
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

Bill No: SB 763 **Hearing Date:** April 11, 2023
Author: Durazo
Version: February 17, 2023
Urgency: No **Fiscal:** Yes
Consultant: SC

Subject: *Criminal records*

HISTORY

Source: Californians for Safety and Justice

Prior Legislation: SB 731 (Durazo), Ch. 814, Stats. 2022
AB 200 (Comm. on Budget), Ch. 58, Stats. 2022
AB 145 (Comm. on Budget), Ch. , Stats. 2021
SB 118 (Comm. on Budget), Ch. 29, Stats. 2020
AB 1076 (Ting), Ch. 578, Stats. 2019

Support: California Public Defenders Association; San Francisco Public Defender; Secure Justice

Opposition: California Association of Licensed Investigators

PURPOSE

The purpose of this bill is to extend automatic conviction record relief for specified felony convictions that occurred on or after January 1, 1973, rather than on or after January 1, 2005.

Existing law requires, commencing July 1, 2023 and subject to an appropriation in the annual Budget Act, the Department of Justice (DOJ), on a monthly basis, to review the records in the statewide criminal justice databases and based on information in the state criminal history repository and the Supervised Release File, and identify persons with convictions that meet the specified criteria and are eligible for automatic record relief. (Pen. Code, § 1203.425, subd. (a)(1)(A).)

Existing law provides that a person is eligible for automatic conviction relief if they meet all of the following:

- 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 upon the information available in DOJ's record, including disposition dates and sentencing terms, it does not appear that the person is currently serving a sentence for an offense and there is no indication of pending criminal charges; and,
- The conviction meets either of the following criteria:
 - The conviction occurred on or after January 1, 1973 and meets either one of the following criteria:
 - The defendant was sentenced to probation and, based upon the disposition date and the term of probation specified in DOJ's records, 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, based upon the disposition date and the term specified in DOJ's records, the defendant appears to have completed their sentence, and at least one calendar year has elapsed since the date of judgment. (Pen. Code § 1203.425, subd. (a)(1)(B)(iv)(I).); or,
 - The conviction occurred on or after January 1, 2005 and the defendant was convicted of a felony other than one for which the defendant completed probation without revocation, and based upon the disposition date and the sentence specified in the DOJ's records, appears to have completed all terms of incarceration, probation, mandatory supervision, postrelease community supervision, and parole, and a period of four years has elapsed since the date on which the defendant completed probation or supervision for that conviction and during which the defendant was not convicted of a new felony offense. This does not apply to a conviction of a serious or violent felony, or a felony offense requiring sex offender registration. (Pen. Code § 1203.425, subd. (a)(1)(B)(iv)(II).)

Existing law states that except as specified, DOJ shall grant relief, including dismissal of a conviction, to identified persons without requiring a petition or motion by party for that relief if relevant information is present in DOJ's electronic records. (Pen. Code, § 1203.425, subd. (a)(2)(A).)

Existing law requires that the state summary criminal history information for a person who has been granted this relief 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 DOJ granted the relief and the section authorizing relief. This note shall be included in all statewide criminal databases with a record of the conviction. (Pen. Code, § 1203.425, subd. (a)(2)(B).)

Existing law states that except as a conviction relates to the revocation or suspension of driving privileges, a person granted conviction relief pursuant to this section shall be released from all penalties and disabilities resulting from the offense of which the person has been convicted. (Pen. Code, § 1203.425, subd. (a)(2)(C).)

Existing law states that relief granted pursuant to this section is subject to the specified conditions including:

- Relief granted pursuant to this section 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;
- Relief granted pursuant to this section does not relieve a person of the obligation to disclose the conviction in response to a direct question contained in a questionnaire or application for public office, for enrollment as a provider of in-home supportive services and waiver personal care services or for contracting with the California State Lottery Commission;
- Relief granted pursuant to this section 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;
- Relief granted pursuant to this section does not limit the jurisdiction of the court over a 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;
- Relief granted pursuant to this section does not affect a person's authorization to own, possess, or have in the person's custody or control a firearm, or the person's susceptibility to conviction for unlawful possession of a firearm, if the criminal conviction would otherwise affect this authorization or susceptibility;
- Relief granted pursuant to this section does not affect a prohibition from holding public office that would otherwise apply under law as a result of the criminal conviction;
- Relief granted pursuant to this section does not release a person from the terms and conditions of any unexpired criminal protective order that has been issued by the court. These protective orders shall remain in full effect until expiration or until any further order by the court modifying or terminating the order, despite the dismissal of the underlying conviction or accusation or information; and,
- In a 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. (Pen. Code, § 1203.425, subd. (a)(4).)

Existing law requires, commencing July 1, 2022, and subject to an appropriation in the annual Budget Act, DOJ to annually 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 through prosecuting attorney or probation department petitions, on the OpenJustice Web portal. (Pen. Code, § 1203.425, subd. (a)(6).)

Existing law authorizes the prosecuting attorney or probation department, no later than 90 calendar days before the date of a person's eligibility for relief, to file a petition to prohibit the department from granting automatic relief based on a showing that granting that relief would pose a substantial threat to the public safety. (Pen. Code, § 1203.425, subd. (b)(1).)

Existing law requires a court to give notice to the defendant and conduct a hearing on the petition within 45 days after the petition is filed. (Pen. Code, § 1203.425, subd. (b)(2).)

Existing law states that at the hearing on the petition, the defendant, the probation department, the prosecuting attorney, and the arresting agency, through the prosecuting attorney, may present evidence to the court. The hearing may be heard and determined upon declarations, affidavits, police investigative reports, copies of state summary criminal history information and local summary criminal history information, or any other evidence submitted by the parties that is material, reliable, and relevant. (Pen. Code, § 1203.425, subd. (b)(3).)

