

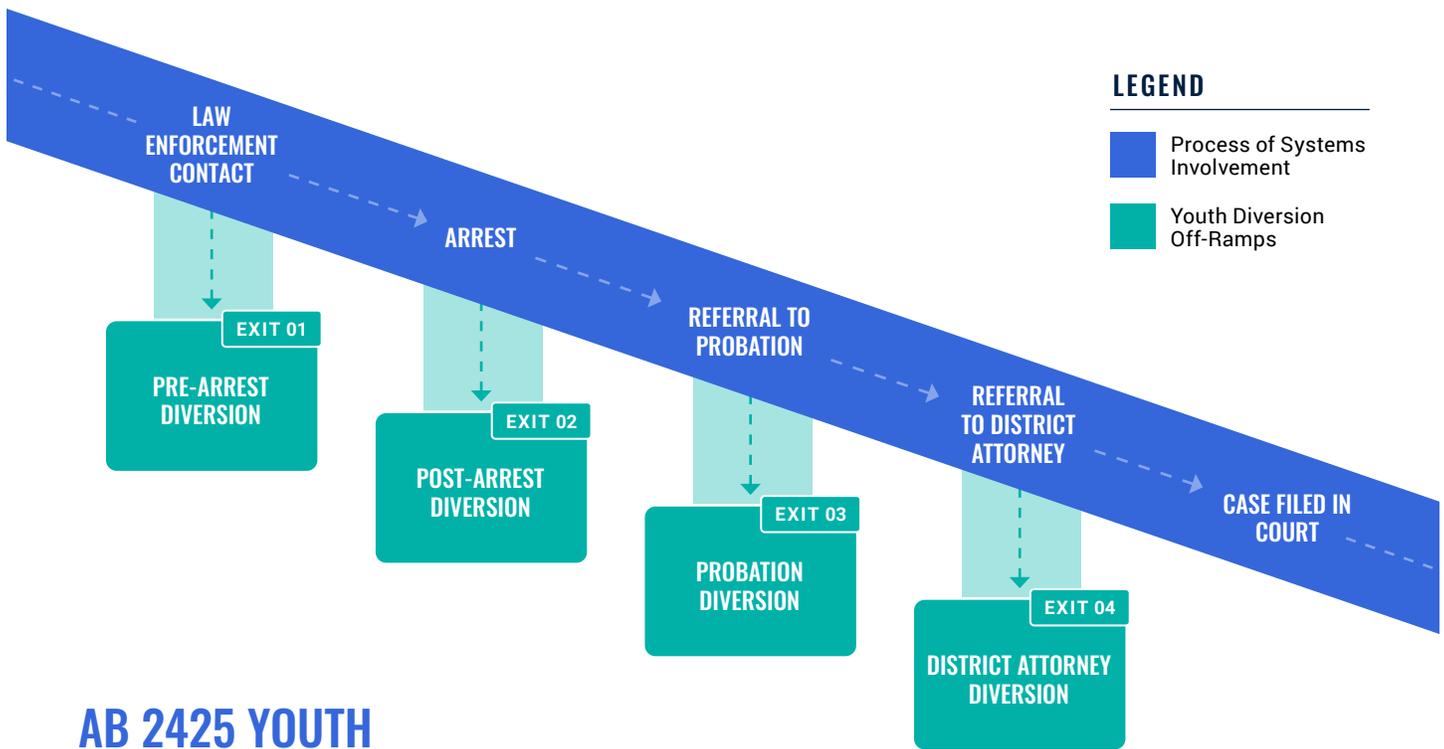


A GUIDE FOR SERVICE PROVIDERS

Confidentiality and Record Sealing of Youth Police Records and Youth Diversion Records

Effective January 1, 2022, youth who come into contact with law enforcement and are diverted from the juvenile justice system have additional confidentiality and record sealing protections under the law. Youth who are diverted and who successfully complete a diversion program will no longer have to request that their police records be sealed – this will be automatic.

This guide is an overview of the different types of encounters with law enforcement that are covered by the additional confidentiality protections, the types of records and information that are protected, and what the requirements are for diversion service providers, law enforcement, and probation departments.



LEGEND

- Process of Systems Involvement
- Youth Diversion Off-Ramps

AB 2425 YOUTH DIVERSION OFF-RAMPS

Each **OFF-RAMP** represents a different point in time when a youth can be diverted away from formal processing in the juvenile justice system.

Diversion opportunities vary in different cities. Some examples of diversion include: counsel and release, mentoring programs, mental health counseling, and restorative justice programs.

