

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

**ASSEMBLY BILL**

**No. 1076**

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**Introduced by Assembly Member Ting**

February 21, 2019

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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