
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: AB 2599 **Hearing Date:** June 26, 2018
Author: Holden
Version: May 25, 2018
Urgency: No **Fiscal:** Yes
Consultant: MK

Subject: *Criminal Records*

HISTORY

Source: Record Clearing Education

Prior Legislation: SB 393 (Lara), Chapter 680, Stats. 2017
SB 513 (Hancock) Chapter 798, Stats. 2013
SB 599 (Perata) Chapter 792, Stats. 2003

Support: American Civil Liberties Union; Californians for Safety and Justice; California Immigrant Policy Center; California Public Defenders Association

Opposition: None known

Assembly Floor Vote: 76 - 0

PURPOSE

The purpose of this bill is to require detention facilities to provide information to arrestees and about their right to petition for arrest record sealing and expungement relief.

Existing law provides in any case in which a person is arrested and released and no accusatory pleading is filed charging him with an offense, any record of arrest of the person shall include a record of release. Thereafter, the arrest is deemed a detention. (Penal Code § 849.5)

Existing law requires detention facilities to post a sign containing information that arrestees have the right to free telephone calls to their attorney, bail bondsman, and to arrange care for the minor, as specified. (Penal Code § 851.5)

Existing law allows a person who been arrested and no accusatory pleading has been filed, to petition the law enforcement agency having jurisdiction over the offense to destroy its records of the arrest and, if the law enforcement agency determines that the person was factually innocent, it must seal its arrest records, and the petition for relief and destroy its arrest records and the petition. (Penal Code § 851.8 (a))

Existing law states that, if the petition of an arrestee to the law enforcement agency to have an arrest record destroyed is denied, a petition may be made to the superior court that would have had jurisdiction over the case. If the court finds the arrestee to be factually innocent, then the court must order the sealing and destruction of records of the arrest. (Penal Code § 851.8)

Existing law provides that, whenever a person is convicted of a charge, and the conviction is set aside based upon a determination that the person was factually innocent of the charge, the judge shall order that the records in the case be sealed, including any record of arrest or detention, upon written or oral motion of any party in the case or the court, and with notice to all parties to the case. (Penal Code § 851.86.)

Existing law states that, whenever a person is acquitted of a charge and it appears to the judge presiding at the trial that the defendant was factually innocent of the charge, the judge may order that the records in the case be sealed, including any record of arrest or detention, upon the written or oral motion of any party in the case or the court, and with notice to all parties to the case. (Penal Code § 851.85)

Existing law allows, in any case where a person is arrested and successfully completes a diversion program administered by a prosecuting attorney in lieu of filing an accusatory pleading, the person may petition the superior court that would have had jurisdiction over the matter to issue an order to seal the records pertaining to an arrest and the court may order those records sealed. (Penal Code § 851.87.)

Existing law allows, in any case where a person is arrested and the successfully completes a deferred entry of judgment program, the judge may order the records pertaining to the arrest to be sealed, upon the written or oral motion of any party in the case, or upon the court's own motion, and with notice to all parties in the case. (Penal Code § 851.90.)

Existing law states that a petition to seal an arrest record may be granted as a matter of right or in the interests of justice. (Penal Code § 851.91 (c).)

Existing law allows a person who has suffered an arrest that did not result in a conviction to petition the court to have his or her arrest and related records sealed. (Penal Code § 851.91.)

Existing law states that “an arrest that did not result in a conviction” means:

- 1) The statute of limitations has run on every offense upon which the arrest was based and the prosecuting attorney has not filed an accusatory pleading based on the arrest;
- 2) the prosecuting attorney filed an accusatory pleading based on the arrest, but, no conviction occurred, or the charge has been dismissed;
- 3) The arrestee has been acquitted of the charges, or;
- 4) A conviction occurred, but has been vacated or reversed on appeal. (Penal Code § 851.91.)

Existing law requires Judicial Council to furnish forms for persons applying to have an arrest sealed. The form must include a statement that the petition form is available in additional languages, the Internet website where the form is available in alternative languages. (Penal Code § 851.91 (b)(3).)

