
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair
2021 - 2022 Regular

Bill No: SB 731 **Hearing Date:** April 13, 2021
Author: Durazo
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Urgency: No **Fiscal:** Yes
Consultant: MK

Subject: *Criminal records: relief*

HISTORY

Source: Californians for Safety and Justice

Prior Legislation: SB 118 (Budget) Chapter 29, Stats. 2020
AB 1076 Ting Chapter 578, Stats. 2019
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: A New Way of Life Re-entry Project; Alliance of Californians for Community Empowerment (ACCE) Action; American Civil Liberties Union/northern California/Southern California/san Diego and Imperial Counties; Arts for Healing and Justice Network; Asian Americans Advancing Justice – California; Asian Solidarity Collective; Bend the Arc: Jewish Action; California Attorneys for Criminal Justice; California Coalition for Women Prisoners; California Immigrant Policy Center; California Labor Federation, Afl-cio; California Public Defenders Association (CPDA); California Religious Action Center of Reform Judaism; Californians United for a Responsible Budget; Cat Clark Consulting Services LLC; Code for America; Communities United for Restorative Youth Justice (CURYJ); Community Works; Courage California; Dream Corps; Drug Policy Alliance; Ella Baker Center for Human Right; Family Reunification, Equity and Empowerment Project; Family Reunification, Equity & Empowerment; Forward Impact Db a Represent Justice; Fresno Barrios Unidos; Friends Committee on Legislation of California; Homeboy Industries; Initiate Justice; Inland Empire Fair Chance Coalition; Inland Equity Partnership; Last Prisoner Project; Law Enforcement Action Partnership; Legal Aid At Work; Legal Services for Prisoners With Children; Los Angeles Regional Reentry Partnership; National Association of Social Workers, California Chapter; Phenomenal Angels of The Community; Pillars of The Community; Re:store Justice; Rubicon Programs; San Francisco Public Defender; Shields for Families; Showing Up for Racial Justice (SURJ) Bay Area; Showing Up for Racial Justice (SURJ) San Diego; Showing Up for Racial Justice North County; Social & Environmental Justice Committee of The Universalist Unitarian Church of

Riverside; Starting Over INC.; Team Justice; Think Dignity; The Reverence Project; Tides Advocacy; Time for Change Foundation; Transition Clinic Network; Uncommon Law; Underground Scholars Initiative Berkeley; We the People - San Diego

Opposition: California Association of Licensed Investigators; Peace Officers Research Association of California (PORAC)

PURPOSE

The purpose of this bill is to permit additional relief by way of withdrawing a plea and deleting arrest records for the purpose of most criminal background checks.

Existing law provides that on a monthly basis the Department of Justice (DOJ) shall review the records in the statewide criminal databases and shall identify persons with records of arrest that are eligible for arrest record relief, with no requirement that the person file a motion seeking relief. A person is eligible for relief if the arrest occurred on or after January 1, 2021 and meets any of the following conditions:

- The arrest was for a misdemeanor and the charge dismissed.
- The arrest was for a misdemeanor and no criminal proceedings have been initiated one year from the date of the arrest.
- If the arrest was for a jail felony, punishable by 8 or more years and no proceedings have been initiated 3 years after the date of the arrest, and no conviction occurred, or the arrestee was acquitted of the charges.
- If the person successfully completed a specified diversion program.

The relief granted is subject to the following conditions:

- It does not relieve a person of an obligation to disclose an arrest in an application for employment as a peace officer.
- It does not limit the ability of a criminal justice agency to access the arrest information.
- It does not limit the ability of a district attorney to prosecute for the offense if it is within the statute of limitations.
- It does not impact a person's authorization to own or possess a firearm
- It does not impact any prohibition on holding public office.
- It does not impact licensing for foster homes and similar facilities.
- It does not limit other motions for relief. (Penal Code Section 851.93)

This bill also makes an arrest for a felony and there is no indication that the criminal proceeding has been initiated at least 3 years after the arrest eligible for relief and also amends existing law to provide that if the arrest was for a jail or prison felony with a sentence of 8 or more years shall be eligible for relief when no criminal proceedings have happened 6 years after the arrest.

