

File No. 190421

Committee Item No. 2

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Comm: Public Safety & Neighborhood Services

Date: June 7, 2019

Board of Supervisors Meeting:

Date: _____

Cmte Board

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| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Resolution |
| <input type="checkbox"/> | <input type="checkbox"/> | Ordinance |
| <input type="checkbox"/> | <input type="checkbox"/> | Legislative Digest |
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OTHER

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| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>AB1076 - May 16, 2019</u> |
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Prepared by: John Carroll

Date: May 31, 2019

Prepared by: John Carroll

Date: _____

1 [Supporting California State Assembly Bill No. 1076 (Ting) - Criminal Records: Automatic
2 Relief]

3 **Resolution supporting California State Assembly Bill No. 1076, authored by Assembly**
4 **Member Phil Ting, to provide efficient arrest and conviction relief through the California**
5 **Department of Justice by automating the process for those who are already entitled to**
6 **record clearance relief under existing laws, and grant formerly-incarcerated persons**
7 **fair and earned opportunity to fully reintegrate into society.**

8
9 WHEREAS, It has been estimated that the U.S. loses roughly \$65 billion per year in
10 terms of gross domestic product due to employment losses among people with criminal
11 records; and

12 WHEREAS, Eight million California residents have criminal convictions on their records
13 that hamper their ability to find housing, secure public benefits, gain admittance to college,
14 obtain licenses; and

15 WHEREAS, Individuals with criminal records face barriers in gaining employment,
16 making them more likely to reoffend; and

17 WHEREAS, These paper prisons perpetuate and reinforce the cycle of poverty and
18 crime, disproportionately impacting socio-economically disadvantaged communities, and in
19 particular, communities of color; and

20 WHEREAS, Existing law authorizes a person who was arrested and has successfully
21 completed a pre-filing diversion program, a person who has successfully completed a
22 specified drug diversion program, a person who has successfully completed a specified
23 deferred entry of judgment program, and a person who has suffered an arrest that did not
24 result in a conviction, under certain conditions, to petition the court to seal the person's arrest
25 record; and

1 WHEREAS, The arrest for the crime for which the defendant was diverted is deemed to
2 have never occurred if a defendant successfully completes certain diversion programs; and

3 WHEREAS, Current law imposes a burden on affected individuals to be made aware of
4 their eligibility and retain an attorney to proactively file the necessary petition; and

5 WHEREAS, This is a significant barrier to access for criminal justice record relief,
6 particularly for lower-income individuals, with it being estimated that less than 20 percent of
7 eligible people obtain record clearance; and

8 WHEREAS, Even if the current process could be made available to all those eligible,
9 the volume of petitions would demand resources higher than courts and prosecutors would be
10 able to provide; and

11 WHEREAS Under the current petition-base record clearance mode, each record costs
12 the state's criminal justice system \$3,757, whereas an automated system would cost 4 cents
13 per record; and

14 WHEREAS, The San Francisco District Attorney's Office has already cleared more
15 than 8,000 cases of marijuana-related convictions using automated record clearance
16 technology within less than a full year; and

17 WHEREAS, California State Assembly Bill No. 1076 would open doors to those facing
18 employment and housing barriers by automating the process of clearing an arrest or criminal
19 record for eligible individuals; and

20 WHEREAS, Its passing would promote positive criminal justice reform for a more
21 equitable justice system; therefore be it

22 RESOLVED, That the City and County of San Francisco supports California State
23 Assembly Bill No. 1076 and urges the Assembly and Senate to pass the bill; and, be it
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FURTHER RESOLVED, That the Board of Supervisors hereby directs the Clerk of the Board to send a copy of this resolution to the California State Assembly and the California State Senate.

AMENDED IN ASSEMBLY MAY 16, 2019
AMENDED IN ASSEMBLY MARCH 27, 2019
CALIFORNIA LEGISLATURE—2019–20 REGULAR SESSION

ASSEMBLY BILL

No. 1076

Introduced by Assembly Member Ting

February 21, 2019

An act to add Sections 851.93 and 1203.425 to the Penal Code, relating to criminal records.

LEGISLATIVE COUNSEL'S DIGEST

AB 1076, as amended, Ting. Criminal records: automatic relief.

Existing law authorizes a person who was arrested and has successfully completed a prefiling diversion program, a person who has successfully completed a specified drug diversion program, a person who has successfully completed a specified deferred entry of judgment program, and a person who has suffered an arrest that did not result in a conviction, under certain conditions, to petition the court to seal the person's arrest record. Under existing law, if a defendant successfully completes certain diversion programs, the arrest for the crime for which the defendant was diverted is deemed to have never occurred.

Existing law authorizes a defendant to petition to withdraw the defendant's plea of guilty or nolo contendere and enter a plea of not guilty, if the defendant has fulfilled the conditions of probation, or if other specified circumstances are met, and the defendant is not then serving a sentence for any offense, on probation for any offense, or charged with the commission of any offense. If relief is granted, existing law requires the court to dismiss the accusation or information against the defendant and release the defendant from all penalties and disabilities

resulting from the offense, with exceptions. Existing law also authorizes a defendant to file a similar petition if the defendant was convicted of a misdemeanor and not granted probation, was convicted of an infraction, or completed a sentence for certain felonies, and the defendant met specified conditions.

This bill would, commencing January 1, 2021, require the Department of Justice, on a weekly basis, to review the records in the statewide criminal justice databases and to identify persons who are eligible for relief by having their arrest records, or their criminal conviction records, withheld from disclosure. The bill would require the department to grant relief to an eligible person, without requiring a petition or motion. The bill would not limit petitions, motions, or orders for relief, as required or authorized by any other law.