NEW LEGAL REQUIREMENTS FOR SERVICE PROVIDERS BEGINNING JANUARY 1, 2022

Diversion Service Providers must maintain confidentiality of youth diversion records according to the following:

For youth who are referred to a diversion program by law enforcement:

- ✓ Service providers must keep diversion records confidential both during and after program completion.
- ✓ Service providers must notify the law enforcement agency that a youth has satisfactorily completed a diversion program within 30 days of completion.

For youth who successfully complete a diversion program at the referral of Probation:

- ✓ Service providers must seal the youth's records within 60 days of being notified by Probation of successful completion, and then must notify Probation once they are sealed.

Definitions

WHAT IS DIVERSION?

Diversion is when a youth is redirected away from formal processing in the juvenile justice system.

Diversion by Police

Diversion can happen when a youth is stopped by a law enforcement officer (including police officer or sheriff) and is given a chance to avoid system involvement. It can look like:

1. The officer lets the youth go home without arresting them and without referring them to a diversion program (called “counsel and release”).
2. The officer lets a youth do a diversion program instead of arresting the youth.
3. The officer arrests a youth, but then refers them to a diversion program instead of to the probation department.

Example: Diversion programs can include counseling, tutoring, mentoring, community service, restorative justice circles, and other opportunities to support youth education, health, and wellbeing.

Diversion by Probation

When a police officer arrests a youth, they can refer the youth to the probation department. Probation departments can choose to divert youth away from court involvement by referring them to a diversion program.

Example: Mike is arrested by a police officer for shoplifting. The police officer does not divert Mike into a diversion program but instead refers him to probation. The probation department offers Mike the opportunity to participate in a community service program instead of referring him to juvenile court.

WHAT IS A JUVENILE POLICE RECORD?

A “juvenile police record” refers to **records or information** relating to the taking of youth into custody, temporary custody, or detention.¹ This includes any information the police or sheriffs collect when they stop a youth because they believe the youth broke a law.

Example: A juvenile police record can include notes that police or sheriffs take after talking to a youth (even if they do not arrest them). It can include a police report that is written when someone is arrested for allegedly breaking the law. Finally, it can include any information that is gathered in speaking to the youth or others in relation to them being stopped and taken into custody.

WHAT ARE DIVERSION RECORDS?

Diversion records include any information that is collected or written down about diversion services that are provided to a youth.

Example: If a youth participates in a diversion program that includes meeting with a mentor, information including the youth’s name, the mentor’s name, attendance, the reason for referral, and anything else related to the youth’s participation in the program is part of the diversion record.

WHAT IS RECORD SEALING?

Sealing a record means that the record cannot be accessed by the public. Once a youth completes a diversion program and the youth’s police record for the related law enforcement contact is sealed, the youth can legally say that they have not been arrested, referred to probation, nor participated in a diversion program for that specific law enforcement contact. It is as if the contact with law enforcement, arrest, participation in diversion program and/or referral to probation **never happened**.

Example: Ana is stopped by police for spray painting a bench and is arrested. Instead of being referred to probation, the police refer Ana to a diversion program where she participates in a program at a community center. Once she completes the diversion program, her police and diversion records related to that incident are sealed and she can say that she was never arrested for spray painting the bench.

WHAT IS CONFIDENTIAL?

Confidential means that information cannot be shared and is kept private, except between certain people, agencies, and authorities.

¹ (WIC § 827.95 (d)(1)). Other parts of WIC 827.95 prohibit the release of “copy of a police record,” this also includes information sharing and not just a physical copy of a record.

Confidentiality of Diversion Records

WHEN ARE POLICE RECORDS AND DIVERSION RECORDS CONFIDENTIAL?

During Program

While a young person is completing a diversion program, only the diversion service provider, law enforcement agency, youth, and parent or guardian can know about the police records and diversion records. That means that people cannot talk about or share those records with anyone who is not in the underlined list.