Existing law requires a court to grant expungement relief, with specified exceptions, for a misdemeanor or felony conviction for which the sentence included a period of probation if the petitioner is not serving a sentence for, on probation for, or charged with the commission of any offense. (Penal Code § 1203.4 (a).)

Existing law requires a court to grant expungement relief, with specified exceptions, for a misdemeanor conviction for which the sentence did not include a period of probation, or for an infraction conviction, if the petitioner is not serving a sentence for, on probation for, or charged with the commission of any offense. (Penal Code § 1203.4(a).)

Existing law allows the court to grant expungement relief for a conviction of a petitioner sentenced to county jail pursuant to criminal justice realignment, if specified conditions are satisfied. (Penal Code § 1203.41.)

Existing law allows the court to grant expungement relief for a conviction of a petitioner sentenced to prison for a felony that, if committed after enactment of Criminal Justice Realignment legislation in 2011, would have been eligible for county-jail sentencing. (Penal Code § 1203.42.)

Existing law allows the court to grant expungement relief for a conviction of solicitation or prostitution, if the petitioner can establish by clear and convincing evidence that the conviction was a result of his or her status as a victim of human trafficking. (Penal Code § 1203.49.)

Existing law provides that defendants sentenced to probation must be informed, in the probation papers, of their right and privilege to petition for expungement relief and a certificate of rehabilitation and pardon. (Penal Code § 1203.4a (a).)

Existing law provides that defendant's convicted of a misdemeanor and not sentenced to probation, an infraction, or sentenced to county jail pursuant to Criminal Justice Realignment, must be informed of the provisions that set forth the requirements to obtain expungement relief, either orally or in writing, at the time of sentencing. (Penal Code § 1203.4a (c)(1).)

Existing law provides that a dismissal order granting expungement shall state, and the defendant must be informed, that the order granting expungement relief does not relieve the petitioner of the obligation to disclose the conviction in response to any direct question contained in any questionnaire or application for public office, for licensure by any state or local agency, or for contracting with the California State Lottery Commission. (Penal Code, § 1203.41 (a)(4).)

This bill provides that a facility at which an arrestee is detained, shall at the request of an arrestee upon release, provide the judicial council forms necessary to apply to have his or her arrest record sealed.

This bill provides that a facility at which an arrestee is detained shall post a sign containing the following information: "A person who has been arrested but not convicted may petition the court to have his or her arrest and related record sealed. The petition form is available on the Internet or upon request in this facility."

COMMENTS

1. Need for This Bill

According to the author:

In California, the pathway to release is wider and the opportunities for rehabilitation have expanded beyond what they have historically been. These are important changes but we also must examine the impact of arrests and incarceration on reintegration into the community. Being required to disclose these events can

impact a person's ability to receive a job, secure an apartment or receive financial aid. Propositions 57, 47 and other reforms have created the opportunity for more people to receive a clean slate and have equal access to job and housing opportunities. We should take the necessary steps to ensure everyone with a record has a chance at a clean slate.

There is a lack of awareness of the requirements or need for expungements in the general public. There is a short time frame for people to file a petition for clearing their arrest record and the standard of evidence required to accomplish this is very high. Getting records expunged after a person has finished probation is also a complicated process and actions by a person during incarceration and probation can affect their ability to potentially expunge their record. This bill increases a person's awareness of their ability to clear their record and the process to do so.

2. Arrest Record Sealing

Under current law, a factually innocent person arrested for or charged with a crime may be able to have the records sealed by obtaining a declaration of factual innocence. (Penal Code, § 851.8, subd. (b).) The petitioner carries the burden of proof to show "facts exist which would lead no person of ordinary care and prudence to believe and conscientiously entertain any honest and strong suspicion that the person arrested [or acquitted] is guilty." (*People v. Adair* (2003) 29 Cal.4th 895, 907 [citation and quotations omitted].) For a finding of factual innocence, the record must exonerate the petitioner. (*People v. Adair*, supra, 29 Cal.4th at p. 907.) If a certificate of factual innocence is granted, all records related to the arrest and charges, if any, must be sealed for three years and then destroyed. (Penal Code, § 851.8, subd. (b).) In contrast to the onerous process of establishing factual innocence, if a defendant has the opportunity to complete diversion or differed entry of judgment, a judge may order the sealing of the arrest and related court records. (Pen. Code, §§ 851.87, 851.90 (a).)

