
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair
2019 - 2020 Regular

Bill No: AB 1076 **Hearing Date:** July 9, 2019
Author: Ting
Version: June 26, 2019
Urgency: No **Fiscal:** Yes
Consultant: SC

Subject: *Criminal Records: Automatic Relief*

HISTORY

Source: Californians for Safety and Justice
San Francisco District Attorney's Office

Prior Legislation: AB 2438 (Ting), 2018, held in Assembly Appropriations
AB 2599 (Holden), Ch. 653, Stats. 2018
AB 1793 (Bonta), Ch. 993, Stats. 2018
AB 1008 (McCarty), Ch. 789, Stats. 2017
SB 393 (Lara), Ch. 680, Stats. 2017
SB 513 (Hancock), Ch. 798, Stats. 2013
SB 599 (Perata), Ch. 792, Stats. 2003

Support: American Civil Liberties Union of California; A New Way of Life Re-Entry Project; Building Opportunities for Self-Sufficiency; California Attorneys for Criminal Justice; California Public Defenders Association; Code for America; Communities in Schools; Community Works; Congregations United for Change; Council of California Goodwill Industries; Democratic Women's Club of San Diego; Ella Baker Center for Human Rights; Feminists in Action; Friends Committee on Legislation of California; Homeboy Industries; Indivisible: San Diego; Initiate Justice; Inland Congregations United for Change; Los Angeles County Board of Supervisors; MedMen; National Association of Social Workers – California Chapter; OneJustice; Pillars of the Community; Project Kinship; Root & Rebound; Safe Return Project; San Diego District Attorney's Office; Smart Justice; Southern California Coalition; Straight Talk Program, Inc.; Torrey Pines Democratic Club; United Domestic Workers of America – AFSCME Local 3930; We the People SD Democratic Club; University of California Student Association

Opposition: California District Attorneys Association; California Judges Association; California Law Enforcement Association of Records Supervisors; Contractors State License Board

Assembly Floor Vote: 52 - 21

This Analysis Reflects the Bill as Proposed to be Amended

PURPOSE

The purpose of this bill is to require the Department of Justice (DOJ), starting January 1, 2021, to review the records in the statewide criminal justice databases on a weekly basis and to identify persons who are eligible for relief by having their arrest records or criminal conviction records withheld from disclosure and to grant relief to an eligible person without requiring a petition or motion.

Existing law states that in any case where a person is arrested and successfully completes a prefiling 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. (Pen. Code, § 851.87.)

Existing law states that in any case where a person is diverted pursuant to a drug diversion program administered by a superior court, as specified, or is admitted to a deferred entry of judgment program, as specified, and the person successfully completes the program, the judge may order those records pertaining to the arrest to be sealed, as specified, 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. (Pen. Code, § 851.90.)

Existing law states that a person who has suffered an arrest that did not result in a conviction, as specified, may petition the court to have his or her arrest and related records sealed. (Pen. Code, § 851.91, subd. (a).)

Existing law specifies that an arrest that did not result in a conviction has occurred if any of the following are true:

- 1) The statute of limitations has run on every offense upon which the arrest was based and the prosecuting attorney of the city or county that would have had jurisdiction over the offense or offenses upon which the arrest was based has not filed an accusatory pleading based on the arrest; or,
- 2) The prosecuting attorney filed an accusatory pleading based on the arrest, but, with respect to all charges, one or more of the following has occurred:
 - a) No conviction occurred, the charge has been dismissed, and the charge may not be refiled;
 - b) No conviction occurred and the arrestee has been acquitted of the charges; or,
 - c) A conviction occurred, but has been vacated or reversed on appeal, all appellate remedies have been exhausted, and the charge may not be refiled. (Pen. Code, § 851.91, subd. (a).)

Existing law states that an eligible petitioner is entitled to have his or her arrest sealed as a matter of right unless the petitioner's record demonstrates a pattern of arrests for domestic violence, child abuse or elder abuse. If a pattern of such offenses is shown, the court may seal the

petitioner's arrest record only upon a showing that the sealing would serve the interests of justice. (Pen. Code, § 851.91, subd. (c).)

Existing law specifies that a person is not eligible for relief in the form of sealing an arrest for which no conviction has occurred in a variety of circumstances, including when the arrest was for a crime that has no statute of limitations, such as murder, or when the person evaded law enforcement efforts to prosecute the arrest, including by absconding from the jurisdiction in which the arrest occurred. (Pen. Code, § 851.91, subd. (a)(2).)

Existing law specifies procedures for filing a petition to seal an arrest record for an arrest that did not result in a conviction and allows a court to deny a petition to seal for failing to meet any of those procedural requirements. (Pen. Code, § 851.91, subds. (b) and (d).)

Existing law specifies procedures that a court must follow upon granting a petition to seal an arrest record for an arrest that did not result in a conviction. (Pen. Code, § 851.91, subd. (e).)