The bill would require an update to the state summary criminal history information to document the relief granted. The bill would require the department, on a weekly basis, to electronically submit a notice to the superior court having jurisdiction over the criminal case, informing the court of all cases for which relief was granted. The bill would prohibit the court from disclosing information concerning an arrest or conviction granted relief, with exceptions.

The bill would authorize the prosecuting attorney to file a motion to prohibit the department from granting automatic relief for criminal conviction records as described above. If the court grants that motion, the bill would prohibit the department from granting relief, but the person would continue to be eligible for relief through other existing procedures, including petitions to the court.

The bill would require the Department of Justice to annually publish statistics regarding relief granted pursuant to the provisions of this bill, as specified.

The bill would require a court, at the time of sentencing, to advise each defendant of their right to conviction relief pursuant to the provisions of this bill, as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

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

1 SECTION 1. Section 851.93 is added to the Penal Code, to
2 read:

1 851.93. (a) (1) On a weekly basis, the Department of Justice
2 shall review the records in the statewide criminal justice databases,
3 and based on information in the Automated Criminal History
4 System, shall identify persons with records of arrest that meet the
5 criteria set forth in paragraph (2) and are eligible for arrest record
6 relief.

7 (2) A person is eligible for relief pursuant to this section, if the
8 arrest *occurred on or after January 1, 1973, and* meets any of the
9 following conditions:

10 (A) The arrest was for a misdemeanor offense and the charge
11 was dismissed.

12 (B) The arrest was for a misdemeanor offense, at least one
13 calendar year has elapsed since the date of the arrest, and no
14 conviction occurred, or the arrestee was acquitted of any charges
15 that arose, from that arrest.

16 (C) The arrest was for an offense that is punishable by
17 imprisonment pursuant to paragraph (1) or (2) of subdivision (h)
18 of Section 1170, at least three calendar years have elapsed since
19 the date of the arrest, and no conviction occurred, or the arrestee
20 was acquitted of any charges arising from, that arrest.

21 (D) The person successfully completed any of the following,
22 relating to that arrest:

23 (i) A prefiling diversion program, as defined in Section 851.87,
24 administered by a prosecuting attorney in lieu of filing an
25 accusatory pleading.

26 (ii) A drug diversion program administered by a superior court
27 pursuant to Section 1000.5, or a deferred entry of judgment
28 program pursuant to Section 1000 or 1000.8.

29 (iii) A pretrial diversion program, pursuant to Section 1000.4.

30 (iv) A diversion program, pursuant to Section 1001.9.

31 (v) Any diversion program described in Chapters 2.8
32 (commencing with Section 1001.20), 2.8A (commencing with
33 Section 1001.35), 2.8I (commencing with Section 1001.40), 2.9
34 (commencing with Section 1001.50), 2.9A (commencing with
35 Section 1001.60), 2.9B (commencing with Section 1001.70), 2.9C
36 (commencing with Section 1001.80), ~~or~~ 2.9D (commencing with
37 Section 1001.81), *or 2.92 (commencing with Section 1001.85)*, of
38 Title 6.

39 (b) (1) The department shall grant relief to a person identified
40 pursuant to subdivision (a), without requiring a petition or motion

1 by a party for that relief. *relief if the record contains sufficient*
2 *information.*

3 (2) The state summary criminal history information shall
4 include, directly next to or below the entry or entries regarding the
5 person's arrest record, a note stating "arrest relief granted," listing
6 the date that the department granted relief, and this section. This
7 note shall be included in all statewide criminal databases with a
8 record of the arrest.

9 (3) Except as otherwise provided in subdivision (d), an arrest
10 for which arrest relief has been granted is deemed not to have
11 occurred, and a person who has been granted arrest relief is released
12 from any penalties and disabilities resulting from the arrest, and
13 may answer any question relating to that arrest accordingly.

14 (4) *As used in paragraph (1), "sufficient information" means*
15 *the date of the arrest and the arrest charges.*

16 (c) (1) On a weekly basis, the department shall electronically
17 submit a notice to the superior court having jurisdiction over the
18 criminal case, informing the court of all cases for which relief was
19 granted pursuant to this section. ~~The Commencing on February 1,~~
20 ~~2021, for any record retained by the court pursuant to Section~~
21 ~~68152 of the Government Code, the court shall not disclose~~
22 ~~information concerning an arrest that is granted relief pursuant to~~
23 ~~this section to any person or entity, in any format, except to the~~
24 ~~person whose arrest was granted relief or a criminal justice agency,~~
25 ~~as defined in Section 851.92.~~

26 (2) The department shall not disclose information concerning
27 an arrest that is granted relief pursuant to this section to a board,
28 as defined in Section 22 of the Business and Professions Code.

29 (d) Relief granted pursuant to this section is subject to the
30 following conditions:

31 (1) Arrest relief does not relieve a person of the obligation to
32 disclose an arrest in response to a direct question contained in a
33 questionnaire or application for employment as a peace officer, as
34 defined in Section 830.

35 (2) Relief granted pursuant to this section has no effect on the
36 ability of a criminal justice agency, as defined in Section 851.92,
37 to access and use records that are granted relief to the same extent
38 that would have been permitted for a criminal justice agency had
39 relief not been granted.

1 (3) Relief granted pursuant to this section does not affect a
2 person's authorization to own, possess, or have in the person's
3 custody or control any firearm, or the person's susceptibility to
4 conviction under Chapter 2 (commencing with Section 29800) of
5 Division 9 of Title 4 of Part 6, if the arrest would otherwise affect
6 this authorization or susceptibility.

7 (4) Relief granted pursuant to this section does not affect any
8 prohibition from holding public office that would otherwise apply
9 under law as a result of the arrest.

10 (5) *Relief-Subject to the requirement prescribed in paragraph*
11 *(2) of subdivision (b), an arrest for which relief has been granted*
12 *pursuant to this section is subject to the provisions of Section*
13 *11105.*

14 (e) This section shall not limit petitions, motions, or orders for
15 arrest record relief, as required or authorized by any other law,
16 including, but not limited to, Sections 851.87, 851.90, 851.91,
17 1000.4, and 1001.9.