Existing law provides that the prosecutor or probation department has the initial burden of proof to show that granting conviction relief would pose a substantial threat to the public safety. In determining whether granting relief would pose a substantial threat to the public safety, the court may consider any relevant factors including, but not limited to, either of the following:

- Declarations or evidence regarding the offense for which a grant of relief is being contested; or,
- The defendant's record of arrests and convictions. (Pen. Code, § 1203.425, subd. (b)(4).)

Existing law states that if the court finds that the prosecutor or probation department has satisfied the burden of proof, the burden shifts to the defendant to show that the hardship of not obtaining relief outweighs the threat to the public safety of providing relief. In determining whether the defendant's hardship outweighs the threat to the public safety, the court may consider any relevant factors including, but not limited to, either of the following:

- The hardship to the defendant that has been caused by the conviction and that would be caused if relief is not granted; or,
- Declarations or evidence regarding the defendant's good character. (Pen. Code, § 1203.425, subd. (b)(5).)

Existing law if the court grants a petition, the court shall furnish a disposition report to the DOJ stating that relief pursuant to this section was denied, and DOJ shall not grant relief. (Pen. Code, § 1203.425, subd. (b)(6).)

Existing law states that a person denied relief pursuant to this section may continue to be eligible for relief pursuant to law, including, but not limited to, other sections authorizing conviction relief. If the court subsequently grants relief pursuant to one of those sections, the court shall furnish a disposition report to DOJ stating that relief was granted pursuant to the applicable section, and DOJ shall grant relief pursuant to that section. (Pen. Code, § 1203.425, subd. (b)(7).)

This bill changes the eligible conviction date for persons convicted of a felony who has successfully completed their sentence (including any term of probation) after having had their probation revoked from on or after January 1, 2005 to on or after January 1, 1973.

COMMENTS

1. Need for This Bill

According to the author of this bill:

Laws that prevent people living with a past conviction from positively contributing to our communities have made us all less safe. After someone has completed their sentence and paid their debts, we cannot continue to allow old legal records to create barriers to opportunity that destabilize families, undermine our economy, and worsen racial injustices. After a certain period of time, someone living with a record has the same chance of committing a new crime as anyone else.

There are eight million Californians living with an old conviction or arrest record today. The State of California and local governments invest billions of dollars into rehabilitative services, but if all we do is exclude people from any kind of opportunity to build a new life for themselves, we are simply wasting that money.

California is now a national leader in providing post-conviction relief to the tens of millions of people across America who need it. We must continue advancing public policies that prioritize safety and promote equal opportunity, not ones that worsen poverty and racial injustices in our criminal justice system. SB 763 will help us ensure opportunity for all Californians trying to earn a living and achieve success for themselves and their families.

2. Automatic Conviction Relief

In 2019, the Legislature passed AB 1076 (Ting), Chapter 578, Statutes of 2019 which established a procedure in which persons could have certain convictions dismissed and have such information withheld from disclosure without having to file a petition with the court. (Pen. Code, § 1203.425.) The purpose of AB 1076 was to remove barriers to housing and employment for convicted and arrested individuals in order to foster their successful reintegration into the community. AB 145

AB 200 (Committee on Budget), Chapter 58, Statutes of 2022, delayed the implementation date of AB 1076 related to prohibiting dissemination of criminal records for which relief was granted to January 1, 2023. SB 731 (Durazo), Chapter 814, Statutes of 2022, as relevant to this bill, expanded automatic conviction relief to a person who was convicted of a felony on or after January 1, 2005, and who has successfully completed their sentence (including any term of probation) after having had their probation revoked.

This bill would expand automatic record relief to apply to felony convictions occurring on or after January 1, 1973, instead of on or after January 1, 2005, where the defendant had probation revoked but subsequently successfully completed their sentence. A corresponding bill that is currently in the Assembly, AB 657 (Ting), would apply automatic relief to misdemeanor convictions in which the person, although having had probation revoked, thereafter successfully completes their sentence and any probation.

3. Argument in Support

According to California Public Defenders Association:

Under existing law, the Department of Justice is required to automatically review specified former convictions and, provided the person qualifies and the prosecutor does not object, expunge that conviction. This process is in everyone's interest, because it allows Californians who have already paid for their offense to reintegrate into our shared community and to find employment and housing, and thereby lessens the chance of recidivism. The problem is that the current statute arbitrarily excludes convictions occurring before 2005. (Pen. Code § 1203.425(a)(B)(iv).) As a result of this odd quirk in the law, Californians whose offense occurred long ago are not eligible for this expungement review, while those whose offenses were far more recent get such review automatically.

SB 763 addresses this issue by removing this arbitrary barrier, giving those whose convictions are far older the same relief as those whose convictions occurred more recently.

4. Argument in Opposition

According to California Association of Licensed Investigators [CALI]:

CALI is a not-for-profit professional organization founded in 1968 to protect and enhance our licensed private investigator and licensed private patrol operator members. With approximately 1,100 members, CALI is the largest private investigator association in the world. The association works to advance the investigation and security professions through educational programs and legislative advocacy efforts that promote the needs of the profession before governmental agencies and the State Legislature. Our members are licensed and regulated by the Department of Consumer Affairs, Bureau of Security and Investigative Services.

CALI is concerned with the provisions of SB 763 that would greatly expand by 32 years the provisions of last year's SB 731 [Durazo, Chapter 814, Statutes of 2022] that provide criminal conviction relief. The applicable convictions would be extended from January 1, 2005 to January 1, 1973.

The measure is arbitrary. It would prohibit the use of this information in most situations. However, the measure would also allow for the use of this information in numerous situations including education, firearms, peace officers, candidates for office, in-home supportive services, and law enforcement.

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