Existing law states that upon successful completion of a pretrial diversion program, the arrest upon which the defendant was diverted shall be deemed to have never occurred and the court may issue an order to seal the records pertaining to the arrest, as specified. (Pen. Code, § 1000.4, subd. (a).)

Existing law establishes misdemeanor pretrial diversion as the procedure of postponing prosecution of an offense filed as a misdemeanor either temporarily or permanently at any point in the judicial process from the point at which the accused is charged until adjudication. (Pen. Code, § 1001.1.)

Existing law states that upon successful completion of a misdemeanor pretrial diversion program, the arrest upon which the diversion was based shall be deemed to have never occurred and the court may issue an order to seal the records pertaining to the arrest, as specified. (Pen. Code, § 1001.9.)

Existing law states that the presiding judge of the superior court, or a judge designated by the presiding judge, together with the district attorney and the public defender, may agree in writing to establish and conduct a preguilty plea drug court program pursuant to the provisions of this chapter, wherein criminal proceedings are suspended without a plea of guilty for designated defendants. (Pen. Code, § 1000.5, subd. (a)(1).)

Existing law states that if the defendant has performed satisfactorily during the period of the preguilty plea program, at the end of that period, the criminal charge or charges shall be dismissed and the arrest upon which the defendant was diverted shall be deemed to have never occurred and the court may issue an order to seal the records pertaining to the arrest, as specified. (Pen. Code, § 1000.5, subd. (b).)

Existing law states that in any case in which a defendant has fulfilled the conditions of probation for the entire period of probation, has been discharged prior to the termination of the period of probation, or in any other case in which a court, in its discretion and the interests of justice, determines that a defendant should be granted relief, the defendant shall be able to withdraw his or her guilty plea and have the charges dismissed. In cases in which the defendant was convicted

after a plea of not guilty, the court shall set aside the verdict of guilty and dismiss the charges. In either case, the defendant shall be released from all penalties and disabilities resulting from the offense of which he or she has been convicted, except the suspension or revocation of the person's driving privilege, as specified. (Pen. Code, § 1203.4, subd. (a)(1).)

Existing law specifies that a person is not eligible to withdraw their plea or have their plea set aside and have the charges dismissed if the defendant is serving a sentence for any offense, on probation for any offense, or charged with the commission of any offense. (Pen. Code, § 1203.4, subd. (a)(1).)

Existing law specifies circumstances in which a defendant who was convicted of a misdemeanor and not granted probation, or a defendant who was convicted of an infraction, is entitled to withdraw his or her guilty plea and have the charges dismissed or the court shall set aside the verdict of guilty and dismiss the charges. (Pen. Code, § 1203.4a, subd. (a).)

Existing law states that a defendant convicted of a misdemeanor and not granted probation, and every defendant convicted of an infraction who does not meet the requirements to have his or her guilty plea withdrawn or verdict set aside and the charges dismissed may still be granted such relief in the interests of justice. (Pen. Code, § 1203.4a, subd. (b).)

Existing law specifies circumstances in which a court, in its discretion, may allow a defendant to withdraw his or her plea of guilty or set a guilty verdict and dismiss the charges when that defendant was convicted of a felony offense, as specified. (Pen. Code, § 1203.41.)

Existing law specifies circumstances in which a court may, in its discretion, allow a defendant to withdraw his or her guilty plea and have the charges dismissed or set aside the verdict of guilty and dismiss the charges for a person who was convicted of an offense prior to the 2011 Realignment Legislation for a crime for which he or she would otherwise have been eligible for sentencing, as specified. (Pen. Code, § 1203.42.)

Existing law specifies that relief in the form of a withdrawal of plea or setting aside a plea and having the charges dismissed does not permit a person to own, possess, or have in his or her custody or control any firearm or prevent his or her conviction for being a prohibited person in possession of a firearm, as specified. (Pen. Code, § 1203.4, subd. (a)(2).)

Existing law specifies that relief in the form of a withdrawal of plea or setting aside a plea and having the charges dismissed does not permit a person prohibited from holding public office as a result of that conviction to hold public office. (Pen. Code, § 1203.4, subd. (a)(3).)

Existing law requires DOJ to maintain state summary criminal history information and specifies procedures and prohibitions on the disclosure and use of that information. (Pen. Code, § 11105.)

Existing law specifies that DOJ shall not disseminate convictions for which relief was granted pursuant to a statute that authorizing sealing of records for victims of human trafficking, except for the following entities and for specified purposes: peace officer employment and certification, criminal justice employment, cable companies, community care or foster family homes, financial institutions, and transportation companies. (Pen. Code, § 11105, subd. (p).)

Existing law defines “criminal offender record information” (CORI) as records and data compiled by criminal justice agencies for purposes of identifying criminal offenders and of maintaining as to each such offender a summary of arrests, pretrial proceedings, the nature and disposition of criminal charges, sentencing, incarceration, rehabilitation, and release. (Pen. Code, § 11075, subd. (a).)

