial programs or services. Because previous programs and services have no impact upon the SDRRC II score, information from sealed cases accessed per Welfare and Institutions Code § 786(g)(1)(C) cannot be used when completing the SDRRC II.

Welfare and Institutions Code § 786(g)(1)(D): Allows the PO, DA, Court, and youth's counsel to access sealed case information after the youth sustains a felony true finding, for the purpose of determining an appropriate disposition. Because the SDRRC II score impacts the probation officer's disposition recommendation, information from sealed cases accessed per Welfare and Institutions Code § 786(g)(1)(D) will be used when completing the SDRRC II.

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Welfare and Institutions Code § 786(g)(1)(E): Allows the PO, DA, Court, and youth's attorney to access sealed case information for the purpose of determining if a transfer to adult court is appropriate. The SDRRC II is not used for determining the appropriateness of a transfer to adult court. Information from sealed cases accessed per Welfare and Institutions Code § 786(g)(1)(E) will not be used when completing the SDRRC II.

#### 706.1.4 SEALED CASE INFORMATION DISCLOSED DURING INTERVIEWS

POs sometimes receive unsolicited sealed case information during their work with probation clients. Information gathered or received about sealed cases, including statements made to the PO by the family, youth, or witnesses, even if unsolicited by the PO, will not be placed in a probation report intended for distribution to parties not named in Welfare and Institutions Code § 781(a)(1)(D)(ii)(III), Welfare and Institutions Code § 786(g)(1)(A), Welfare and Institutions Code § 786(g)(1)(C), Welfare and Institutions Code § 786(g)(1)(D), and Welfare and Institutions Code § 786(g)(1)(E). Information gathered or received regarding sealed information will only be disclosed as allowed in procedure section 706.1.2, to include the use of the Supplemental Delinquent History Statement.

#### 706.1.5 ACCESSING THE SEALED ELECTRONIC OR PHYSICAL FILE

When a PO needs to access sealed records in accordance with Welfare and Institutions Code § 781(D)(ii)(III), Welfare and Institutions Code § 786(g)(1)(A), Welfare and Institutions Code 786(g)(1)(C), Welfare and Institutions Code § 786(g)(1)(D) or Welfare and Institutions Code § 781(g)(1)(E), they will send an email titled "Access Needed to Sealed Record" to their Supervising Office Assistant (SOA), with a cc to the Probation Operations Support Manager, with the name and identification (ID) number of the youth they are investigating. Upon receiving the email from the PO, the SOA will unlock the sealed records in the Probation Case Management System (PCMS) database. Within two business days of submitting the Supplemental Delinquent History Statement or utilizing the sealed information, the PO will email the SOA or Senior Office Assistant (Sr. OA) to lock the sealed record(s) in the PCMS database.

The PO shall not access the paper copies of the sealed records, which is a taped folder in the youth's file, unless the PO needs to submit their report within 24 hours and the SOA has not responded to the PO's email within a reasonable time. If the PO un-tapes the sealed case file, the PO shall take the case file to Records Support Staff for re-taping within two business days of submitting the Supplemental Delinquent History Statement or utilizing the sealed information.