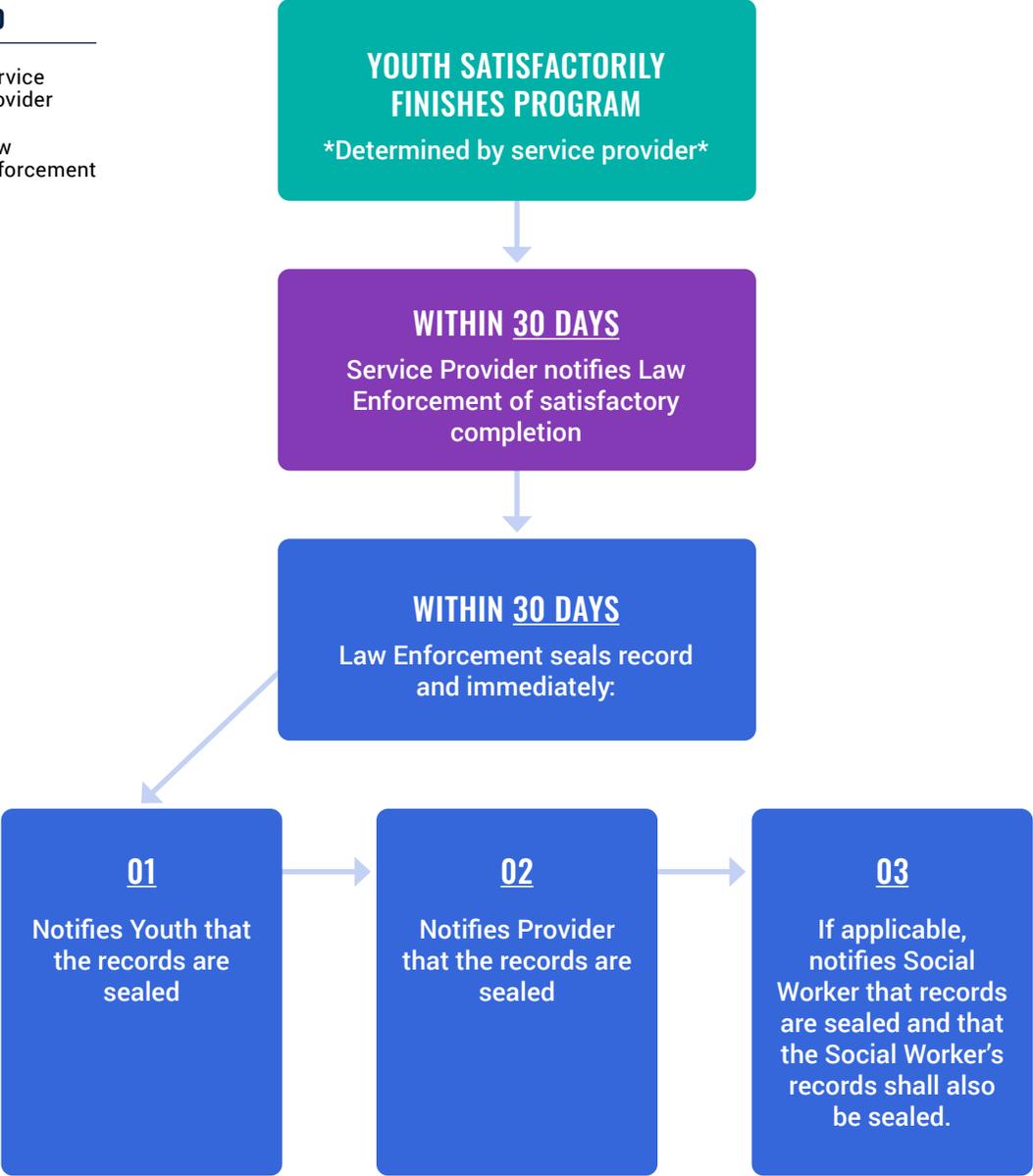
After Program is Completed

After a young person completes a diversion program, the diversion records remain confidential. They cannot be viewed by anyone other than the service provider and can only be shared with the youth and their parent or guardian after receiving signed permission from the youth or their parent or guardian.

Sealing Process for Police-Referred Diversion Records

LEGEND

- Service Provider
- Law Enforcement



HOW DOES A YOUTH SEAL THEIR POLICE AND DIVERSION RECORDS?

Police records and diversion records are automatically sealed in the following situations. If a youth ends up in one of these situations, they do not need to do anything to get their records sealed. They will be sealed automatically in the timeframes listed below.

If a youth cannot legally be arrested:

For most offenses, children under age 12 cannot legally be arrested. If a child in this category has contact with police and cannot legally be arrested, then any police record created will automatically be sealed after the police release the child. This happens immediately upon the child's release.

If a service provider determines that a youth successfully completes a diversion program:

A law enforcement officer can refer a youth to a diversion program. Once the youth has successfully completed the diversion program, the program provider will notify the referring law enforcement agency and the law enforcement agency will seal the youth's police records. They have 30 days from the time the provider notifies the police that the youth finished the program to seal the youth's records.

If a youth had contact with police but 60 days go by and they are not referred to the probation department:

If a youth has contact with a law enforcement officer but they are let go (counsel and release) and are not referred to probation for anything in the next 60 days, the law enforcement agency has to seal the youth's police records. The police have 6 months after they release the youth to check if the youth was referred to probation. After they confirm no subsequent referral to probation was made within 60 days of the initial release, they have to seal the youth's records within 60 days.

WHAT HAPPENS IF THE POLICE DEPARTMENT DOES NOT SEAL A YOUTH'S RECORDS AFTER THEY COMPLETE A DIVERSION PROGRAM?

If a youth receives notice that the law enforcement agency is not going to seal their records after they have completed a diversion program, they can ask the agency to reconsider.