Existing law states that CORI shall be restricted to that which is recorded as the result of an arrest, detention, or other initiation of criminal proceedings or of any consequent proceedings related thereto. (Pen. Code, § 11075, subd. (b).)

This bill requires, starting January 1, 2021, DOJ to review the records in the statewide criminal justice databases on a weekly basis, and based on information in the state summary criminal history repository, identify persons with records of arrest that qualify for relief.

This bill specifies that a person is eligible for arrest record relief if the arrest occurred on or after January 1, 1973, and meets any of the following conditions:

- 1) The arrest was for a misdemeanor offense and the charge was dismissed;
- 2) The arrest was for a misdemeanor offense, there is no indication that criminal proceedings have been initiated, at least one calendar year has elapsed since the date of the arrest, and no conviction occurred, or the arrestee was acquitted of any charges that arose, from that arrest;
- 3) The arrest is for a felony offense that is punishable by imprisonment in county jail, there is no indication that criminal proceedings have been initiated, and at least three calendar years have elapsed since the date of the arrest, and no conviction has occurred, or the arrestee has been acquitted of the charges; or,
- 4) The person successfully completed a diversion or deferred entry of judgment program related to the arrest as provided.

This bill requires DOJ to grant arrest record relief to an eligible person without requiring a petition or motion by a party for that relief if relevant information is present in DOJ’s records.

This bill states that the state summary criminal history information shall include, directly next to or below the entry or entries regarding the person’s arrest record, a note stating “arrest relief granted,” listing the date that the DOJ granted relief, and this section. This note shall be included in all statewide criminal databases with a record of the arrest.

This bill states that except as otherwise provided below, an arrest for which arrest relief has been granted is deemed not to have occurred, and a person who has been granted arrest relief is released from any penalties and disabilities resulting from the arrest, and may answer any question relating to that arrest accordingly.

This bill requires, on a weekly basis, DOJ to electronically submit a notice to the superior court having jurisdiction over the criminal case, informing the court of all cases for which a complaint was filed in that jurisdiction for which arrest record relief was granted.

This bill states that, starting February 1, 2021, for any record retained by the court pursuant to existing law that governs retention of court records, the court shall not disclose information, except as provided, concerning an arrest that is granted relief pursuant to this section to any person or entity, in any format, except to the person whose arrest was granted relief or a “criminal justice agency,” as defined in existing law.

This bill states that arrest record relief granted pursuant to the provisions of this bill is subject to the following conditions:

- 1) It does not relieve a person of the obligation to disclose an arrest in response to a direct question contained in a questionnaire or application for employment as a peace officer, as defined;
- 2) It has no effect on the ability of a criminal justice agency to access and use records that are granted relief to the same extent that would have been permitted for a criminal justice agency had relief not been granted;
- 3) It does not affect a person’s authorization to own, possess, or have in the person’s custody or control any firearm, or the person’s susceptibility to conviction for being a prohibited person in possession of a firearm, as specified, if the arrest would otherwise affect this authorization or susceptibility;
- 4) It does not affect any prohibition from holding public office that would otherwise apply under law as a result of the arrest; and,
- 5) It does not affect existing authority to receive or take adverse action based on criminal history information, including authority to receive certified court records received or evaluated pursuant to existing provisions of law regulating community care facilities, residential care facilities, and child day care facilities.

This bill’s provisions do not limit petitions, motions, or orders for arrest record relief, as required or authorized by any other law.

This bill requires DOJ to annually publish statistics for each county regarding the total number of arrests granted relief pursuant to the provisions of this bill and percentage of arrests for which the state summary criminal history information does not include a disposition, on the OpenJustice Web portal.

This bill requires, starting January 1, 2021, DOJ to review its statewide criminal justice databases, and based upon information in the state summary criminal history repository and Supervised Release File, identify people who are eligible for automatic conviction record relief.

This bill states that a person is eligible for automatic conviction relief if they meet all of the following conditions:

- 1) The person is not required to register as a sex offender;
- 2) The person does not have an active record for local, state, or federal supervision in the Supervised Release File;

- 3) The person is not currently serving a sentence for any offense and does not have any pending criminal charges;
- 4) There is no indication that the conviction resulted in a sentence of incarceration in the state prison except if the defendant was sentenced prior to the implementation of the 2011 Realignment Act for a crime for which he or she would otherwise have been eligible for sentencing pursuant to Realignment; and,
- 5) The conviction occurred on or after January 1, 1973 and meets one of the following criteria:
 - a) The defendant was sentenced to probation and has completed the term of probation without revocation;
 - b) The defendant was convicted of an infraction or misdemeanor and was not granted probation, has completed their sentence and based upon the disposition date in DOJ's record, at least one calendar year has elapsed since the date of judgment.
 - c) The defendant was sentenced prior to the implementation of the 2011 Realignment Act for a felony for which he or she would otherwise have been eligible for sentencing pursuant to Realignment, as specified, and based on the disposition date and the sentence specified in DOJ's records, it appears that two years have elapsed following the defendant's completion of the sentence.