18 (f) The department shall annually publish statistics *for each*
19 *county* regarding the total number of arrests granted relief pursuant
20 *to this section, by county, section and the total number of arrests*
21 *lacking sufficient information as described in subdivision (b), on*
22 *the OpenJustice Web portal, as defined in Section 13010.*

23 (g) This section shall be operative commencing January 1, 2021.

24 SEC. 2. Section 1203.425 is added to the Penal Code,
25 immediately following Section 1203.42, to read:

26 1203.425. (a) (1) On a weekly basis, the Department of Justice
27 shall review the records in the statewide criminal justice databases,
28 and based on information in the Automated Criminal History
29 System and the Supervised Release File, shall identify persons
30 with convictions that meet the criteria set forth in paragraph (2)
31 and are eligible for automatic conviction record relief.

32 (2) A person is eligible for automatic conviction relief pursuant
33 to this section if they meet all of the following conditions:

34 (A) The person is not required to register pursuant to Section
35 290.

36 (B) The person is not under active local, state, or federal
37 supervision, according to the Supervised Release File.

38 (C) The person is not currently serving a sentence for any
39 offense and does not have any pending criminal charges.

1 (D) The conviction *occurred on or after January 1, 1973, and*
2 *meets one of the following criteria:*

3 (i) The defendant was sentenced to probation and has completed
4 their term of probation without revocation.

5 (ii) The defendant was convicted of an infraction or
6 misdemeanor and was not granted probation, has completed their
7 sentence ~~or paid their fine~~, *sentence*, and at least one calendar year
8 has elapsed since the date of judgment.

9 (iii) The defendant was sentenced pursuant to subparagraph (B)
10 of paragraph (5) of subdivision (h) of Section 1170, and one year
11 has elapsed following the completion of sentence, or, the defendant
12 was sentenced pursuant to subparagraph (A) of paragraph (5) of
13 subdivision (h) of Section 1170, and two years has elapsed
14 following the completion of sentence.

15 (iv) The defendant was sentenced before January 1, ~~2012~~ *2012*,
16 for a crime which, on or after January 1, 2012, would have been
17 eligible for sentencing pursuant to subdivision (h) of Section 1170,
18 and two years have elapsed following the defendant's completion
19 of the sentence.

20 (b) (1) Except as specified in subdivision (g), the department
21 shall grant relief, including dismissal of a conviction, to a person
22 identified pursuant to subdivision (a), without requiring a petition
23 or motion by a party for that relief. ~~relief if the record contains~~
24 *sufficient information.*

25 (2) The state summary criminal history information shall
26 include, directly next to or below the entry or entries regarding the
27 person's criminal record, a note stating "relief granted," listing the
28 date that the department granted relief and this section. This note
29 shall be included in all statewide criminal databases with a record
30 of the conviction.

31 (3) Except as otherwise provided in subdivision (d) and in
32 Section 13555 of the Vehicle Code, a person granted conviction
33 relief pursuant to this section shall be released from all penalties
34 and disabilities resulting from the offense of which ~~he or she~~ *the*
35 *person* has been convicted.

36 (4) *As used in paragraph (1), "sufficient information" means*
37 *the date of the disposition, the conviction charges, and the sentence*
38 *imposed.*

39 (c) (1) On a weekly basis, the department shall electronically
40 submit a notice to the superior court having jurisdiction over the

1 criminal case, informing the court of all cases for which relief was
2 granted pursuant to this section. ~~The Commencing on February 1,~~
3 ~~2021, for any record retained by the court pursuant to Section~~
4 ~~68152 of the Government Code, the court shall not disclose~~
5 ~~information concerning a conviction granted relief pursuant to this~~
6 ~~section or Sections 1203.4, 1203.4a, 1203.41, and 1203.42, to any~~
7 ~~person or entity, in any format, except to the person whose~~
8 ~~conviction was granted relief or a criminal justice agency, as~~
9 ~~defined in Section 851.92.~~

10 (2) The department shall not disclose information concerning
11 a criminal conviction record that is granted relief pursuant to this
12 section to a board, as defined in Section 22 of the Business and
13 Professions Code.

14 (d) Relief granted pursuant to this section is subject to the
15 following conditions:

16 (1) Relief granted pursuant to this section does not relieve a
17 person of the obligation to disclose a criminal conviction in
18 response to a direct question contained in a questionnaire or
19 application for employment as a peace officer, as defined in Section
20 830.

21 (2) Relief granted pursuant to this section does not relieve a
22 person of the obligation to disclose the conviction in response to
23 any direct question contained in any questionnaire or application
24 for public office, for licensure by any state or local agency, or for
25 contracting with the California State Lottery Commission.

26 (3) Relief granted pursuant to this section has no effect on the
27 ability of a criminal justice agency, as defined in Section 851.92,
28 to access and use records that are granted relief to the same extent
29 that would have been permitted for a criminal justice agency had
30 relief not been granted.

31 (4) *Relief granted pursuant to this section does not limit the*
32 *jurisdiction of the court over any subsequently filed motion to*
33 *amend the record, petition or motion for postconviction relief, or*
34 *collateral attack on a conviction for which relief has been granted*
35 *pursuant to this section.*

36 (4)

37 (5) Relief granted pursuant to this section does not affect a
38 person's authorization to own, possess, or have in the person's
39 custody or control any firearm, or the person's susceptibility to
40 conviction under Chapter 2 (commencing with Section 29800) of

1 Division 9 of Title 4 of Part 6, if the criminal conviction would
2 otherwise affect this authorization or susceptibility.

3 ~~(5)~~

4 (6) Relief granted pursuant to this section does not affect any
5 prohibition from holding public office that would otherwise apply
6 under law as a result of the criminal conviction.