Until last year, there was no such relief for a person who was arrested, but the charges were never filed or were dismissed. Only people who could prove their factual innocence, or participated in a diversion program, could have their arrests sealed. However, in 2017, the Legislature passed SB 393 (Lara), which created a process for persons who were arrested but never found guilty of a crime to petition the court to have their arrest record. Now, under existing law, a person may petition the court if the prosecutor has not filed charges based on the arrest, no conviction has occurred, the charges have been dismissed, or if the arrestee is acquitted of the charges.

If the court grants relief, the arrest is sealed and deemed not to have occurred and the person is released from penalties and disabilities resulting from the arrest. Unless the record is sealed and destroyed based upon a finding of factual innocence, sealed arrest records can still be used in subsequent prosecutions and have the same effects as if they had not been sealed. The arrestee is still obligated to disclose the arrest in response to any direct question contained in a questionnaire or application for a peace officer position, licensing by a state or local agency, and for contracting with the state lottery. (Penal Code § 851.91.) The sealing does not affect the person's authorization to own a firearm or any prohibition from holding public office that would otherwise apply. (*Id.*)

Even though a sealed arrest still follows a person, the benefits of record sealing are numerous. For example, a sealed record may not be used in any way that could result in denial of any employment, benefit, or license. If a member of the public or a consumer agency requests information from the courts or law enforcement about an arrest, they will only be informed that the record has been sealed and will not be supplied any other information about the arrest. Private background check companies must destroy records of an arrest once they learn that the record is sealed, and are prohibited from disclosing a sealed arrest in a consumer background report.

A person seeking to seal their arrest record must navigate a complex process. A petition to seal an arrest must be verified, filed in the court with criminal jurisdiction in the place the arrest occurred, be filed at least 15 days prior to the hearing on the petition, be served on the prosecutor in the county where the arrest occurred, include the petitioner's name, birthdate, date of arrest, city and county where the arrest occurred, the law enforcement agency that made the arrest. Additionally, a petitioner who just suffered an arrest, must obtain any other information identifying the arrest that is available from the law enforcement agency that conducted the arrest or from the court in which the accusatory pleading, such as the case number for the police investigative report documenting the arrest, and the court number under which the arrest was reviewed by prosecutor, the offense upon which the arrest was based, or, if an accusatory pleading was filed based on the arrest, the charges in the accusatory pleading. The petition must also include a statement the petitioner is entitled to have his or her arrest sealed as a matter of right or, how the interests of justice would be served by granting the petition, accompanied by declarations made directly and verified by the petitioner, and supporting declarants. (Penal Code § 851.92 (b).)

Additionally, if you are in the DNA database, you must also request the DOJ to destroy your DNA sample and expunge your DNA database profile. Any person arrested and charged with a felony must submit a DNA sample to the DOJ. (Penal Code § 296.) To remove your information from the DOJ's database, a petitioner must submit a petition to the DOJ, provide a copy to the trial court and the prosecutor, and send the court a proof of service for each. The DOJ will only expunge the information from its database if the petitioner provides a certified copy of the court order dismissing the conviction or case, or a letter from the district attorney certifying that no accusatory pleading has been filed or the charges have been dismissed, the defendant has been found factually innocent, not guilty, acquitted, or the conviction was reversed and the case dismissed. (*Id.*)

This bill would require detention facilities to provide a form from Judicial Counsel, which is available online, to arrestees upon their release from custody at their request, and to post a sign informing arrestees of their right to petition the court to seal their record. Detention facilities are already required to post a sign containing information that arrestees have the right to free telephone calls to their attorney, bail bondsman, and to arrange care for the minor. (Penal Code § 851.5.)