This bill states that except as specified, DOJ shall grant relief, including dismissal of a conviction, to an eligible person without requiring a petition or motion by a party for that relief if the relevant information is present in DOJ's records.

This bill provides that the state summary criminal history information shall include, directly next to or below the entry or entries regarding the person's criminal record, a note stating "relief granted," listing the date that the department granted relief and this section. This note shall be included in all statewide criminal databases with a record of the conviction.

This bill states that except as applied to any revocation or suspension of a person's driving privileges, a person granted conviction relief pursuant to the provisions of this bill shall be released from all penalties and disabilities resulting from the offense of which the person has been convicted.

This bill requires DOJ, on a weekly basis, to submit a notice electronically to the superior court having jurisdiction over the criminal case, informing the court of all cases for which a complaint was filed in that jurisdiction and relief was granted pursuant to these provisions.

This bill states that, commencing February 1, 2021, the court shall not disclose information concerning a conviction granted relief pursuant to these provisions, except as specified, to any person or entity, except to the person whose conviction was granted relief or a "criminal justice agency," as defined in existing law.

This bill provides that automatic conviction relief granted pursuant to this bill is subject to the following conditions:

- 1) It does not relieve a person of the obligation to disclose a criminal conviction in response to a direct question contained in a questionnaire or application for employment as a peace officer, as defined;
- 2) It does not relieve a person of the obligation to disclose the conviction in response to any direct question contained in any questionnaire or application for public office, or for contracting with the California State Lottery Commission;
- 3) It has no effect on the ability of a criminal justice agency, as defined, to access and use records that are granted relief to the same extent that would have been permitted for a criminal justice agency had relief not been granted;
- 4) It does not limit the jurisdiction of the court over any subsequently filed motion to amend the record, petition or motion for postconviction relief, or collateral attack on a conviction for which relief has been granted pursuant to this section;
- 5) It does not permit a person to own, possess, or have in his or her custody or control any firearm or prevent his or her conviction for being a prohibited person in possession of a firearm, as specified;
- 6) It does not affect any prohibition from holding public office that would otherwise apply under law as a result of the criminal conviction;
- 7) In any subsequent prosecution of the defendant for any other offense, the prior conviction may be pleaded and proved and shall have the same effect as if the relief had not been granted;
- 8) It does not affect existing authority to receive or take adverse action based on criminal history information, including authority to receive certified court records received or evaluated pursuant to existing provisions of law regulating community care facilities, residential care facilities, and child day care facilities; and,
- 9) It does not make eligible a person who is otherwise ineligible to provide or receive payment for providing in-home supportive services.

This bill specifies that these provisions shall not limit petitions, motions, or orders for relief in a criminal case, as required or authorized by any other law.

This bill requires that DOJ, on an annual basis, to publish statistics for each county regarding the total number of convictions granted relief pursuant to this section and the total number of convictions prohibited from automatic relief based on a prosecuting attorney or probation department's motion, on the OpenJustice Web portal.

This bill allows a prosecuting attorney or probation department, no later than 90 calendar days before the date of a person's eligibility for relief for convictions entered on or after January 1, 2018, to file a motion to prohibit DOJ from granting automatic conviction relief.

This bill provides that the court shall give notice to the defendant and conduct a hearing on the motion within 45 days after the motion is filed; if the court grants that motion, DOJ shall not grant automatic relief but the person may continue to be eligible for relief pursuant to other provisions of law, and if the court subsequently grants such a motion, the court shall report that outcome to DOJ and DOJ shall grant relief pursuant to the applicable section.

This bill provides that at the time of sentencing, the court shall advise a defendant, either orally or in writing, of the provisions of this section and of the defendant's right, if any, to petition for a certificate of rehabilitation and pardon.

This bill makes conforming changes in existing code sections related to the dissemination of state summary criminal history information by DOJ and information provided to a licensing board.

COMMENTS

1. Need for This Bill

According to the author of this bill:

Individuals with criminal records face barriers in gaining employment, making them more likely to reoffend. Current law allows individuals to clear arrests that did not result in a conviction, and to clear convictions that are eligible for dismissal by petitioning the court. This imposes a burden on affected individuals to be made aware of their eligibility and retain an attorney to proactively file the necessary petition. Additionally, under that current petition-based record clearance model, each record costs the system \$3,757.

AB 1076 would require the California Department of Justice (DOJ) to automate arrest and conviction relief by dismissing eligible convictions for individuals who have completed their probation and/or county jail sentence, arrests that did not result in a conviction for qualified misdemeanors one year after the arrest, and qualified non-serious, non-violent, non-sex felonies three years after arrest. This bill will not require any action from a petitioner, thereby reducing significant barriers to employment and housing opportunities for millions of Californians.