7 ~~(6)~~

8 (7) In any subsequent prosecution of the defendant for any other
9 offense, the prior conviction may be pleaded and proved and shall
10 have the same effect as if the relief had not been granted.

11 (8) *Subject to the requirement prescribed in paragraph (2) of*
12 *subdivision (b), a conviction for which relief has been granted*
13 *pursuant to this section shall be subject to the requirements of*
14 *Section 11105.*

15 (e) This section shall not limit petitions, motions, or orders for
16 relief in a criminal case, as required or authorized by any other
17 law, including, but not limited to, Sections 1203.4, 1203.4a,
18 1203.41, and 1203.42.

19 (f) The department shall annually publish statistics *for each*
20 *county* regarding the total number of convictions granted relief
21 pursuant to this section, ~~and the total number of convictions~~
22 ~~prohibited from automatic relief pursuant to subdivision (h), by~~
23 ~~county, and the total number of arrests, lacking sufficient~~
24 ~~information as described in subdivision (b), on the OpenJustice~~
25 ~~Web portal, as defined in Section 13010.~~

26 (g) Subdivisions (a) to (g) inclusive, shall be operative
27 commencing January 1, 2021.

28 (h) ~~No~~ *For convictions entered on or after January 1, 2018, the*
29 *prosecuting attorney or probation department may, no later than*
30 *90 calendar days before the date of a person's eligibility for relief*
31 *pursuant to this section, the prosecuting attorney or probation*
32 ~~department may~~ *file a motion to prohibit the department from*
33 *granting automatic relief pursuant to this section. The court shall*
34 *give notice to the defendant and conduct a hearing on the motion*
35 *within 45 days after the motion is filed.* If the court grants that
36 motion, the department shall not grant relief pursuant to this
37 section, but the person may continue to be eligible for relief
38 pursuant to Section 1203.4, 1203.4a, 1203.41, or 1203.42.

39 (i) At the time of sentencing, the court shall advise a defendant,
40 either orally or in writing, of the provisions of this section and of

1 the defendant's right, if any, to petition for a certificate of
2 rehabilitation and pardon.

O

ASSEMBLY THIRD READING

AB 1076 (Ting)

As Amended May 16, 2019

Majority vote

SUMMARY:

Requires the Department of Justice (DOJ), as of January 1, 2021, to review its criminal justice databases on a weekly basis, identify persons who are eligible for relief by having either their arrest records or conviction records withheld from disclosure, with specified exceptions, and requires the DOJ to grant that relief to the eligible person without a petition or motion to being filed on the person's behalf.

Major Provisions

- 1) Requires the DOJ to review its statewide criminal justice databases and Automated Criminal History System on a weekly basis and identify persons who meet specified conditions and are therefore eligible for automatic arrest record relief.
- 2) States the conditions that must be met in order for a person to be eligible for relief.
- 3) Requires the DOJ to grant relief, including dismissal of a conviction, to a person identified as eligible, provided that there is sufficient information in DOJ's database to ascertain eligibility, without requiring a petition or motion by a party for that relief, and further requires such a person thereafter be released from all penalties and disabilities resulting from the offense of which the person has been convicted, except for the suspension or revocation of the person's driving privilege, as specified.
- 4) Requires DOJ to include on the OpenJustice Web portal statistics regarding the total number of convictions granted relief and the total number of convictions prohibited from automatic relief, as well as the number of persons for which there is insufficient information to ascertain eligibility for relief, on an annual basis.

COMMENTS:**According to the Author:**

"Everybody deserves a second chance. We must open doors for those facing housing and employment barriers and use available technology to clear arrest and criminal records for individuals already eligible for relief. There is a great cost to our economy and society when we shut out job-seeking workers looking for a better future. This bill would open doors to those facing employment and housing barriers by automating the process of clearing an arrest or criminal record for eligible individuals."

Arguments in Support:

According to the *Californians for Safety and Justice*, "Eight million California residents have criminal convictions on their records that hamper their ability to find work and housing, secure public benefits, or even get admitted to college. Millions more have old arrests on their record that never resulted in a conviction but remain as obstacles to employment. Nearly 90% of employers, 80% of landlords, and 60% of colleges screen applicants' criminal records."

"The *Survey of California Victims and Populations Affected by Mental Health, Substance Issues, and Convictions* found that 76 percent of individuals with a criminal conviction report instability in finding a job or housing, obtaining a license, paying for fines or fees, and having health issues. A National Institute of Justice study found that having a criminal record reduced the chance of getting a job or call back by 50%.

"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."

Arguments in Opposition:

According to the *California Law Enforcement Association of Records Supervisors, Inc.*: "Under current law, a person already has the ability to petition the courts to get their criminal records expunged. Once the judge grants the expungement, a person can lawfully answer they have never been convicted of the crime. This process allows for a successful reentry into the community and the ability to obtain housing and employment. Furthermore, existing law also allows for an indigent defendant to get the necessary fees waived for costs associated with the expungement process.

"AB 1076 will unnecessarily put the burden on records management personnel, who are short staffed and without sufficient resources, to move arrest dispositions to an automated system, a very labor intensive and cost-prohibitive task. This proposed policy further creates a liability for law enforcement agencies that may inadvertently miss a defendant's record eligible for dismissal."

FISCAL COMMENTS:

According to the Assembly Appropriations Committee:

- 1) One-time costs (General Fund (GF)) to DOJ, likely in the low millions of dollars, to review records and submit notices to superior courts, as required by this bill. Given the magnitude of the work involved and the limited timeline specified in this bill, it is likely that DOJ would require a significant temporary increase in staffing.
- 2) Costs (Trial Court Trust Fund/GF) between \$3.2 million dollars and \$9.8 million dollars annually for increased trial court workload assuming one million notifications over three years. Costs will depend on the number of convictions identified by the DOJ for relief.

