

Assembly Bill No. 2599

CHAPTER 653

An act to amend Section 851.91 of the Penal Code, relating to criminal records.

[Approved by Governor September 21, 2018. Filed with
Secretary of State September 21, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2599, Holden. Criminal records.

Existing law authorizes a person who has suffered an arrest that did not result in conviction to petition the court to have his or her arrest and related records sealed. Existing law requires the Judicial Council to furnish forms to be utilized by a person applying to have his or her arrest sealed.

This bill would require a facility at which an arrestee is detained to, at the request of the arrestee upon release, provide the forms described above to the arrestee. The bill would additionally require a facility at which an arrestee is detained to post a sign that contains a specified notice regarding the sealing of arrests. By imposing additional duties on local agencies, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

The people of the State of California do enact as follows:

SECTION 1. Section 851.91 of the Penal Code is amended to read:

851.91. (a) A person who has suffered an arrest that did not result in a conviction may petition the court to have his or her arrest and related records sealed, as described in Section 851.92.

(1) For purposes of this section, an arrest did not result in a conviction if any of the following are true:

(A) 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.

(B) 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:

(i) No conviction occurred, the charge has been dismissed, and the charge may not be refiled.

(ii) No conviction occurred and the arrestee has been acquitted of the charges.

(iii) A conviction occurred, but has been vacated or reversed on appeal, all appellate remedies have been exhausted, and the charge may not be refiled.

(2) A person is not eligible for relief under this section in any of the following circumstances:

(A) He or she may still be charged with any of the offenses upon which the arrest was based.

(B) Any of the arrest charges, as specified by the law enforcement agency that conducted the arrest, or any of the charges in the accusatory pleading based on the arrest, if filed, is a charge of murder or any other offense for which there is no statute of limitations, except when the person has been acquitted or found factually innocent of the charge.

(C) The petitioner intentionally evaded law enforcement efforts to prosecute the arrest, including by absconding from the jurisdiction in which the arrest occurred. The existence of bench warrants or failures to appear that were adjudicated before the case closed with no conviction does not establish intentional evasion.

(D) The petitioner intentionally evaded law enforcement efforts to prosecute the arrest by engaging in identity fraud and was subsequently charged with a crime for that act of identity fraud.

(b) (1) A petition to seal an arrest shall:

(A) Be verified.

(B) Be filed in the court in which the accusatory pleading based on the arrest was filed or, if no accusatory pleading was filed, in a court with criminal jurisdiction in the city or county in which the arrest occurred.

(C) Be filed at least 15 days prior to the hearing on the petition.

(D) Be served, by copy, upon the prosecuting attorney of the city or county in which the arrest occurred and upon the law enforcement agency that made the arrest at least 15 days prior to the hearing on the petition.

(E) Include all of the following information:

(i) The petitioner's name and date of birth.

(ii) The date of the arrest for which sealing is sought.

(iii) The city and county where the arrest took place.

(iv) The law enforcement agency that made the arrest.

(v) 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, if any, based on the arrest was filed, including, but not limited to, the case number for the police investigative report documenting the arrest, and the court number under which the arrest

was reviewed by the prosecuting attorney or under which the prosecuting attorney filed an accusatory pleading.

(vi) The offenses upon which the arrest was based or, if an accusatory pleading was filed based on the arrest, the charges in the accusatory pleading.

(vii) A statement that the petitioner is entitled to have his or her arrest sealed as a matter of right or, if the petitioner is requesting to have his or her arrest sealed in the interests of justice, how the interests of justice would be served by granting the petition, accompanied by declarations made directly and verified by the petitioner, his or her supporting declarants, or both.

(2) The court may deny a petition for failing to meet any of the requirements described in paragraph (1).

(3) (A) The Judicial Council shall furnish forms to be utilized by a person applying to have his or her arrest sealed pursuant to this section. The petition form shall include all of the information required to be included in the petition by paragraph (1) of subdivision (b), shall be available in English, Spanish, Chinese, Vietnamese, and Korean, and shall include a statement that the petition form is available in additional languages and the Internet Web site where the form is available in alternative languages. The forms shall include notice of other means to address arrest records, including a determination of factual innocence under Section 851.8 and deeming an arrest a detention under Section 849.5.