2. Effect of this Legislation

This bill would create an automatic process whereby DOJ would be required to seek out the records of persons who would be eligible for relief under the provisions of this bill. This bill would also require DOJ to electronically submit information of all cases for which relief was granted to the court with jurisdiction over the case if a complaint was filed. The courts, starting February 1, 2021, are prohibited from releasing information concerning an arrest or conviction that has been granted relief, except to a criminal justice agency or the person who is the subject of the information. This bill contains two separate provisions for arrest record relief and conviction record relief.

a. Automatic Arrest Record Relief

This bill requires DOJ, on a weekly basis starting on January 1, 2021, to review the records in the statewide criminal justice databases and to identify people who are eligible for arrest record relief. If granted relief, the person's state summary history information would include, directly next to or below the entry or entries regarding the person's arrest record, a note stating, "arrest relief granted" pursuant to this bill's provisions. This notation shall be included in all statewide criminal databases with a record of the arrest.

DOJ's review of its records shall take place without a petition or motion by the person who would be granted the relief. However, the bill specifies that its provisions do not limit petitions, motions, or orders for arrest record relief as authorized by existing law.

This bill provides that a person is eligible for this type of relief if the arrest occurred on or after January 1, 1973 and any of the following conditions is met:

- 1) The arrest was for a misdemeanor offense and the charge was dismissed;
- 2) The arrest was for a misdemeanor offense, there is no indication that criminal proceedings have been initiated, at least one calendar year has elapsed since the date of arrest, and no conviction occurred, or the arrestee was acquitted of the charges that arose from that arrest;
- 3) The arrest was for a realigned felony, there is no indication that criminal proceedings have been initiated, at least three calendar years have elapsed since the date of the arrest and no conviction occurred, or the arrestee was acquitted of any charges arising from that arrest; or,
- 4) The person successfully completed a diversion or deferred entry of judgment program, as specified.

This bill states that a person who has been granted arrest record relief, subject to certain limitations such as possession of firearms and application for employment as a peace officer, entitles the person to be released from any penalties and disabilities resulting from the arrest, and to answer any question relating to the arrest accordingly.

This bill requires DOJ to electronically submit notice to the superior court of any arrest records granted this relief and also prohibits, starting February 1, 2021, the court from disclosing information regarding the arrest to any person or entity except the person whose arrest was granted or a criminal justice agency. Arrest record relief has no effect on the ability of a criminal justice agency to access and use an arrest record to the same extent that would have been permitted had the relief not been granted. This bill specifies that its provisions do not limit petitions, motions, or orders for arrest record relief, as required or authorized by any other law.

This bill also contains a reporting provision requiring DOJ to annually publish statistics for each county regarding the total number of arrests granted relief pursuant to the provisions of this bill and percentage of arrests for which the state summary criminal history information does not include a disposition, on the OpenJustice Web portal.

b. Automatic Conviction Record Relief

This bill creates similar authority for automatic conviction record relief. Specifically, this bill requires DOJ, on a weekly basis starting on January 1, 2021, to review its records and identify persons with convictions eligible for conviction record relief. If granted this relief, the state summary criminal history information shall include, directly next to or below the entry or entries regarding the person's criminal record, a note stating "relief granted" listing the date that the department granted the relief and this section. This note shall be included in all statewide criminal databases with a record of the conviction.

This bill states that persons that meet all of the following criteria are eligible for this relief:

- 1) The person is not required to register as a sex offender;
- 2) The person does not have an active record for local, state, or federal supervision in the Supervised Release File;
- 3) The person is not currently serving a sentence for any offense and does not have any pending criminal charges;
- 4) Except for a felony conviction that has been realigned to be a county jail-eligible felony, there is no indication that the conviction resulted in a sentence of incarceration in the state prison; and,
- 5) The conviction occurred on or after January 1, 1971 and meets one of the following criteria:
 - a) The person was sentenced to probation and, based upon the disposition date and the term of probation specified in the department's records, appears to have completed their term of probation without revocation;
 - b) The person was convicted of an infraction or misdemeanor, was not granted probation, and has completed their sentence, and based upon the disposition date in DOJ's record, at least one calendar year has elapsed since the date of judgement; or,
 - c) The person was sentenced prior to January 1, 2012 to a felony that has since been realigned to a county jail-eligible felony and, based upon the disposition date and sentence specified in DOJ's records, it appears that two years have elapsed following the completion of the defendant's completion of the sentence.

This bill allows a prosecuting attorney or probation department to file a motion to prohibit automatic relief no later than 90 days before the date of a person's eligibility. (See note 3 below.) Similar to the arrest record relief, the conviction record relief created by this bill has specified limitations such as disclosure when applying for certain jobs or positions, and the ability for these convictions to be used in any subsequent conviction for purposes of charging and sentencing. At the time of sentencing, the court is required to advise the defendant of these limitations and the defendant's right, if any, to a petition for a certificate of rehabilitation and pardon. The court may still continue to hear motions or petitions for conviction relief under existing laws.