VOTES:

ASM PUBLIC SAFETY: 6-2-0

YES: Jones-Sawyer, Bauer-Kahan, Kamlager-Dove, Quirk, Santiago, Wicks

NO: Lackey, Diep

ASM APPROPRIATIONS: 12-5-1

YES: Gonzalez, Bloom, Bonta, Calderon, Carrillo, Chau, Eggman, Gabriel, Eduardo Garcia, Petrie-Norris, Quirk, Robert Rivas

NO: Bigelow, Brough, Diep, Fong, Obernolte

ABS, ABST OR NV: Maienschein

UPDATED:

VERSION: May 16, 2019

CONSULTANT: Matthew Fleming (Counsel) / PUB. S. / (916) 319-3744

FN: 0000977

Date of Hearing: April 10, 2019

ASSEMBLY COMMITTEE ON APPROPRIATIONS
Lorena Gonzalez, Chair
AB 1076 (Ting) – As Amended March 27, 2019

Policy Committee: Public Safety

Vote: 6 - 2

Urgency: No

State Mandated Local Program: No

Reimbursable: No

SUMMARY:

Requires the Department of Justice (DOJ), as of January 1, 2021, to review its criminal justice databases on a weekly basis, identify persons who are eligible for relief by having either their arrest records or conviction records withheld from disclosure, and grant relief to an eligible person without a petition or motion being filed on the person's behalf. Specifically, this bill:

- 1) 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 relief was granted.
- 2) Requires DOJ to include on the OpenJustice Web portal statistics regarding the total number of convictions granted relief and the total number of convictions prohibited from automatic relief, on an annual basis.
- 3) Requires the DOJ to grant relief, including dismissal of a conviction, to a person identified as eligible, without requiring a petition or motion by a party for that relief, and further requires such a person thereafter be released from all penalties and disabilities resulting from the offense of which the person has been convicted, except for the suspension or revocation of the person's driving privilege, as specified.

FISCAL EFFECT:

- 1) One-time costs (GF) to DOJ, likely in the millions of dollars, to review records and submit notices to superior courts, as required by this bill. Given the magnitude of the work involved and the limited timeline specified in this bill, it is likely that DOJ would require a significant temporary increase in staffing.
- 2) Costs (Trial Court Trust Fund/GF) between \$3.2 million dollars and \$9.8 million dollars annually for increased trial court workload assuming one million notifications over three years. Costs will depend on the number of convictions identified by the DOJ for relief.

Additional costs possibly in the tens of millions of dollars annually in lost revenue if courts determine eligible persons are relieved from all penalties and assessments, as required by this bill. Judicial Council estimates possible annual revenue loss to the courts of between \$23.3 million dollars and \$46.7 million dollars in penalties.

- 3) Costs (GF) likely in the hundreds of thousands of dollars annually for DOJ to compile information on convictions granted and denied relief and post them on the OpenJustice Web portal.

COMMENTS:

- 1) **Purpose.** According to the author:

This bill would open doors to those facing employment and housing barriers by automating the process of clearing an arrest or criminal record for eligible individuals.

- 2) **Background.** This bill requires DOJ to review convictions in the summary criminal history database for any crimes occurring before January 1, 2012 that may be eligible for expungement or removal from the database pursuant to sentencing changes in Propositions 47 and 64, as well as other statutory changes made since 2012. However, DOJ's summary criminal history database is often missing important disposition information, especially in regards to low-level arrests and probation violations. Furthermore, the summary criminal history database was first established in 1953. The records in that database are likely to number in the tens of millions, if not more. Analyzing each of those records for eligibility will be a monumental task and may produce some undesirable results. For example, DOJ will have no way of knowing whether the subject it is evaluating for relief is deceased, has moved out of the country or is otherwise uninterested in seeking arrest record or conviction record relief. The current system places the onus on the defendant to initiate the process to obtain relief, thereby ensuring that government resources are only expended on persons who actually stand to benefit.

- 3) **Support.** According to Californians for Safety and Justice:

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.

- 4) **Opposition.** According to the California Law Enforcement Association of Records Supervisors, Inc.:

AB 1076 will unnecessarily put the burden on records management personnel, who are short staffed and without sufficient resources, to move arrest dispositions to an automated system, a very labor intensive and cost-prohibitive task. This proposed policy further creates a liability for law enforcement agencies that may inadvertently miss a defendant's record eligible for dismissal.

- 5) **Related Legislation:** AB 972 (Bonta) would establish a process for courts to automatically re-designate as a misdemeanor any felony conviction that is eligible to be reduced to a misdemeanor because of the passage of Proposition 47 (2014). AB 972 is pending in this committee.

Analysis Prepared by: Kimberly Horiuchi / APPR. / (916) 319-2081

Date of Hearing: April 2, 2019
Counsel: Matthew Fleming

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 1076 (Ting) – As Amended March 27, 2019

SUMMARY: Requires the Department of Justice (DOJ), as of January 1, 2021, to review its criminal justice databases on a weekly basis, identify persons who are eligible for relief by having either their arrest records or conviction records withheld from disclosure, with specified exceptions, and requires the DOJ to grant that relief to the eligible person without a petition or motion to being filed on the person's behalf. Specifically, **this bill**:

- 1) Requires the DOJ to review its statewide criminal justice databases and Automated Criminal History System on a weekly basis and identify persons who meet specified conditions and are therefore eligible for automatic arrest record relief.
- 2) States that a person is eligible for automatic arrest record relief if the person meets one of the following conditions:
 - a) The arrest is for a misdemeanor offense, and the charge has been dismissed;
 - b) The arrest is for a misdemeanor offense, and at least one calendar year has elapsed since the date of arrest, and no conviction has occurred, or the arrestee has been acquitted of the charges;
 - c) The arrest is for a felony offense that is punishable by imprisonment in county jail for 16 months, or two or three years, 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,
 - d) The case resulting from the arrest meets one of the following conditions:
 - i) The person has successfully completed a prefiling diversion program, as specified, administered by a prosecuting attorney in lieu of filing an accusatory pleading;
 - ii) The person has successfully completed a drug diversion program administered by a superior court, as specified, or a deferred entry of judgment program, as specified;
 - iii) The person has successfully completed a pretrial diversion program, as specified; or,
 - iv) The person has successfully completed a diversion program, as specified.
- 3) Requires DOJ to grant relief to a person identified as eligible without requiring a motion or a petition by a party for that relief, and thereafter the arrest is deemed not to have occurred, and he or she may answer any question relating to the arrest that has been granted relief

accordingly, and is released from all penalties and disabilities resulting from the arrest, except as provided.