(B) (i) A facility at which an arrestee is detained shall, at the request of an arrestee upon release, provide the forms furnished by Judicial Council pursuant to subparagraph (A) to the arrestee.

(ii) 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 records sealed. The petition form is available on the Internet or upon request in this facility.”

(c) A petition to seal an arrest record pursuant to this section may be granted as a matter of right or in the interests of justice.

(1) A petitioner who is eligible for relief under subdivision (a) is entitled to have his or her arrest sealed as a matter of right unless he or she is subject to paragraph (2).

(2) (A) (i) A petitioner may have his or her arrest sealed only upon a showing that the sealing would serve the interests of justice if any of the offenses upon which the arrest was based, as specified by the law enforcement agency that made the arrest, or, if an accusatory pleading was filed, any of the charges in the accusatory pleading, was one of the following:

(I) Domestic violence, if the petitioner’s record demonstrates a pattern of domestic violence arrests, convictions, or both.

(II) Child abuse, if the petitioner’s record demonstrates a pattern of child abuse arrests, convictions, or both.

(III) Elder abuse, if the petitioner’s record demonstrates a pattern of elder abuse arrests, convictions, or both.

(ii) For purposes of this subparagraph, “pattern” means two or more convictions, or five or more arrests, for separate offenses occurring on separate occasions within three years from at least one of the other convictions or arrests.

(B) In determining whether the interests of justice would be served by sealing an arrest record pursuant to this section, the court may consider any relevant factors, including, but not limited to, any of the following:

(i) Hardship to the petitioner caused by the arrest that is the subject of the petition.

(ii) Declarations or evidence regarding the petitioner’s good character.

(iii) Declarations or evidence regarding the arrest.

(iv) The petitioner’s record of convictions.

(d) (1) At a hearing on a petition under this section, the petitioner, the prosecuting attorney, and, through the prosecuting attorney, the arresting agency may present evidence to the court. Notwithstanding Section 1538.5 or 1539, 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, relevant, and reliable.

(2) The petitioner has the initial burden of proof to show that he or she is entitled to have his or her arrest sealed as a matter of right or that sealing would serve the interests of justice. If the court finds that petitioner has satisfied his or her burden of proof, then the burden of proof shall shift to the respondent prosecuting attorney.

(e) If the court grants a petition pursuant to this section, the court shall do all of the following:

(1) Furnish a disposition report to the Department of Justice, pursuant to Section 13151, stating that relief was granted under this section.

(2) (A) Issue a written ruling and order to the petitioner, the prosecuting attorney, and to the law enforcement agency that made the arrest that states all of the following:

(B) The record of arrest has been sealed as to petitioner, the arrest is deemed not to have occurred, the petitioner may answer any question relating to the sealed arrest accordingly, and the petitioner is released from all penalties and disabilities resulting from the arrest, except as provided in Section 851.92 and as follows:

(i) The sealed arrest may be pleaded and proved in any subsequent prosecution of the petitioner for any other offense, and shall have the same effect as if it had not been sealed.

(ii) The sealing of an arrest pursuant to this section does not relieve the petitioner of the obligation to disclose the arrest, if otherwise required by law, in response to any direct question contained in a questionnaire or application for public office, for employment as a peace officer, for licensure by any state or local agency, or for contracting with the California State Lottery Commission.

(iii) The sealing of an arrest pursuant to this section does not affect petitioner’s authorization to own, possess, or have in his or her custody or

control any firearm, or his or her susceptibility to conviction under Chapter 2 (commencing with Section 29800) of Division 9 of Title 4 of Part 6, if the arrest would otherwise affect this authorization or susceptibility.

(iv) The sealing of an arrest pursuant to this section does not affect any prohibition from holding public office that would otherwise apply under law as a result of the arrest.

SEC. 2. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.