3. Motion to Prohibit Automatic Conviction Record Relief

This bill specifies for convictions entered on or after January 1, 2018, that a prosecuting attorney or probation department may file a motion to prohibit DOJ from granting automatic relief. The court is required to give notice to the defendant and conduct a hearing on the motion no later than 45 calendar days after the motion is filed. The court is required to report the outcome of the hearing to DOJ and DOJ is required to take appropriate action based on the ruling. A person who is denied automatic relief may still file a petition requesting relief under existing procedures.

This bill does not provide guidance on when a prosecuting attorney or probation department may file one of these motions. This may lead to some counties where these motions are filed in majority of cases regardless of the individual facts of the case or result in bias-motivated filings. Such motions should be dependent on the circumstances of the case, such as unusually egregious facts or multiple convictions or arrests that is indicative of a pattern or shows a threat to public safety. This bill does, however, provide a way for the frequency of these motions to be evaluated county by county through DOJ's annual report.

4. Existing Procedures for Dismissal of Arrests and Expungement of Convictions

Existing law provides for a number of procedures in which a person who has been arrested for, or convicted of, a criminal offense, can petition a court to have his or her arrest/conviction information sealed or dismissed. When these procedures are successful, they generally treat the arrest or conviction as if it had never occurred. This allows persons formally arrested or convicted, to lawfully withhold information about their arrest or conviction when applying for jobs or housing, which is vitally important to successfully reentering the community and not returning to a life of crime. Typically, the procedure for sealing an arrest record, or dismissing a conviction is a court process. It requires the defendant to submit an application, or "petition" with the court, and the court makes a determination about whether the person is eligible for the relief he or she is seeking. This bill appears to be largely based on these existing laws except the process would be automatic and would be initiated by DOJ rather than self-petitioning through the courts.

a. Arrest Records

Penal Code section 851.91 authorizes a person who has suffered an arrest that did not result in a conviction to petition the court to have the arrest and related records sealed. A person is eligible for this relief if the statute of limitations has run on every offense upon which the arrest was based and criminal charges have not been filed, or a charges have been filed but not conviction occurred, the charge was dismissed and the charge may not be refiled or the arrestee was acquitted or a conviction occurred but has been vacated or reversed on appeal and the charge may not be refiled. A person is not eligible for relief if, among other reasons, the arrest is for an offense that does not have a statute of limitations, except if the person has been acquitted for found factually innocent, or if the person evaded law enforcement efforts to prosecuting the arrest. Petitions to seal a qualifying arrest may be granted as a matter of right but the court may also exercise discretion. Arrests for certain offenses such as domestic violence, child abuse and elder abuse where the petitioner's record demonstrates a pattern of like crimes, the court may only seal the arrest records if the sealing would serve the interests of justice. A "pattern" means

two or more convictions, or five or more arrests, within three years. This section also requires notice to the prosecuting attorney of at least 15 days prior to the hearing.

Arrest records may also be sealed after a person has completed a diversion or deferred entry of judgment program. In that instance, a person is charged and agrees to participate in a program, and follow other court ordered conditions, either following a plea or without entering a plea, and if the person successfully completes the program the court must generally dismiss the case. The arrest upon which the defendant was diverted shall be deemed to have never occurred and the court may issue an order to seal the arrest records, with specified exemptions related to disclosure for certain jobs and ability of criminal justice agencies to access those records.

b. Conviction Records

Penal Code section 1203.4 requires a court to dismiss the case against a defendant who has been convicted of a crime and thereafter fulfilled the conditions of probation or has been discharged from probation early or in the interests of justice the court determines a defendant should be granted this relief. The prosecuting attorney must be given 15 days' notice of the petition for relief and if the prosecuting attorney does not object or fails to appear, prosecuting attorney may not move to set aside or otherwise appeal the grant of that petition. The defendant shall be informed of the limitations of this relief which include among other things the ability to use the conviction as a prior for purposes of charging and sentencing and disclosure when applying for certain jobs or positions. Otherwise, the defendant is deemed to be released from all penalties and disabilities as provided.

Penal Code section 1203.4a contains similar authority as Penal Code section 1203.4 except as applied to misdemeanors and infractions. The court shall dismiss the charge and set aside the conviction for defendants convicted of a misdemeanor and not granted probation, and every defendant convicted of an infraction, after the lapse of one year from the date of judgment, if they have fully complied their sentence, is not then serving a sentence for any offense and is not charged with any crime, and has, since sentencing, conformed to and obeyed the laws. The court may also grant relief to a person who otherwise does not meet the requirements of that section in its discretion and in the interests of justice. The prosecuting attorney must be given 15 days' notice of the petition for relief and if the prosecuting attorney does not object or fails to appear, prosecuting attorney may not move to set aside or otherwise appeal the grant of that petition. The defendant shall be informed of the limitations of this relief which include among other things the ability to use the conviction as a prior for purposes of charging and sentencing and disclosure when applying for certain jobs or positions. Otherwise, the defendant is deemed to be released from all penalties and disabilities as provided.