Existing law provides that if a person is sentenced to a jail felony, the court, in its discretion, in the interest of judgement may allow a person to withdraw their guilty plea and enter a plea of not guilty and the court shall set aside the verdict and dismiss the accusations or information against the defendant when specified conditions are met. The relief shall be not be granted unless the

prosecuting attorney has been given 15 days' notice of the petition for relief. (Penal Code Section 1203.41)

This bill makes Penal Code Section 1203.41 apply to all felonies not just jail felonies and provides that if the defendant was on mandatory supervision, the parole officer shall notify the prosecuting attorney when a petition is filed.

Existing law provides that commencing July 1, 2022, an subject to a Budget appropriation, on a monthly basis, the DOJ shall review records in the statewide criminal justice databases and shall identify person with convictions that meet specified criterial and are eligible for automatic conviction relief. A person is eligible for relief if they meet all of the following conditions:

- The person is not required to register as a Sex Offender.
- The person does not have an active record for local, state, or federal supervision in the Supervised Release file.
- Based on the information available, it does not appear the person is currently serving a sentence for an offense and there is no indication of pending criminal charges.
- There is no indication that the conviction resulted in a sentence of incarceration in state prison.
- The conviction occurred on or after January 1, 2021 and the defendant either was sentenced to probation and appears to have completed their term of probation without revocation or, the defendant was convicted of an infraction or misdemeanor, was not granted probation, and at least one calendar year has passed since the date of judgement. (Penal Code Section 1203.425(a)(1))

This bill deletes the prohibition on granting relief if the person was incarcerated in the state prison.

This bill adds an additional criteria for relief providing for relief if the conviction occurred on or after January 1, 1973, the defendant was convicted of a felony other than one for which the defendant completed probation without revocation, and based on the disposition date and the sentence specified in DOJ's records, appears to have completed all terms of incarceration, probation, mandatory supervision, postrelease supervision, and parole.

Existing law provides that automatic conviction record relief is subject to the following conditions:

- It does not relieve a person of the obligation to disclose a conviction when applying to be a peace officer.
- It does not relieve a person of the obligation to disclose the conviction in response to a direct question contained in a questionnaire for public office or for contracting with the California State Lottery Commission
- It does not affect a person's authorization to own, possess, etc. a firearm.
- It does not affect a prohibition from holding public office that would otherwise apply as a result of the conviction.
- It does not affect the authority to receive, or take action based on, criminal history information including the authority to receive certified court records.
- It does not make eligible a person otherwise ineligible to provide in-home supportive services.

- It may still act as a prior for future arrests and convictions. (Penal Code Section 1203.425(a)(3))

This bill in addition provides that relief granted does not release the defendant from the terms and conditions of any unexpired criminal protective orders.

Existing law provides that the DOJ shall maintain the state summary criminal history information which is the master record of information compiled by the Attorney General pertaining to the identification and criminal history of a person. (Penal Code Section 11105(a))

Existing law specifies how, what and to whom criminal history information shall be distributed by the DOJ to an entity to check the background of a potential or current employee or volunteer. What criminal history is released differs based on the employer or volunteer organization and is specified in law. (Penal Code Section 1105(b)-(u))

This bill states that commencing July 1, 2022, notwithstanding any other law, state or federal summary criminal history furnished by DOJ shall not include any of the following information;

- Records of arrest that were granted relief under Section 851.93, if 2 years has passed since that relief was granted and there was no new conviction for a felony offense.
- Records granted relieve under numerous sections to expunge, change a plea, seal a record etc. and if 2 years have passed and there is no new conviction for a felony offense.