- 4) Specifies 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; requires this note to be included in all statewide criminal databases with a record of the arrest.
- 5) Specifies that automatic arrest record relief granted pursuant to these provisions is subject to the following conditions:
 - a) 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;
 - b) 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;
 - c) It does not affect any prohibition from holding public office that would otherwise apply under law as a result of the arrest;
 - d) It has no effect on the ability of a criminal justice agency, as defined, to, in the regular course of its duties, access, furnish to other criminal justice agencies, 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; and,
 - e) It is subject to provisions of law that allow for the dissemination of criminal history information by DOJ to a variety of courts, agencies, officers and others, if it is needed in the course of their duties, as specified.
- 6) Requires DOJ to, on a weekly basis, submit a notice to the superior court having jurisdiction over the criminal case, informing the court of all cases for which relief was granted pursuant to these provisions.
- 7) Specifies that the court shall not disclose information concerning an arrest that is granted relief pursuant to these provisions to any person or entity, except to the person whose arrest was granted relief or a criminal justice agency, as defined.
- 8) Specifies that DOJ shall not disclose information concerning an arrest that is granted relief pursuant to this section to a board, as defined in the Businesses and Professions Code.
- 9) Specifies that these provisions shall not limit petitions, motions, or orders for arrest record relief, as required or authorized by any other law.
- 10) Requires the DOJ to review its statewide criminal justice databases, and based upon information in its Automated Criminal History System and Supervised Release File, identify

people who are eligible for automatic criminal conviction record relief as specified.

- 11) States that a person is eligible for automatic conviction record relief if they meet all of the following conditions:
 - a) The person is not required to register pursuant to Penal Code Section 290;
 - b) The person is not under active local, state, or federal supervision, according to the Supervised Release File;
 - c) The person is not serving a sentence for any offense, or charged with the commission of any offense; and,
 - d) The conviction meets one of the following criteria:
 - i) The defendant has completed their probation sentence without revocation;
 - ii) The defendant was convicted of an infraction, or of a misdemeanor and not granted probation, has completed their sentence, and at least one calendar year has elapsed since the date of pronouncement of judgment;
 - iii) If the defendant was convicted of a felony and sentenced to time in the county jail and part of the sentence was suspended, as specified, one year has elapsed following the defendant's completion of the sentence;
 - iv) If the defendant was convicted of a felony and sentenced to time in the county jail, and no part of the sentence was suspended, as specified, two years have elapsed following the defendant's completion of the sentence; or
 - v) The defendant was sentenced prior to the implementation of the 2011 Realignment Legislation for a crime for which he or she would otherwise have been eligible for sentencing pursuant to Realignment, as specified, and two years have elapsed following the defendant's completion of the sentence.
- 12) Requires the DOJ to grant relief, including dismissal of a conviction, to a person identified as eligible, without requiring a petition or motion by a party for that relief, and he or she shall thereafter be released from all penalties and disabilities resulting from the offense of which he or she has been convicted, except for the suspension or revocation of the person's driving privilege, as specified.
- 13) Specifies 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; requires this note to be included in all statewide criminal databases with a record of the arrest.
- 14) Requires that the defendant be informed, either orally or in writing, of the provisions of this section and of his or her right, if any, to petition for a certificate of rehabilitation and pardon at the time he or she is sentenced.

- 15) Specifies that automatic conviction record relief granted pursuant to these provisions is subject to the following conditions:
- a) 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;
 - b) 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, for licensure by any state or local agency, or for contracting with the California State Lottery Commission;
 - c) 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;
 - d) It does not permit a person prohibited from holding public office as a result of that conviction to hold public office;
 - e) 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 specified; and,
 - f) It does not have any effect on the ability of a criminal justice agency, as defined, to, in the regular course of its duties, access, furnish to other criminal justice agencies, 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.
- 16) 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 relief was granted pursuant to these provisions.
- 17) Specifies that the court shall not disclose information concerning a conviction granted relief pursuant to these provisions to any person or entity, except to the person whose conviction was granted relief or a criminal justice agency, as defined.
- 18) Specifies that DOJ shall not disclose information concerning a criminal conviction record that is granted relief pursuant to this section to a board, as defined in the Businesses and Professions Code.
- 19) 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.
- 20) Requires that, on an annual basis statistics regarding the total number of convictions granted relief pursuant to this section and the total number of convictions prohibited from automatic relief pursuant to subdivision (h) of this section, by county, shall be published on the OpenJustice Web portal, as defined.

- 21) States that the preceding provisions shall become operative on January 1, 2021.
- 22) Allows a prosecuting attorney, no later than 90 calendar days before the date of a person's eligibility for conviction record relief, to file a motion to prohibit DOJ from granting automatic relief; if the court grants that motion, DOJ will not grant automatic relief but the person may continue to be eligible for relief, as specified.

EXISTING LAW:

- 1) 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.)
- 2) 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.)
- 3) 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).)
- 4) Specifies that an arrest that did not result in a conviction has occurred 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; or
 - 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; or,
 - 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. (Pen. Code, § 851.91, subd. (a).)
- 5) 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).)