- ✓ **They can fill out and submit a form called, "Petition to Seal Juvenile Police Records, JV-582."**
They can ask the agency for the form.
- ✓ **They can also submit other documents to show that they completed the diversion program.**

WHAT HAPPENS AFTER THE POLICE DEPARTMENT SEALS A YOUTH'S RECORDS?

After the police department seals a youth's records, they must tell the following people and agencies that the youth's records have been sealed:

- ✓ **Youth**
- ✓ **Diversion service provider**
- ✓ **The youth's social worker** (if the youth is a dependent of the juvenile court)

WHAT HAPPENS IF A YOUTH HAS AN ADDITIONAL POLICE CONTACT WHILE PARTICIPATING IN A DIVERSION PROGRAM?

This may impact the sealing of the young person's records. The youth should contact the public defender's office or other qualified attorney for guidance.

Sealing Process for Probation Diversion Records

LEGEND

- Probation
- Law Enforcement
- Service Provider



WHAT HAPPENS IF A YOUTH DOES A DIVERSION PROGRAM THROUGH THE PROBATION DEPARTMENT?

If a young person participates in a diversion program through the probation department, a probation officer will decide if they've done what they need to do to complete the program. (The legal term is "satisfactory completion.") If the probation officer decides the youth has done enough, the probation department will seal their probation records (which include arrest and other records). Youth do not have to do anything to make this happen. Their records held by the probation department will automatically be sealed upon satisfactory completion of the diversion program. The probation department will also tell the following agencies that they need to seal the records:

✓ **The arresting law enforcement agency (police department or sheriff)**

The law enforcement agency has 60 days to seal the youth's records after the probation department notifies them to seal the records. The law enforcement agency has to notify probation once they have sealed the records. Once the probation department knows the records are sealed, they have 30 days to notify the youth in writing of the sealing.

✓ **The diversion service provider**

Diversion service providers have 60 days to seal a youth's records related to the arrest, referral, and participation in the diversion program after the probation department tells them to seal the records. The diversion service provider has to tell the probation department once they have sealed the records. Once the probation department knows the records are sealed, they have to notify the youth in writing of the sealing.

WHAT HAPPENS IF A PROBATION DEPARTMENT DOES NOT THINK A YOUTH HAS DONE ENOUGH TO COMPLETE THE DIVERSION PROGRAM AND DECIDES NOT TO SEAL THEIR RECORDS?

If the probation department decides not to seal the youth's diversion records, the probation department must notify the youth in writing, informing them of the reason for not sealing the records. The youth may then ask the juvenile court to review the decision. Public defenders may be able to help with this.

WHAT HAPPENS IF A YOUTH HAS AN ADDITIONAL POLICE CONTACT WHILE PARTICIPATING IN A DIVERSION PROGRAM?

This may impact the sealing of the young person's records. The youth should contact the public defender's office or other qualified attorney for guidance.

Other Requirements and Exceptions

WHAT IF A YOUTH IS IN FOSTER CARE?

The requirements and process for sealing a foster youth's diversion records are the same as those for sealing other youth's records, as outlined above. The one addition is that once a foster youth's record is sealed, police are required to inform the foster youth's social worker, and then all of the social worker's records related to the youth's diversion or police contact are also sealed.

HOW DOES A YOUTH SEAL THEIR COURT RECORDS?

This guide does not cover court records which have their own rules on sealing. Please see www.pjdc.org/sealing.

WHAT IF A YOUTH COMPLETED DIVERSION BEFORE JANUARY 1, 2022?

The law requiring police diversion records to be automatically sealed went into effect on January 1, 2022. If a youth completed a diversion program before then, they should contact the public defender's office or a qualified attorney to get support in sealing their law enforcement records.

ARE THERE EXCEPTIONS TO WHEN A SEALED YOUTH POLICE RECORD CAN BE ACCESSED?

Prosecutors or District Attorneys may look at or use a sealed youth police record in court to make sure they are following the law about sharing favorable evidence in another person's case who is accused of a crime. After it is used for this limited purpose, the prosecutor must destroy the records.

Example: Andrew and Bobby are classmates at the same high school, but do not get along. One day, Andrew and Bobby get into a fight with each other while walking home from school. Police intervene, counsel and release both boys, and refer Bobby to a local diversion program since he was believed to be the aggressor. Nine months later, Bobby accuses Andrew of threatening him with a gun. The local prosecutor charges Andrew with assault with a deadly weapon and calls Bobby as her main witness against Andrew. The court may allow the prosecutor access to Bobby's diversion records and share them with Andrew's defense attorney, as information in Bobby's diversion records may be favorable to Andrew's case.

Prosecutors do not have access to diversion service provider records.

FOR MORE INFO OR TO REQUEST A TRAINING

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