Penal Code section 1203.41 provides similar authority for a person who has been convicted of a realigned felony and a portion of the sentence was mandatory supervision. The court has discretion to, in the interests of justice, to set aside the plea or verdict of guilty and dismiss the case if the defendant is not under mandatory supervision, and is not serving a sentence for, on probation for, or charged with the commission of any offense. At minimum, a year must have elapsed after the completion of the sentence. The prosecuting attorney must be given 15 days' notice of the petition for relief and if the prosecuting attorney does not object or fails to appear, prosecuting attorney may not move to set aside or otherwise appeal the grant of that petition.

Penal Code section 1203.42 provides similar authority for persons who were convicted of a felony prior to realignment and the offense has been reclassified as a county jail-eligible felony. Relief may be granted only if the defendant is not under supervised release, and is not serving a sentence for, on probation for, or charged with the commission of any offense, and after the lapse of two years following the defendant's completion of the sentence. The prosecuting attorney must be given 15 days' notice of the petition for relief and if the prosecuting attorney does not object or fails to appear, prosecuting attorney may not move to set aside or otherwise appeal the grant of that petition.

c. Automating the Process

This bill would streamline the existing processes by making the relief automatic, rather than petition-based, but also leaves the ability of a person to petition for relief under the existing provisions. Self-petitioning the court may be an arduous task for the few that decide to go through the process, but the bigger issue is that many people may not know they are eligible for relief under existing statutes. Additionally, automating the process puts less pressure on courts who are currently responsible for hearing these motions even when the facts would require a dismissal.

However, DOJ is only responsible for determining who is eligible and not making any additional findings that under existing law could be determined by the court. Thus, their review is limited and can only consider facts that are readily verifiable, such as how much time has elapsed since the arrest or sentencing date or whether the person is currently under supervision. Accordingly, unlike Penal Code section 851.91, this bill does not require that the statutes of limitations has run on any charges that may stem from the arrest and instead requires at least one year to have elapsed since a misdemeanor arrest, and three years from a felony arrest to mirror the default statutes of limitations for misdemeanors and felonies, although there are several offenses that specify a statute of limitations that is longer than the default timeframes. This bill however, does not affect criminal justice agencies' access to this information and does not prohibit charges from being filed. Additionally, creating an automated system that takes into consideration all of the different statutes of limitations may not be feasible.

Along the same vein, existing Penal Code sections 1203.41 and 1203.42 do not require dismissal of charges, rather relief is in the court's discretion in the interests of justice. DOJ's automated process would not have the ability to make a determination based on the interests of justice, which is the standard used by courts where the facts of a petition do not otherwise require a dismissal.

5. Barriers to Employment and Housing for People with Criminal Records

Getting a job with a criminal record can be very difficult. According to the U.S. Equal Employment Opportunity Commission (EEOC), as many as 92 percent of employers subject their applicants to criminal background checks. Some employers ask applicants whether they have been convicted of any crimes up front on the application and turn away anyone who checks the box. Others run background checks and reject anyone who turns up with a criminal history without further review.

The refusal to consider job applicants with a criminal history perpetuates a vicious cycle: folks who have been involved in criminal activity seek to come clean and refocus their lives on productive, non-criminal endeavors, but find it nearly impossible to land employment. Unable to earn a steady income and excluded from the dignity and social inclusion that a job confers, people with criminal histories sometimes drift back toward criminal endeavors, resulting in increased recidivism.

As for housing, it is estimated that four out of five landlords use criminal background checks to screen potential tenants. (David Thacher, *The Rise of Criminal Background Screening in Rental Housing* (2008) 33 L. & Soc. Inquiry 5, 12.) A criminal record combined with factors that stem from the inability to obtain employment such as lack of income history or a prior eviction make it extremely difficult for people with criminal records to find housing.

The criminal justice system is known to disproportionately affect people of color, therefore the barriers to employment and housing caused by criminal history also impact people of color disproportionately. The EEOC reports that one in every 17 white men will be incarcerated at some point in their lifetimes. That figure for Latino men is one in six; for African-American men it is one in three.

6. Criminal Record Relief Has a Positive Impact on Reducing Recidivism

A recent study evaluated the benefits of expungement and any impacts on public safety. The study found that people who get their records expunged tend to have lower recidivism rates than the general population. The problem is that many people who are eligible do not apply for relief for a variety of reasons:

The good news is that people who get expungements tend to do very well. We found that within a year, on average, their wages go up by more than 20 percent, after controlling for their employment history and changes in the Michigan economy. This gain is mostly driven by unemployed people finding work and minimally employed people finding steadier positions.