- 6) 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).)
- 7) Specifies that a petition to seal an arrest record for an arrest that did not result in a conviction may be granted as a matter of right or in the interests of justice, as specified. (Pen. Code, § 851.91, subd. (c).)
- 8) 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).)
- 9) 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).)
- 10) 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.)
- 11) 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.)
- 12) 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).)
- 13) 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).)
- 14) 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).)

- 15) 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).)
- 16) 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).)
- 17) 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).)
- 18) 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.)
- 19) 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.)
- 20) 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).)
- 21) 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).)
- 22) 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.)
- 23) 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).)
- 24) 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).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "Everybody deserves a second chance. We must open doors for those facing housing and employment barriers and use available technology to clear arrest and criminal records for individuals already eligible for relief. There is a great cost to our economy and society when we shut out job-seeking workers looking for a better future. This bill would open doors to those facing employment and housing barriers by automating the process of clearing an arrest or criminal record for eligible individuals."
- 2) **Employment Barriers for People with Criminal History Records:** There are approximately 2.2 million Americans imprisoned today. Each year more than 600,000 inmates are released from federal and state prisons. Another 11.4 million individuals circulate through local jails. Around 70 million Americans, including around eight million Californians, have some sort of criminal record. This amounts to almost one-in-three working-age Americans.

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.

The criminal justice system is known to disproportionately affect people of color, therefore the barriers to employment 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.

This bill seeks to reduce the barriers to employment for individuals with a criminal history by automating the process of having eligible arrest records sealed, and eligible conviction records dismissed. This would allow formerly arrested and convicted individuals to dedicate their time and resources toward securing employment immediately upon their release into the community, rather than going through a court process of sealing and/or dismissal.

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, 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 would streamline that process by removing the requirement that a defendant file a petition with the court, and instead requires DOJ to proactively seek out defendants who are eligible for relief by searching its criminal information databases. Once DOJ makes a determination that a person is eligible for either arrest record or conviction record relief, it must grant relief in the form of either 1) sealing an arrest record, or 2) in the case of a guilty plea, withdrawing the plea of guilty, entering a plea of not guilty, and dismissing the charges, or 3) in the case of a conviction after a plea of not guilty, vacating the conviction and dismissing the charges against the person. DOJ would be required to search for eligible defendants on a weekly basis and inform the superior court with jurisdiction over the case when relief is granted.

This bill would leave in place certain prohibitions resulting from arrests or convictions after relief has been granted, such as the prohibition on owning a firearm after a conviction for domestic violence or a felony, and would not restore someone's driving privilege if that privilege was lost as a result of the conviction for which he or she is obtaining relief. This bill would prohibit the disclosure of the arrest/conviction record for which relief is obtained, with certain exceptions already prescribed in existing law, such as when a person who has been granted relief is applying for a position as a peace officer. This bill would also not allow DOJ to grant conviction records relief to a person who is required to register as a sex offender, or a person who is under court supervision or facing criminal charges.

- 3) **Implementation of this Bill:** This bill would be a comprehensive change in how record relief for most arrests and conviction records is granted. Thus, implementing this bill is likely to come with certain challenges. As an initial matter, there is information necessary to making a determination on eligibility for certain forms of relief that will not necessarily be immediately apparent in DOJ's databases. For example, this bill would require DOJ to seal the record of an arrest for a misdemeanor offense if one year has lapsed since the time of arrest, and no conviction has occurred during that time. Under existing law, such a person would not be eligible for arrest record relief if he or she had avoided conviction by absconding from the jurisdiction. In its current form, this bill does not contain a similar exception for absconding, but even if it did, DOJ may not be aware that the person absconded based upon the information available to it in its criminal history database.

DOJ's criminal history databases depend upon local jurisdictions uploading timely and accurate information. DOJ will only be able to make an accurate determination as to eligibility for relief to the extent that local courts and law enforcement agencies provide accurate and timely updates. Because this bill contemplates DOJ checking its databases on a weekly basis, if a local entity delays in providing information to the DOJ, there may be instances in which an otherwise ineligible person is found to be eligible for relief, and vice versa. Anecdotally, DOJ's summary criminal history database is often missing important disposition information, especially in regards to low-level arrests and probation violations.

That information will be necessary for the DOJ to make many eligibility determinations under the provisions of this bill.

In addition, this bill does not place any time parameters on which records DOJ is required to analyze for eligibility of relief. The summary criminal history database was first established in 1953. The records in that database are likely to number in the tens of millions, if not more. Analyzing each of those records for eligibility will be a monumental task, and may produce some undesirable results. For example, DOJ will have no way of knowing whether the subject it is evaluating for relief is deceased, has moved out of the country, or is otherwise uninterested in seeking arrest record or conviction record relief. One of the merits of the current system is that it places the onus of the defendant to initiate the process to obtain relief, thereby ensuring that government resources are only expended on persons who actually stand to benefit.

Although this bill requires DOJ to provide notice to the court when it grants relief, there is no similar provision that requires notice to be sent to the individual for whom relief has been granted. In other words, people who are granted relief pursuant to this section will not know it has been granted. This may curtail the benefits that are otherwise gained by going through the court process where a person is assured of the fact that their record has been sealed and/or dismissed. Also, a person who obtains relief through the court is likely to be provided with information about when and how their criminal record can still be accessed and disseminated in limited circumstances after relief has been granted.

This bill anticipates that courts will continue to have the ability to process writs and petitions for arrest and conviction record relief, in spite of DOJ's automated system. Thus, the Legislature will be delegating the same, or very similar, authority to two separate branches of government simultaneously. In theory, it makes sense that a judge could examine a writ or petition for relief separate and apart from the automated DOJ process anticipated by this bill. As a practical matter, however, it is hard to imagine that a judge's decision-making process will not be affected by the fact that DOJ has chosen not to grant relief to a particular individual.