This bill provides that the above does not apply to any of the following:

- Any record for which the subject is required to register as a Sec Offender, has an active record for state, local, or federal supervision in the Supervised Release File, or it appears as if the person Is currently serving a sentence for an offense or there is an indication of a pending criminal charge.
- Records that are given to the courts, district attorneys, peace officers, probation or parole officers , public defenders for peace officer certification or employment at a criminal justice agency.
- If the dissemination is required by federal law.
- The furnishing of records relating to the regulation of firearms.
- The furnishing of records to the subject of the records.
- Records of specified assault offenses when they are being distributed to an agency licensing a community care facility or foster home or similar.

COMMENTS

1. Need for This Bill

According to the author:

Nationally, an estimated 70 million people (nearly one in three adults, and 8 million people in California alone) have a past arrest or conviction on their record.¹ The vast majority of people with convictions have long finished their sentence in prison, jail, parole or probation and exited the ‘deepest end’ of the justice system.

Despite the data on recidivism, California still maintains these records until the person reaches 100 years of age. Due to the widespread usage of background checks in today's society, the availability of these records activate thousands of barriers for one quarter of the state's population resulting in chronic housing insecurities, long-term unemployment, and widespread lack of civic participation. These collateral consequences disproportionately affect Black and Latino communities and have become one of the leading drivers of multi-generational poverty.

2. Automatic Arrest Record Relief

AB 1076 Ting Chapter 578, Statutes 2019, created a process for the automatic arrest record relief for people arrested for a misdemeanor or for a jail felony when the charges were dismissed or enough time has passed that it is clear there is not intent for criminal proceedings to go forward.. Dependent on an appropriation in the budget, the relief will be automatic based on a monthly review by the Department of Justice (DOJ) starting January 1, 2021. Even if relief granted relief, a person will still be required to disclose the arrest or the arrest information can still be used for specified circumstances such as applying to become a peace officer or having a foster car license evaluated.

This bill would expand those eligible for relief to those arrested for any felony not just those for which the sentence is county jail. If the felony sentence can be more than eight years relief shall not be granted until six years have passed, otherwise relief may be granted after three years have passed.

3. Automatic conviction relief

SB 1076 (Ting) also created a process for automatic conviction relief. Specifically, the law requires DOJ, 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.

A person is eligible is not eligible for relief if the person was sentenced to state prison. A conviction is eligible if the defendant was sentenced to probation and based on information the DOJ has probation was completed without a revocation or the defendant was convicted of an infraction or misdemeanor and not granted probation but based on the information the DOJ has the defendant appears to have completed their judgement a year has elapsed.

This bill deletes the prohibition on relief for a person sentenced to prison and specifically allows relief for a person convicted of a felony after January 1, 1973 and based on the information the DOJ has completed all terms of incarceration, probation, mandatory supervision postrelease supervision and parole.

The relief granted does not remove a number of obligations and prohibitions, including: disclosing the conviction when applying to be a peace officer; disclosing the conviction when contracting with the State Lotter or applying for public office; a criminal justice agency can still use the records; it does not impact motions or appeals related to the conviction; does not change

prohibitions related to firearms; does not change actions relating to a foster care agency or home supportive services; and, it can still act as a prior.

This bill further adds that the bill does not impact a protective order.

Should a person convicted of a felony for which they were not granted probation be eligible for automatic relief by the DOJ?

4. Court conviction relief

Existing law also creates a process for conviction record relief. A court may, in the interests of justice, order relief for a person convicted of a jail felony. This bill expands that provision to include any felony. If relief is granted the court may permit a person to withdraw his or her plea of guilty and the defendant shall be released from any penalties and disabilities related to the offense. The relief can only come after one or two years after the completion of the sentence, depending on the underlying sentences and a person cannot be on parole or under supervision. Notice must be served on the prosecutor 15 days prior to the petition and this bill provides that if the person was on mandatory supervision, the probation officer shall notify the prosecuting attorney and if the person was on parole the parole officer shall notify the prosecuting attorney.