This finding is especially encouraging because some skeptics have argued that expungement can't work in the age of Google — that the criminal-record genie can't be put back in the bottle. We have no doubt that this is sometimes true: People with expunged records may sometimes be haunted by online mug shots, for instance. Even so, many others do benefit.

In addition, contrary to the fears of critics, people with expunged records break the law again at very low rates. Indeed, we found that their crime rates are considerably lower than those of Michigan's general adult population. That may be in part because expungement reduces recidivism.

But another likely reason is that expungement recipients aren't high risk to begin with. Like most states, Michigan requires a waiting period before expungement (five years after a person's last interaction with law enforcement). Research in criminology indicates that people with records who go several years without another conviction are unlikely to offend again.

To be sure, if expanded laws cut down waiting periods or otherwise loosened eligibility requirements, the broader pools of recipients might have a higher baseline crime risk. But even then, there's simply no reason to believe that expungement would increase those baseline crime risks. Again, if anything, access to jobs, housing and other benefits should reduce overall levels of crime.

So here's the bad news: Hardly anyone gets expungements. According to information Michigan State Police provided to us, Michigan grants about 2,500 a year — but that's a drop in the bucket compared to the number of criminal convictions there each year. Precise numbers are hard to come by, but we estimate that there are hundreds of thousands annually.

Relatively few people with records meet the legal requirements — but that's not the only problem. Even among those who do qualify, we found that only 6.5 percent received expungements within five years of becoming eligible. Michigan judges have discretion to reject applications, but that's not the big reason for this low rate. Rather, over 90 percent of those eligible don't even apply.

Given the large potential benefits of expungement, why wouldn't someone apply? We interviewed expungement lawyers and advocates for people with records, whose insights pointed to a clear set of explanations. Most people don't know they can get an expungement, or don't know how to do it, and don't have lawyers to advise them. The process is long and complicated, requiring visits to police stations and courthouses. The fees and costs (which in Michigan usually total close to \$100, not including transportation and time away from work) are a barrier for people in poverty. And people with records have often had painful experiences with the criminal justice system, making the prospect of returning to it for any reason daunting.

The low rate of applications for expungement is consistent with broader findings about the difficulties that poor and middle-class Americans face in dealing with the legal system. When the state makes it too hard or costly for citizens to exercise a right or opportunity, it's not that different from denying that right or opportunity. Most people won't be able to jump through all those hoops.

(Prescott and Starr, *The Case for Expunging Criminal Records: A new study shows the benefits of giving people a clean slate*, New York Times (Mar. 20, 2019); Prescott et al. *Expungement of Criminal Convictions: An Empirical Study* (2019) Harv. L. Rev. 133.)

7. Committee Amendments

The author intends to amend the bill in committee to modify the arrest record relief provisions to require that there is no indication that criminal proceedings have been initiated and to make changes to the existing statute that governs the release of criminal summary history records by DOJ to authorized entities to include references to existing code sections that authorize a person to petition for dismissal of charges.

The author also intends to amend to bill to authorize the court to disclose information concerning an arrest or conviction that has been granted automatic relief by DOJ to agencies under the Department of Social Services and makes conforming changes.

8. Argument in Support

According to Californians for Safety and Justice, a co-sponsor of this bill:

Lack of access to employment and housing are primary factors driving recidivism, criminal records are serious barriers to successful reentry and come at a great cost to California's economy. Nationally, it has been estimated that the U.S. loses roughly \$65 billion per year in terms of gross domestic product due to employment losses among people with convictions.

AB 1076 requires the California Department of Justice (DOJ) to automate arrest and conviction relief by dismissing eligible convictions for individuals who have completed their probation and/or county jail sentence, arrests that did not result in a conviction for qualified misdemeanors, non-violent, non-sex felonies three years after arrest.

This bill will not require any action from a petitioner, thereby reducing significant barriers to employment and housing opportunities for millions of Californians.

9. Argument in Opposition

According to the California District Attorneys Association:

Under section 1203.425(a)(2)(D)(i) a defendant is eligible for relief if “[t]he defendant was sentenced to probation and has completed their term of probation without revocation.” But it is impossible to give notice to the Department of Justice 90 days before the person is eligible because a person's probation can be revoked until the last day of probation. In other words, eligibility cannot be determined until probation is completed without revocation – so how can notice of an objection to eligibility be given 90 days in advance?

Under section 1203.425(a)(2)(D)(ii) and (iii), a person is eligible for relief only after the sentence has been completed and either one or two years has passed. But once a defendant has served their sentence a court loses jurisdiction and the case is over. (See *In re Griffin* (1967) 67 Cal.2d 343, 346; *People v. Antolin* (2017) 9 Cal.App.5th 1176, 1182.) Neither probation nor the prosecution has the authority to order the case back on calendar to determine if the defendant has met the requirements for eligibility so keeping track of whether the defendant is eligible without a new case being filed and measuring the 90-day period will be very difficult.

-- END --