Finally, this bill contains a provision that allows a prosecutor to file a motion to prohibit DOJ from granting relief. This bill does not explain under what circumstances a prosecutor may do so. It may be entirely appropriate for a prosecutor to file a motion to prohibit DOJ from granting relief in circumstances where the prosecutor disagrees with the DOJ's assessment that the person is eligible. However, as currently drafted, this bill appears to leave open the possibility that a prosecutor could prevent a person from obtaining automatic DOJ relief for illegitimate reasons, such as personal animus against the defendant.

- 4) **Argument in Support:** the bill's sponsor, *Californians for Safety and Justice*: "Eight million California residents have criminal convictions on their records that hamper their ability to find work and housing, secure public benefits, or even get admitted to college. Millions more have old arrests on their record that never resulted in a conviction but remain as obstacles to employment. Nearly 90% of employers, 80% of landlords, and 60% of colleges screen applicants' criminal records.

"The *Survey of California Victims and Populations Affected by Mental Health, Substance Issues, and Convictions* found that 76 percent of individuals with a criminal conviction report

instability in finding a job or housing, obtaining a license, paying for fines or fees, and having health issues. A National Institute of Justice study found that having a criminal record reduced the chance of getting a job or call back by 50%.

“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.”

- 5) **Argument in Opposition:** According to the *California Law Enforcement Association of Records Supervisors, Inc.*: “Under current law, a person already has the ability to petition the courts to get their criminal records expunged. Once the judge grants the expungement, a person can lawfully answer they have never been convicted of the crime. This process allows for a successful reentry into the community and the ability to obtain housing and employment. Furthermore, existing law also allows for an indigent defendant to get the necessary fees waived for costs associated with the expungement process.

“AB 1076 will unnecessarily put the burden on records management personnel, who are short staffed and without sufficient resources, to move arrest dispositions to an automated system, a very labor intensive and cost-prohibitive task. This proposed policy further creates a liability for law enforcement agencies that may inadvertently miss a defendant’s record eligible for dismissal.”

6) **Related Legislation:**

- a) AB 972 (Bonta) would establish a process for courts to automatically redesignate as misdemeanors, felony convictions which are eligible to be reduced to misdemeanors because of the passage of Proposition 47 (2014). AB 972 is pending in the Assembly Appropriations Committee.
- b) AB 1372 (Grayson) would allow a criminal justice agency to inquire about, seek, and utilize information about certain nonsworn employees concerning an arrest or detention that did not result in a conviction, information concerning a referral or participation in a diversion program, and information that has been judicially dismissed or ordered sealed.

7) **Prior Legislation:**

- a) AB 2599 (Holden), Chapter 653, Statutes of 2018, requires law enforcement agencies and probation departments to increase awareness and access to the arrest record sealing and expungement process.
- b) AB 2438 (Ting), of the 2017-2018 Legislative Session, would have required automatic expungements of certain convictions, as specified. AB 2438 was held of the Assembly Appropriations Suspense File.

- c) AB 1793 (Bonta), Chapter 993, Statutes of 2018, requires the court to automatically resentence, redesignate, or dismiss cannabis-related convictions.
- d) AB 1008 (McCarty), Chapter 789, Statutes of 2017, directed employers to follow certain procedures if they wish to consider job applicants' criminal history as part of a hiring process.
- e) AB 813 (Gonzalez Fletcher) Chapter 739, Statutes of 2016 created a mechanism of post-conviction relief for a person to vacate a conviction or sentence based on error damaging his or her ability to meaningfully understand, defend against, or knowingly accept the immigration consequences of the conviction.
- f) SB 124 (Lara), Chapter 789, Statutes of 2016, authorized a person who was sentenced to a term of one year prior to January 1, 2015, to submit an application to the trial court to have the term of the sentence reduced to the maximum term of 364 days.

REGISTERED SUPPORT / OPPOSITION:

Support

California for Safety and Justice (Sponsor)
American Civil Liberties Union of California
California Public Defenders Association
Community Works
Feminists in Action
Indivisible Sausalito
Indivisible Stanislaus
Indivisible: San Diego Central
Initiate Justice
National Association of Social Workers, California Chapter
Showing Up for Racial Justice, Marin
Sister Warrior Freedom Coalition
Southern California Coalition
We The People - San Diego

Opposition

California Law Enforcement Association of Records Supervisors

Analysis Prepared by: Matthew Fleming / PUB. S. / (916) 319-3744

Introduction Form

By a Member of the Board of Supervisors or Mayor

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SAN FRANCISCO

2019 APR 16 PM 2:06

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or meeting date

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee. (An Ordinance, Resolution, Motion or Charter Amendment).
- 2. Request for next printed agenda Without Reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning : "Supervisor [] inquiries"
- 5. City Attorney Request.
- 6. Call File No. [] from Committee.
- 7. Budget Analyst request (attached written motion).
- 8. Substitute Legislation File No. []
- 9. Reactivate File No. []
- 10. Topic submitted for Mayoral Appearance before the BOS on []

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission
- Youth Commission
- Ethics Commission
- Planning Commission
- Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use the Imperative Form.

Sponsor(s):

Brown, Walton, Mar, Mandelman

Subject:

Supporting California State Assembly Bill No. 1076 (Ting) - Criminal records: automatic relief

The text is listed:

Resolution supporting California State Assembly Bill No. 1076, authored by Assemblymember Phil Ting, to provide efficient arrest and conviction relief through the California Department of Justice by automating the process for those who are already entitled to record clearance relief under existing laws, and grant formerly-incarcerated persons fair and earned opportunity to fully reintegrate into society.

Signature of Sponsoring Supervisor:

For Clerk's Use Only