Why have probation and parole notice the prosecutor and not the person requesting the relief?

The relief granted is subject to some limitations: it can still be used as a prior for a future conviction; they must still disclose the conviction in response to a direct question for public office, for licensure by any state or local agency, or for contracting with the State Lottery; it does not change any prohibition on gun ownership; and, it does not change any limitation on holding public office.

Are there any other purposes for which a former conviction should be disclosed?

5. Background checks

Under existing law, DOJ is the keeper of criminal history and the law sets forth to whom criminal history and for what purposes criminal history, based on a fingerprint check along with other identifying information, can be released. Fingerprint based DOJ background checks are authorized to be used for numerous employment, licensing and volunteer purposes. What part of a criminal history is released is outlined in the law and varies depending on the type of employment etc.

This bill provides that notwithstanding any other law, the criminal history furnished by DOJ shall not include records where relief was granted if at least two years has passed and there has been no new offense. Exceptions to this prohibition include: records for which a person has to register as a sex offender; records to a criminal justice agency for peace officer employment or employment at a criminal justice agency; firearm background checks; if dissemination is required by federal law; information for licensing of a foster home etc.

It is not clear if this section would allow a defense attorney to get the information on their client, should access by those in the criminal just system be clarified that it is allowed for more than just employment? Are there more circumstances in which records granted relief should be released? The state has a number of licensing boards. There is also the Medical Board and the State Bar.

Could some of these records be specifically related to a license a person is seeking and may be relevant? Does the federal exception cover background checks required by Federally Insured Banks?

6. Argument in Support

Californians for Safety and Justice the sponsor of this bill states:

Nationally, an estimated 70 million people—nearly one in three adults, and 8 million people in California alone— have a past arrest or conviction on their record. California maintains an individual’s criminal records until that person reaches 100 years of age. As a result of the widespread usage of background checks in today's society, the permanence of these records present thousands of barriers resulting in widespread constraints on civic participation.

Examples of these barriers are felt by families seeking to live outside of impoverished areas, individuals that want careers in education or healthcare, others who want to coach, homeowners that want to join their HOA board, couples that want to adopt, or grandchildren that want to care for their elderly grandparent. Old criminal records go beyond economics and into denial of human decency, family responsibility, and basic citizenship.

Lack of access to employment and housing are primary factors driving recidivism, criminal records are serious barriers to successful reentry and come at a cost of \$20 billion annually to California’s economy. Nationally, it has been estimated that the U.S. loses roughly \$372.3 billion per year in terms of gross domestic product due to employment losses among people living with convictions.

SB 731 proposes a structured, automated approach to sunseting criminal records. Automated sealing of all arrest records that do not result in conviction, and phased relief for convictions records, expand record sealing to all sentences following completion of terms of incarceration, post-release supervision, and an additional period of time - provided the person has completed their sentence without any new felony convictions and has no new charges pending. For the reasons listed above, Californians for Safety and Justice is proud to co-sponsor SB 731.

7. Argument in Opposition

Peace Officers Research Association of California Opposes this bill stating:

Current law authorizes a defendant who was sentenced to a county jail for the commission of a felony and who has met specified criteria to petition to withdraw their plea of guilty or nolo contendere and enter a plea of not guilty after the completion of their sentence. Current law requires the court to dismiss the accusations or information against the defendant and release them from all penalties and disabilities resulting from the offense, except as specified. This bill would make this relief available to a defendant who has been convicted of any felony.

PORAC believes that by expanding the relief of penalties for all felonies, we are placing our communities at risk. Oftentimes, felony crimes are violent and leave behind innocent victims whose lives will never be the same. By allowing violent criminals back on the street, with their record dismissed, they will have less deterrent to commit another crime. Thus, leaving more victims in their wake. If the author is willing to amend the bill to exclude violent criminals, we would be inclined to remove our opposition.

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